

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 81/2002

Monday this the 13th day of January, 2003.

C O R A M

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

N.Satheesan
S/o Narayanan
Assistant Provident Fund Commissioner
Regional Office
Employees' Provident Fund Organisation
Pattom
Thiruvananthapuram.

Applicant

(By advocate Ms.Chincy Gopakumar)

Versus

1. Central Board of Trustees
represented by its Chairman
Shram Shakti Bhavan
New Delhi.
2. Central Provident Fund Commissioner
New Delhi.
3. Director (Vigilance)
Office of the Central Provident Fund Commissioner
New Delhi.
4. Regional Provident Fund Commissioner
Bhavishyanidhi Bhavan
Pattom
Thiruvananthapuram.

Respondents

(By advocate Mr.N.N.Sugunapalan R2 to 4)

The application having been heard on 13th January, 2003,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

Applicant, an Assistant Provident Fund Commissioner, has filed this application challenging A-1 order dated 22.1.2002 by which he has been informed that his submission in the letter dated 11.9.2001 regarding recovery of HRA drawn by him was not acceptable to the Central Provident Fund Commissioner and he has been asked to deposit a sum of Rs.22,390/- in lumpsum, informing further that failure to do so would entail recovery of his pay and allowances from January 2002 onwards.

2. The relevant averments in the application are as follows: From 15.6.98 to 31.5.2001, the applicant was posted at the office of the Regional Provident Fund Commissioner, Bangalore. During that period, he had been staying in guest houses as also in different lodges situated in Bangalore city. For a few days he stayed in the guest houses and paid the guest house charges as stipulated. The number of days he had stayed in the guest houses is detailed in page 3 of the application. Since the applicant had not stayed continuously in the guest houses and as he had paid the guest house charges on the dates he stayed there, the applicant was entitled to receive HRA as per rules. Coming to know that there was a direction by the 3rd respondent to recover HRA paid to the applicant during the period in question, the applicant submitted A-2 representation dated 11.9.01 to the Regional Provident Fund Commissioner - the 4th respondent herein - stating that the 3rd respondent had no authority to direct such a recovery, that the applicant had stayed only for a few days in the guest houses on payment of stipulated rates and that the rules did not permit recovery of HRA for the reason that on certain days he had stayed in the guest houses. It was in reply to the A-1 representation that the impugned order was issued. Alleging that the order does not disclose application of mind, nor is it based on any rule or instructions and is unsustainable, the applicant has filed this application seeking to set aside the impugned order Annexure A-1.

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3. Respondents in their reply statement stated that the applicant for a period of more than 1 1/2 years continuously stayed in the guest houses, that in accordance with the Government of India, Ministry of Finance OM No.239/94-E.II(B) dated 27th October, 1994, the applicant who had stayed in the guest houses continuously is liable to refund the excess paid HRA.

4. In the rejoinder filed, the applicant has stated that occasional stay in the guest houses at concessional rate of rent does not amount to continuous stay at subsidized rate and therefore the contention of the respondents that the applicant was bound to refund the excess HRA is unsustainable. There is no basis for fixing Rs.22,390/- as excess amount, contends the applicant.

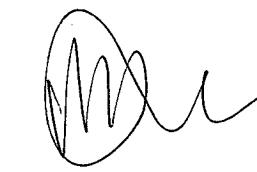
5. When the application came up for hearing, none appeared for the applicant.

6. I have gone through the application and the pleadings and materials brought on record and have heard the learned counsel for the respondents. The allegation in the application that the applicant had not been continuously staying in the guest houses but had stayed only on certain days has not been specifically contested with details in the reply statement. The applicant has given a detailed list of the number of days he stayed in the guest houses. This has not been specifically stated to be not true in the reply statement although the respondents in the reply statement made a statement that the applicant has stayed for more than 1 1/2 years continuously in the guest houses. No rule or

instruction has been brought to my notice to show that occasional or periodical stay in the guest houses would disentitle an officer from drawing HRA otherwise admissible to him if he has not availed of regular rent free accommodation or accommodation on payment of licence fee. Applicant has specifically averred in the application that he had been staying in the guest houses as also in private hotels and lodges. When the applicant stayed in private hotels/lodges, he would have had to pay much more rent than the amount which he would receive as HRA. Therefore, the fact that for certain days he had stayed in guest houses paying subsidized rent does not mean that he has been making any gain. In the impugned order A-1, no reason at all has been stated as to why the explanation submitted by the applicant was not acceptable. I find that there is no justification for recovery of a sum of Rs.22,390/- as proposed in A-1.

7. In the light of what is stated above, the impugned order A-1 which is unsustainable is set aside, with consequential benefits.

Dated 13th January 2003.



A.V.HARIDASAN
VICE CHAIRMAN

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