CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

.....

Date of decision: 8.11.1990

P R E S E N T

Hon'ble Shri N.V.Krishnan, Administrative Member

And

Hon'ble Shri N.Dharmadan, Judicial Member

O.A. 235/89

Dr. P.J.Cecily .. Applicant

Versus

1. The Director,
   Central Institute of Fisheries
   (ICAR) Technology,
   Cochin-29.

2. The Director General,
   Indian Council of Agricul-
   tural Research,
   Krishi Bhavan, New Delhi.

3. Union of India, represented
   by ~~Shixx~~ Secretary to Govt.
   of India, New Delhi.

} Respondents

Mr. P.V.Mohanan .... Counsel for applicant

Mr. P.V.Madhava Nambiar .... Counsel for respondents

O R D E R

(Shri N.V.Krishnan, Administrative Member)

The applicant is working from 1958 in the Central Institute of Fisheries Technology (CIFT, for short), an organisation under the Indian Council of Agricultural Research, to which the orders framed by the Govt. of India regarding the grant of House Rent Allowance (HRA, for short) are fully applicable. Her grievance concerns the denial of HRA to her from March, 1989. By the 'Note' dated 3.4.89 (Annexure-I), she has been informed by the Director, CIFT that she is not

entitled to get HRA, as she is staying with her husband in the house allotted to him by the Fertilizers and Chemicals Travancore Ltd. (FACT, for short) at Ambalamedu. She is also aggrieved by the order dated 12.4.89 (Annexure-II) which seeks to recover from her the entire amount of HRA paid to her from September, 1975 to February, 1989, on the same ground. She has impugned both these decisions on the grounds that (i) HRA being a part of pay it cannot be stopped arbitrarily (ii) the decisions have been taken without notice to her and (iii) it cannot be held retrospectively that she was not entitled to HRA. When the respondents produced at a later stage O.M. dated 20.12.89 (Exbt. R.1-D) to defend the impugned orders (Annexures I & II), the applicant filed an amended application challenging the validity of Exbt. R.1-D.

2. The respondents have filed a reply rebutting the claim. They rely on para 5(c)(iii) of the orders framed by Govt. of India to regulate grant of HRA (HRA order, for short) in terms of which the applicant was not entitled to HRA as her husband has been allotted accommodation at the 'same station' by FACT, an autonomous Govt. of India undertaking. It appears from the arguments of Shri P.V.Madhavan Nambiar, learned counsel for the respondents that their defence of Ann. I and Ann.II order is based on two grounds. Firstly, by the OM dated 18.2.88 of the Ministry of Finance (Ann.R.1-F)

HRA was extended to Puthencruz. The relevant portion of that OM reads as follows:

"Subject: House Rent Allowance - Places of duty within 8 kilometres of a classified city/town - Fulfilment of the prescribed conditions in respect of Puthencruz.

The undersigned is directed to say that Puthen Cruz near Cochin, Kerala fulfils the conditions prescribed in para 3(b)(iii) of the Office Memorandum No.F.2(37)-EII (B)/64 dated 27.11.1965 as amended from time to time. The President is accordingly pleased to decide that the Central Government servants having their places of duty in Puthencruz may be granted house rent allowances at the same rate as is appropriate to those posted within the classified town of Cochin, subject to fulfilment of the conditions laid down in the Office Memorandum dated 27.11.1965 as amended from time to time."

Secondly, Govt. of India have clarified in the OM dated 20.12.89 (Ann. R1-D) the scope of the phrase 'same station' used in para 5(c)(iii) of the HRA order. That clarification is reproduced below:

"Subject: Clarification of the phrase "same station" for grant of HRA/CCA.

The undersigned is directed to invite a reference to para 5(c)(iii) of this Ministry's OM No.F.2(37)/E.II(B)/64 dated 27.11.1965 as amended from time to time and to say that references have been received in this Ministry seeking clarifications about the interpretation of the phrase 'same station' occuring in the above mentioned para. The matter hasbeen considered and the President is pleased to decide that the phrase 'same station' occuring in para 5(c)(iii) of this Ministry's OM dated 27.11.1965 includes all places which are treated as contiguous to the qualified city/town in terms of para 3(a)(i), and those dependent on the qualified city/town in terms of para 3(b)(ii) and 3(b)(iii) of the aforesaid OM dated 27.11.1965 and also those places which are included in the Urban Agglomeration of a qualified city."

It is submitted that in view of this clarification, Puthencruz is the 'same station' as the classified town of Cochin Corporation on which it is dependent and is, therefore, the 'same station' as the Cochin Urban Agglomeration - which includes Cochin Corporation to which HRA applies.

3. We have perused the record and heard the counsel.

4. It is not disputed that applicant is entitled to HRA because her place of duty, i.e., CIFT, is located in the Cochin Corporation, which is included in the Cochin Urban Agglomeration where HRA is applicable, and she was being paid HRA till the issue of the Ann.I order. It is also not disputed that the house allotted, for the first time, to the husband of the applicant by the FACT in September 1975, is located in the area of Vadavucode-Puthencruz Panchayat, where she has been staying with her husband since then and that H RA has been extended to Puthencruz Panchayat by a notification dated 18.2.88 under para 3(b)(iii) of the HRA order (Exbt. R1-F). The question is whether on thebasis of these facts the applicant is disentitled to HRA under para 5(c)(iii) of the HRA order since September 1975.

5. In the present case, there is no denial by the respondents--in fact, it is undisputed--that Vadavucode-Puthencruz Panchayat, where the husband of the applicant has been allotted quarters by FACT, is not a part of the Cochin Urban Agglomeration, where the applicant has her place of duty. It is also not disputed that HRA was not applicable to this Panchayat till Exbt. R1-F memo

was issued under para 3(b)(iii) of the HRA order. Yet, the Respondents contend that the applicant's claim to HRA from September 1975 itself is hit by para 5(c)(iii) of the HRA order as the accommodation allotted to the applicant's husband at Puthen Cruz is in the 'same station'.

6. For a proper understanding of the dispute involved in this case, it is necessary to see para 3 and para 5 of the HRA order. Those provisions are reproduced below to the extent they are relevant:

"Areas where admissible

3. (a)(i) The limits of the locality which within these orders apply shall be those of the named municipality, or corporation and shall include such of the suburban municipalities, notified areas or cantonments as are contiguous to the named municipality or corporation or other areas as the Central Government may from time to time, notify.

(ii) xxx xxx xxx

(b) (i) xxx xxx xxx

(ii) Government servants whose place of duty is in the proximity of a qualified city, and who, of necessity have to reside within the city, may be granted the compensatory (city) and house rent allowances admissible in that city. The Administrative Ministries/Departments and the Comptroller and Auditor General in respect of staff serving under him, are authorised to sanction the allowances under this clause provided they are satisfied that--

(1) the distance between the place of duty and the periphery of the municipal limits of the qualified city does not exceed 8 kilometres; and

(2) the staff concerned have to reside within qualified city out of necessity, ie., for want of accommodation nearer their place of duty.

(iii) Staff working in aerodromes, meteorological observatories, wireless stations and other Central Govt. establishments within a distance of 8 kilometres from the periphery of the municipal xx

limits of a qualified city will be allowed house rent allowance at the rates admissible in that city even though they may not be residing within those municipal limits, provided that--

(1) there is no other suburban municipality, notified area or cantonment within the 8 kilometres limit; and

(2) it is certified by the Collector/Deputy Commissioner having jurisdiction over the area that the place is generally dependent for its essential supplies, eg., foodgrain, milk, vegetables, fuel, etc., on the qualified city.

Such a certificate will remain valid for a period of three years after which a fresh certificate will be required.

Note 1. xxx xxx

Note 2. xxx xxx

Clarification 1. xxx xxx

Clarification 2. It has been decided in consultation with the staff side of the National Council (JCM) that House Rent Allowance will also now be payable to the Central Government employees within the area of the Urban Agglomeration of classified city at the rates admissible in the classified city. The existing provisions for the payment of House Rent Allowance under paras 3(b)(ii) and 3(b)(iii) of the Office Memorandum, dated 27.11.65, will, however, continue to be applicable only at places which are within 8 kilometres of municipal limits of classified cities, but which are not included within Urban Agglomeration of any city, subject to fulfilment of usual conditions laid down and subject to issue of specific sanctions therefor as before.

(G.I., M.F., O.M.No.11021/6/76-E.II(B), dated the 26th October, 1977.)

xxxx xxxxx

Para 5. (a) xxx xxx

(b) xxx xxx

(c) A Government servant shall not be entitled to house rent allowance if--

(i) he shares Government accommodation allotted rent-free to another Government servant; or

(ii) he/she resides in accommodation allotted to his/her parents/son/daughter by the Central Government, State Government, an autonomous public undertaking or semi-Government organisation such as a Municipality, Port Trust, Nationalised Banks, Life Insurance Corporation of India, etc.

(iii) his wife/her husband has been allotted accommodation at the same station by the Central Government, State Government, an autonomous public undertaking or semi-Government organisation such as Municipality, Port Trust, etc., whether he/she resides in that accommodation or he/she resides separately in accommodation rented by him/her.

7. The only question for decision in this case is whether the applicant's husband has been allotted accommodation at the 'same station' as mentioned in para 5(c)(iii) of the HRA order by the autonomous public undertaking (FACT) under whom he is employed. That question arises because the provision in the HRA order is not clear. The provision does not indicate which is the other station, with which the station, where accommodation has been allotted to the spouse, has to be compared so as to come to a conclusion whether or not the station where the spouse has been allotted accommodation is/the 'same station' as the other station. That will be possible if one knows how that other station is to be traced out or identified. It is these matters about which para 5(c)(iii) is silent. In other words, there should be an answer to the further question "allotted accommodation at the same station as what station or which station?" That is neither answered by para 5(c)(iii) of the HRA order or in the counter affidavit.

8. This very question came up for consideration in OA 236/89 which was disposed of by us some time back and we construed the expression 'same station' by

answering the question posed above as follows.

> "That does not mean that some additional words are not to be read in para 5(c)(iii). In fact, without such addition, that clause will apparently be incomplete. For, while it refers to the accommodation being at the 'same station', it does not give explicitly an answer to the question "same as what?". Obviously, there is only one answer viz., that it should be the same as the location of the place of duty of the claimant. With this addition, the operative part of para 5(c)(iii) could read somewhat as follows:-
>
> > 'A Government servant shall not be entitled to house rent allowance if his wife/her husband has been allotted accommodation at the same station as the station where his/her place of duty is located.'

In that OA , the applicant's place of duty was in Cochin Corporation. Her husband, an employee of the University of Cochin, an autonomous body under the Government of Kerala, was allotted accommodation by the University at Trikkakara. In respect of Cochin ~~Municipal~~ Corporation, HRA is applicable to the Cochin Urban Agglomeration (CUA, for short), the constituents of which include both the Cochin Corporation - where the applicant's office is located - and Trikkakara outgrowth - where the house allotted to her husband is located, besides Eloor, Kalamassery and Tripunithura. Therefore, the HRA claim was disallowed.

9. That finding which was referred to in the course of hearing has not been disputed and, therefore, it is necessary to examine the contentions raised in this case on the basis of that interpretation. What is being

contended by the respondents is that, for the purpose of interpreting the expression 'same station', the local area where the applicant's place of duty is located should also include areas notified under para 3(b)(ii) and 3(b)(iii) as clarified in Exb . R1-D.

10. On one issue, a decision can be rendered straightaway. Even if Exbt. R1-D is accepted, as a valid clarification, Puthencruz will be included as part of the 'same station' for purpose of para 5(c)(iii) of the HRA order, only from the date when an order under para 3(b)(iii) was issued in respect of that place on 18.2.88 (Exbt.R1-F). Therefore, the respondents cannot treat the applicant as having become disentitled to HRA from any date prior to 18.2.88. Hence, on this ground, the impugned Ann.II order has to be drastically modified, if not struck down.

11. It also needs mention that the impugned Ann. I and Ann. II orders were passed on 3.4.89 and 12.4.89 respectively, i.e. before the issue of the Exbt. R1-D OM dated 20.12.89, which, in any case, could not have been anticipated. A perusal of the counter affidavit dated 10.7.89 in reply to the unamended application shows that the respondents did not have any clear idea as to when and in what circumstances disentitlement under para 5(c)(iii) of the HRA order is attracted. This is clear

from the following passages from that reply:

"As per Government of India instructions an employee who is sharing accommodation allotted to her husband/wife/any other member is not entitled to receive House Rent Allowance". (Para 2)

Referring to the quarters, it is stated "Eventhough it is situated at Ambalamedu, it is considered as if it is in Cochin, since it is the single factory of FACT at Cochin. Therefore, the stay of the applicant with her husband at Ambalamedu is to be treated as in the same station, for the purpose of application of rules on House Rent Allowance." (para 6)

"So long as she is staying in the quarters allotted to her husband by another Department, she falls within the purview of Rule 5(c)(iii) and therefore not entitled to draw the HRA as per Rules. She is also not incurring any expenditure towards payment of rent." (Para 8)

The respondents had no idea of what the phrase 'same station' used in para 5(c)(iii) of the HRA order connotes. The applicant had also a confused idea about the nature of the disentitlement under para 5(c)(iii) of the HRA order, as this application was filed before our orders in OA 236/89 were delivered. For it is stated in para 4(3) of the application as follows:

"The applicant has been staying along with her husband in the FACT Quarters, 25 Km. away from the CIFT Station. The FACT Quarter in which the applicant and her husband reside is not situated within a radius of 8.Km. of the CIFT. Hence the stay of the applicant along with her husband cannot be said to be in the same station."

12. Exbt. R1-D on which great reliance is placed is stated to be a reply to references from various quarters seeking an interpretation of the expression 'same station' in para 5(c)(iii) of the HRA order.

It is unfortunate that instead of stating what this expression means, as was done by us in OA 236/89 vide para 6 supra, Exbt. R1-D proceeds to merely state, and that too not in unambiguous and clear terms, what is included in the phrase 'same station'.

13. As I understand it, what is clarified by Exbt. R1-D is as follows:-

(a) Firstly, 'same station' includes not only the qualified city (para 1 of HRA order) but also (i) all places contiguous to such city in terms of para 3(a)(i); and (ii) those places dependent on the qualified city/ town in terms of para 3(b)(ii) and 3(b)(iii) of the HRA order; and

(b) secondly, 'same station' includes all the places included in the Urban Agglomeration of a qualified city and also includes any places in respect of which orders have been issued under para 3(b)(ii) or 3(b)(iii) related to a qualified city which itself stands included in that Urban Agglomeration.

14. This clarification suffers from one major shortcoming. As far as the spouse of the claimant of HRA, to whom a reference is made in para 5(c)(iii) of the HRA order is concerned (spouse, for short), there is one clear attribute to identify the station which is meant in clause (iii) viz. it is that station where

accommodation is allotted to the spouse. For purposes of clause (iii), it is necessary to find out whether this station is the same as another station. The Exbt. R1- D clarification does not state what attribute should be taken into account, to identify the other station.

As para 5(c)(iii) of the HRA order deals with disentitlement of a claimant to HRA, obviously, that attribute has to be one that concerns the claimant of HRA. Even then, there may be many attributes of the claimant with regard to which the other station can be identified viz. place where he was born or educated, or employed, or has immovable property or has married, etc. Neither clause (iii) nor the Exbt. R1-D clarification states which of these attributes has to be taken into account. The only manner to choose the proper attribute is to take note of the fact that this provision is for determining loss of entitlement to HRA. The HRA order itself makes it clear that HRA becomes, prima facie, payable if the place of duty is in the qualified city etc. Therefore, the only attribute with reference which the other station having a connection with the claimant can be identified is, it is that station where the place of duty of the claimant is located, as it is because of such location that the applicant would, otherwise, have been entitled to HRA.

15. The respondents point out that Puthencruz, where the applicant's husband has been allotted a house by FACT, is now granted HRA by OM dated 18.2.88 under para 3(b)(iii) of the HRA order relating it to the qualified city of Cochin. Therefore, in the light of the clarification dated 20.12.89 (Extb.R1-D) discussed in para 13 above, the local area where the applicant has her place of duty and to which HRA is admissible, i.e., the CUA related to the qualified city of Cochin, shall also extend to cover Puthencruz for the purpose of interpreting the phrase 'same station' in para 5(c)(iii) of the HRA order. In other words, in this view of the matter, the station where the house hasbeen allotted to the applicant's husband i.e, Puthencruz, is in the same local area, where the place of duty of the applicant is located and hence, she is not entitled to get HRA.

16. In this connection a doubt was expressed whether the Exbt. R1-D clarification automatically flows from a mere interpretation of the provisions of para 3 and para 5 of the HRA Order or, it is a totally new decision, not necessarily flowing from them and announced for the first time on 20.12.89. For, in the former situation it could be contended that this interpretation should govern all cases irrespective of

when a dispute in this regard arose ad in the latter case, the clarification will have only prospective effect. The applicant has contended that, even if Exbt. R1-D clarification is valid, it can have only prospective effect. The respondents contend that Exbt. R1-D is a logical outcome of para 3 and para 5 of the HRA Order and hence, will apply for interpretation of these provisions, whenever a dispute arose.

17. I am not satisfied that the clarification given at Exbt. R1-D flows naturally from the provisions of HRA Order. There are at least 3 important reasons for holding this view.

(a) Firstly, para 3(a)(i) prescribes the geographical limitsof the locality within which the HRA order applies. If the OM issued under para 3(b)(ii) and para 3(b)(iii) also directed that HRA will apply to the geographical limits of the additional places mentioned therein, which are in proximity to the qualified city, one could, for argument's sake, appreciate the contention that the additional places so notified also form part of the 'same station' for the purpose of para 5(c)(iii) of the HRA order, to determine disentitlement to HRA. That is not the case.

Para 3(b)(ii) extends the benefit of HRA to only certain employees and not to a place. Those government servants, whose place of duty is in the proximity of the qualified city and who also reside within

alone get the benefit.
that city out of sheer necessity. The benefit is not extended to other employees. Thus, while all employees working in any government office in the localities delimited by para 3(a)(i) of the HRA order are entitled to HRA, irrespective of where they reside, this is not the case in respect of entitlement to HRA under para 3(b)(ii). Similar is the case with the OM under para 3(b)(iii). This is specially applicable in respect of staff working in aerodrome etc. within the proximity of 8 kms. from the periphery of a qualified city. They are entitled to HRA if it is certified that (i) within the 8 kms belt there is no other municipality or notified area or cantonment and (ii) that the place generally depends for its essential supplies on the qualified city. Unlike para 3(b)(ii), this provision does not require the government servants to reside at a particular place to get HRA. It appears that this is an unintended omission. This seems to be clear for two reasons:-

Firstly, this clause does not refer to the employees of the Govt. of India in general terms but refers specially to staff working in aerodromes, meteorological observatories, wireless stations and other Central Govt. establishments. Obviously, the staff of the named establishments are required to generally stay in the place of their duty or very near their offices. The "other Central Government establishments" are also to be construed similarly.

Secondly, if the persons entitled to HRA under this clause do not stay in the place of their duty, condition (2) thereunder, relating to dependence on the qualified city will have no meaning. For, it is only if they stay in proximity to the qualified city on which they depend heavily that they can be considered to be suffering from the same disadvantages as of an employee residing in the city itself, insofar as accommodation is concerned.

In other words, it appears that while under para 3(b)(ii) HRA is admittedly payable only if the employees stay in the qualified city, under para 3(b)(iii), it stands to reason that H RA ought to be admissible only if the employees stay within the area adjoining the qualified city where the aerodrome, meteorological observatories etc. is situated. Both apply to persons only, while para 3(a)(i) applies to an area.

(b) The second reason is that the interpretation at Exbt. R1-D is inconsistent with the specific provisions of at least para 3(b)(ii) of the HRA order. As pointed out above, to be eligible to get HRA under that provision, it is absolutely necessary that the HRA claimant should reside, out of sheer necessity, within the qualified city. It would appear that clause (ii) assumes that residence in the proximity of city where the place of duty is located is impossible for anyone i.e. either for the employees or for

their spouse. Thus if area X in the proximity of Cochin Municipal Corporation, which is the qualified city, is notified under para 3(b)(iii), the HRA claimant should necessarily stay in Cochin Municipal Corporation because residence in area X, either by the applicant or his spouse, is ruled out. Therefore, disentitlement to get HRA under para 5(c)(iii) of the HRA order arises only if the claimant's spouse is allotted a house in Cochin Municipal Corporation only.

On the contrary, the interpretation given at R1-D will mean that for such disentitlement, area X is the same station as the CUA to which HRA applies and accordingly, on this interpretation, even if the spouse is allotted a house in Trikkakara, a constituent of the CUA, the claimant will be disentitled to HRA, whether he stays in the house of the spouse or not. This is basically wrong because, if the claimant chooses to stay with his spouse at Trikkakara, he will be disentitled to get HRA, not because of the provisions of para 5(c)(iii), but because of the terms of para 3 (b)(ii) itself, which makes residence of the claimant in the qualified city (Cochin Municipal Corporation, in this case) mandatory for entitlement. In other words, in its application to a government servant claiming HRA under a notification issued under 3(b)(ii) of the HRA order, the expression 'same station' used in para 5(c)(iii) of the

order would not mean the same station as the place of duty of the claimant in the proximity of the classified city (because there is an implied presumption that such place is uninhabitable), but would mean only the classified city, residence in which by the applicant is a matter of necessity, under that clause.

(c) Thirdly, the respondents have failed to consider the effect of Clarification-2 given under para 3 of the HRA order which is again reproduced below:

> "Clarification 2: It has been decided in consultation with the staff side of the National Council (JCM) that House Rent Allowance will also now be payable to the Central Government employees within the area of the Urban Agglomeration of classified city. The existing provisions for the payment of House Rent Allowance under para 3(b)(ii) and 3(b)(iii) of the Office Memorandum dated 27.11.65 will however continue to be applicable only at places which are within 8 kilometres of municipal limits of classified cities, but which are not included within Urban Agglomeration of any city, subject to fulfilment of usual conditions laid down and subject to issue of specific sanctions therefor as before." (emphasis ours)

The implication of the underlined portion is clear. When it is decided that H RA will be admissible unconditionally within the area of the Urban Agglomeration of a qualified city, questions could arise as to what would be the effect of notifications under para 3(b)(ii) or 3(b)(iii) of the HRA order then subsisting. It is this question that has been clarified by the underlined portion. It is stated that if certain government servants having their places of duty in the proximity of a classified city have been given

the benefit of HRA by orders issued under para 3(b)(ii) or 3(b)(iii), and those places of duty have not been included within the Urban Agglomeration, the government servants concerned will get HRA subject to the conditions specified in these orders. What is left unsaid in this clarification is that, if on the contrary, the said places of duty near the qualified city are already included within the Urban Agglomeration area, then by virtue of such inclusion, the government servants working in those places will thereafter be eligible for HRA unconditionally, as these places of duty fall in the Urban Agglomeration area. Under such circumstances, the orders issued under para 3(b)(ii) and 3(b)(iii) in respect of such places will cease to have effect. It is thus clear that if a place of duty referred to in an order under para 3(b)(ii) or 3(b)(iii) is to be treated as part and parcel of an Urban Agglomeration, that place of duty should be made part of that Urban Agglomeration. In this case, admittedly, there is no such declaration making the Puthencruz Panchayat a part of the CUA and hence that Panchayat cannot be the 'same station' as the CUA. Therefore, the clarification contained in Exbt.R1-D in this respect - vide para 13(b) supra - runs counter to clarification 2 under para 3 of the HRA order.

18. There is one other important aspect which has a bearing on this issue. It may be seen from para 5(c) of the HRA order reproduced in para 6 supra that it deals with three kinds of disentitlement. These are dealt with below:

(i) The first disentitlement under clause (i) arises if a claimant shares rent free accommodation allotted to any other Government servant. The claimant and the allottee may even be husband and wife.

(ii) The second disentitlement under clause (ii) arises if a claimant <u>resides</u> with either of his parents or his children to whom accommodation has been allotted by Government or by public sector undertaking. This clause does not apply to a husband and wife whose case is dealt with in clause (iii).

(iii) It has to be noticed that both under clause (i) and (ii) the accommodation can be located at <u>any station</u>.

(iv) Clause (iii) is confined to a husband and wife team of whom one is the claimant and the other is an allottee of accommodation. Unlike clause (i) ad clause (ii) disentitlement arises by <u>the mere allotment of accommodation to the claimant's spouse and residence therein by the claimant is not a precondition.</u> However, this disentitlement is subject to one important condition - not applicable to the disentitlement in clauses (i) and (ii) - viz. that the allotment of accommodation

to the claimant's spouse should be at the same station. Hence, the expression "same station" has to be construed strictly as, otherwise, it is likely to deprive the claimant of his rightful claim.

19. The foregoing analysis makes it clear that, if in the instant case, the husband of the applicant had been allotted accommodation at say, Alwaye, - admittedly a station different from CUA - instead of that at Puthencruz, and the applicant also lived there with him, her claim for HRA could not have been denied under para 5(c)(ii) of the HRA order. This is due to the fact that the allotment of accommodation to the applicant's husband is not at the 'same station'. On the contrary, in identical circumstances, there would have been disentitlement under clause (ii) if the persons concerned were not spouses, but, say, father and son.

20. In the present case, the applicant's husband is allotted accommodation at Puthencruz Panchayat. What has been stated above in respect of Alwaye will apply with equal force to Puthencruz Panchayat also, however near it may be to Cochin. For, it cannot be denied that HRA was never applicable to that Panchayat under para 3 of the HRA order until, by OM dated 18.2.88 (Exbt. R1-F), it was made applicable under para 3(b)(iii) thereof to Govt. servants who had their place of duty in that Panchayat, subject to certain conditions. If Puthencruz is indeed the same station as Cochin - the qualified city - as claimed by Respondents HRA would have been applicable to Puthencruz - and that too unconditionally -

from the same date from which it was applicable to Cochin and the Cochin Urban Agglomeration under para 1 or para 3(a)(ii) of the HRA order or Explanation II to that para, as the case may be. As this is not the case, Puthencruz cannot be the same station as Cochin or CUA. Thus, the very fact that an OM under para 3(b)(iii) of the HRA order was required to extend HRA to Govt. employees in Puthencruz - where the applicant's husband has been allotted accommodation - clinches the issue and establishes that it is a station different from either Cochin or CUA, where the applicant has her place of duty.

21. It is because of the fact that the Respondents did not either appreciate or realize the full implications and niceties of the expression "same station" used in para 5(c)(iii) of the HRA order - as expounded above - that they have issued the impugned orders Ann. I and Ann.II on the irrelevant grounds mentioned in para 11 supra. For, they have not addressed themselves to the only relevant question viz. whether Puthencruz where the applicant's spouse has been allotted accommodation by FACT is in the same station as the station where the applicant has her place of duty, before and after the issue of the OM dated 18.2.88 (Exbt. R1-F).

22. For the foregoing reasons, the clarification given at Exbt. R1-O cannot be considered to flow naturally from a proper interpretation of para 3 and para 5 of the HRA order and, therefore, the question of its having any

retrospective effect does not arise.

23. In this view of the matter, the clarification given in Exbt. R1-D has necessarily to be taken as a new decision of the Govt. of India, primarily because of the fact that it is not in consonance with some of the provisions contained in para 3 of the HRA order as pointed out in para 17 supra. I am however of the view that Government is fully entitled to clarify and decide the circumstances when HRA can be denied on the grounds mentioned in para 5(c) independently of the provisions of para 3 of the Order.

(iii) The competence of the Government to issue such clarification cannot be questioned. Exbt. R1-D memo is not a clarificatory memorandum. It is an amendment because it is a new decision, not necessarily flowing from the other provisions of the HRA order and therefore it will have only prospective effect. The circumstances in which disentitlement to receive HRA arise will be governed by the provisions of that OM (i.e. Exbt. R1-D) with effect from the date of its issue.

24. The applicant has contended that the HRA is a compensatory allowance and has to be treated as pay and, therefore, cannot be withdrawn arbitrarily by the respondents. What the respondents have done is only to stipulate certain new conditions under which HRA will be disallowed to an applicant, if his spouse has been allotted government accommodation in the 'same station', as interpreted by them in Exbt. R1-D. They are fully competent to do this. Hence, this argument has no force.

25. Having considered the provisions of para 3 and

para 5(c) of the HRA Order, I may now state my conclusions, which are relevant for the disposal of this application and which flow from that Order only and not by the application of the clarification given in Exbt. R1-D. References to paras and clauses are to paras and clauses of the HRA Order unless, otherwise, stated:

(i) The accommodation allotted to the spouse of a person claiming HRA under para 3 will be said to be in the 'same station' for the purpose of disentitlement to HRA under para 5(c)(iii), if such allotment is in the station where that person has his place of duty. However, if the HRA claim is under para 3(b)(ii), such allotment should be in the qualified city within which that person has to reside out of necessity.

(ii) A person who claims HRA under Clarification (2) given below para 3, extending HRA to an Urban Agglomeration, will be disentitled to such HRA under para 5(c)(iii) if his spouse has been allotted a house within the limits of that Urban Agglomeration.

(iii) The allotment of accommodation to the spouse of a HRA claimant in the locality described in clause (iii) of an O.M., issued under para 3(b)--extending HRA to the persons having their place of duty in that locality in the establishments mentioned in that clause--will be in the 'same station' and thus disentitle that claimant from receiving HRA, only if the HRA is claimed under para 3(b)(iii). It is further clarified that the allotment of accommodation in such locality to the spouse of

the claimant will not be in the 'same station' for purposes of disentitlement under para 5(c)(iii), if the HRA claim is made under a provision other than under para 3(b)(iii).

(iv) In the instant case, as the applicant has her place of duty in the Cochin Urban Agglomeration(CUA) and as Puthencruz where her spouse has been allotted accommodation is not part of the CUA, it is not the 'same station' for purpose of disentitlement under para 5(c)(iii). This conclusion stands unchanged even after the issue of the O.M. dated 18.2.88 (Exbt. R1-F) under para 3(b)(iii) in respect of Puthencruz.

(v) HRA is granted by executive instructions dated 27.11.65 as amended from time to time. The O.M. dated 20.12.89 (Exbt. R1-D) is not a clarification but is really an amendment incorporating a new decision as to how the expression 'same station' occurring in para 5(c)(iii) is to be construed to decide when disentitlement arises on that ground. Exbt. R1-D is therefore effective only from the date of its issue i.e. 20.12.89.

(vi) With the issue of Exbt. R1-D amendment, the conclusions reached in item (iii) and (iv) above will stand modified. From 20.12.89 the allotment of accommodation to the spouse of a claimant in a locality in respect of which an O.M. is issued under para 3(b)(iii) with reference to a qualified city, will be

the 'same station' for purposes of disentitlement of HRA under para 5(c)(iii), not only if the claim is under para 3(b)(iii), but also if it is under para 1, on the ground that the claimant's place of duty is in the qualified city with reference to which the aforesaid O.M. under para 3(b)(iii) has been issued or, under para 3(1)(a), on the ground that the claimant's place of duty is in any of the places contiguous to the said qualified city or, under clarification (2) below para 3, on the ground that the claimant's place of duty is in the Urban Agglomeration in which the said qualified city is included. Hence, Puthencruz Panchayat which fulfils this condition, will be in the 'same station' as Cochin Corporation as well as the CUA, for purposes of disentitlement to HRA under para 5(c)(iii) with effect from 20.12.89. The applicant can thus be disentitled to HRA if an appropriate order is issued in this behalf by the respondents.

26. For the aforesaid reasons, the impugned orders of the 1st respondent dated 3.4.89 and 12.4.89 (Ann. I and Ann.II respectively) are quashed. It is clarified that this order will not prevent the respondents from taking any action to terminate the applicant's entitlement to receive HRA, if so advised, in accordance with law and in the light of this order.

27. The application is disposed of as above. In the circumstances, there will be no order as to costs.

(N.V.Krishnan)
Administrative Member
8.11.1990

SHRI N. DHARMADAN, JUDICIAL MEMBER

I have gone through the judgment written by my learned brother. But, I think, since this matter is fully covered by our earlier judgment it is difficult for me to agree with the view taken by my learned brother.

2 This is a simple case in which the applicant, who is working as a Technical Officer (T-8) in Central Institute of Fisheries Technology, Cochin, and residing along with her husband, in the quarters granted to him under the provisions of Allotment of Residence Rules, FACT, Cochin Division, approached this Tribunal attacking Annexure-I order stopping the grant of HRA to her from March, 1989 and Annexure-II order seeking recovery of the amount already received by her as HRA from September, 1975 after furnishing certificate in Annexure-II form, a copy of which is produced as Ext. R-1A, stating that she was incurring some expenditure towards rent and her husband has not been allotted accommodation at the same station.

3. It is an admitted fact that the applicant is sharing the residential accommodation granted to her husband working in FACT, under the Allotment of Residence Rules, of FACT, a Government of India Undertaking at a place called Puthenkurisu, which is contiguous to Cochin city. So according to the respondents her case comes within para 5(c)(iii) of the Government of India Notification of HRA which is extracted for reference:

> "5(c) A Government servant shall not be entitled to hourse rent allowance if
> X X X
> X X X
>
> (iii) his wife/her husband has been allotted accommodation at the same station by the Central Government, an autonomous public undertaking or semi-Government organisation such as Municipality, Port Trust, etc. whether he/she resides in that accommodation or he/she resides separately in accommodation rented by him/her."

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4. The contention raised by the applicant is "The quarters of the husband of the applicant in FACT situate in the area of Vadavode, Puthenkurisu Panchayat, 25 KM away from Cochin," and "since the husband of the applicant does not have residential building within a radius of 8 KM from the concern, he has been granted quarters (accommodation) by FACT under the provisions of Allotment of Residence Rules, FACT, Cochin Division." So the allotted accommodation to her husband is not "at the same station" to deny her the benefit of HRA.

5. The decision in this case depends on the interpretation of the term 'same station' in para 5'c)(iii) of HRA notification. In order to understand this term, it is necessary to read para 3(a) and (b) of HRA notification.

6. The territorial limits of the locality within which the orders pertaining HRA shall apply, are mentioned in clauses (i) and (ii) of para 3(a) of the relevant order. They read as follows:

> "3.(a)(i): The limits of the locality within which these orders apply shall be those of the named municipality, or copporation and shall include such of the suburban municipalities, notified areas or cantonments as are contiguous to the named municipality or corporation or other areas as the Central Government may from time to time, notify."
>
> (ii) The orders contained will automatically apply/cease to apply to areas which may be included within/excluded from the limits of the named municipality or corporation by the State Government concerned, from the date of such inclusion/exclusion.

7. While para 3(a) deals with the places to which HRA is applicable, para 3(b) mentions about the persons, with reference to their place of duty (viz. the Government servants and the staff), to whom the provisions of HRA are applicable. The relevant portions of para 3(b) read as follows:

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"3(b)(i) A Government servant whose place of duty falls within the qualifying limits of a city shall be eligible for both the compensatory (city) and house rent allowances, irrespective of whether his place of residence is within such limits or outside.

(b)(ii): Government servants whose place of duty is in the proximity of a qualified city, and who, of necessity have to reside within the city, may be granted the compensatory (city) and house rent allowances admissible in that city....."

(b)(iii): Staff working in aerodromes, meteorological observatories, wireless stations and other Central Government establishments within a distance of 8 KMs from the periphery of the municipal limits of a qualified city will be allowed house rent allowance at the rates admissible in that city even though they may not be residing within those municipal limits, provided that -

(1) there is no other suburban municpality, notified area or catonment within the 8 KMs limit; and

(2) it is certified by the Collector/Deputy Commissioner having jurisdiction over the area that the place is generally dependent for its essential supplies, e.g., foodgrains, milk, vegetables, fuel, etc., on the qualified city.

Such a certificate will remain valid for a period of three years after which a fresh certificate will be required."

8. Under para 3(b)(i) any 'Government servant' whose place of duty falls within the 'qualifying limits of city' is eligible for HRA irrespective of whether 'his place of residence is within such limits or outside.' According to me since the applicant is residing in a place outside the notified city of Cochin but contiguous to it, her case comes within the provisions of para 3(b)(i) and the question whether she is disqualified to get HRA under para 5(c)(iii) on account of her sharing the accommodation allotted to her husband at Ambalamedu as indicated above will definitely depend upon the interpretation of the term 'same station'.

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9. The above provision in para 3(b)(i) if read along with para 3(a)(i), the meaning of the expression 'same station' in para 5(c)(iii) becomes crystal clear. A proper construction of the sub paras in the light of the general knowledge and information of the people of the locality about the notified cities and the nearby areas which are contiguous to such cities, would import the idea that an area or place which is geographically contiguous to a notified city will also be part of the locality where HRA becomes applicable under para 3(a)(i) without specific notification. Even without any clarification or further explanation in this behalf the above meaning is discernible from the provisions itself. But the respondents have produced Annexure R-1D an O.M. dated 20.12.89 issued by the Govt. of India as a clarification of the existing provision in HRA. It reads as follows:

> "The undersigned is directed to invite a reference to para 5(C)(iii) of this Ministry's O.M. No. F.2(37)/E.II(B)/64 dated 27.11.1965 as amended from time to time and to say that references have been received in this Ministry seeking clarifications about the interpretation of the phrase 'same station, occurring in the above mentioned para. The matter has been considered and the President is pleased to decide that the pharase 'same station' occurring in para 5(c)(iii) of this Ministry's O.M. dated 27.11.65 includes all places which are treated as contiguous to the qualified city/town in terms of para 3(a)(i) and those dependent on the qualified city/town in terms of para 3(b)(ii) and 3(b)(iii) of the aforesaid O.M. dated 27.11.1965 and also those places which are included in the Urban Agglomeration of a qualified city."

This is only a clarification issued by the Government of India when letters were received from various quarters seeking "clarifications about the interpretation of the phrase 'same station.' occurring in para 5(c)(iii)." It takes effect from the date of the original notification of HRA. In fact the Central Administrative Tribunal in Biraja Prasad Misra Vs. Union of India and others, (1987) 4 ATC 140 held that clarifications " can be applied even to cases arising prior to issue of the clarification."

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10. Recently, we the same bench, have considered the scope and ambit of the term 'same station' in para 5(c)(iii) in O.A. 236/89 and held as follows without even considering Ann. R-1D or any other explanation:

> "Ordinarily, the HRA is applicable within the limits of the classified cities only, vide para 1 of the Order, as the intention is to apply this facility to cities not smaller than Class 'C' cities. However, para 3(a)(i) of the Order extends the applicability to the areas contiguous to the classified cities. It is provided that HRA applies within the limits of the 'locality' defined therein. It states that in addition to the classified city, HRA will be applicable to the suburban Municipality, notified areas or cantonments which are contiguous to the classified city. A proper construction of this sub-para suggests that no notification is needed for this purpose, except to publicise for general knowledge and information of all concerned, which are such contiguous areas. In addition, HRA can be made applicable to other areas as may be notified by the Government (i.e., other than the contiguous suburban municipalities, notified areas or cantonments) like Panchayats. As the entire area so defined has to be a 'locacity' it is obvious that such other areas should also be contiguous to the classified city. In other words, the 'locality' where HRA becomes applicable under para 3(a)(i) is one geographically contiguous entity, even though it may, in addition to the classified city, consist of more than one town or village or Municipality or Panchayat as understood in the law relating to the revenue administration or local government administration respectively."

We have also distinguished the judgment in O.A.K.127/88 and held as follows:

> "In our view, the expression "same station" in para 5(c)(iii) of the order referring to the location of the spouse's accommodation covers all areas and locations. That clause will make sense even without the addition of the words like "same station" including contiguous stations or such stations as are notified for the purpose of Clause 3(a)(i)" mentioned in para 4 of that judgment. For, even without any such qualification, the reference to the accommodation in that clause is a reference to that accommodation wherever located-ie, whether it is located in the classified city or in any part of an urban agglomeration relatable to the classified city or to any extended area or area notified under para 3(a)(i)."

11. This Tribunal has taken the view in O.A. 236/89 that even without any specific notification the limits of the 'locality' to which the orders pertaining to the grant of

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HRA will apply if that area is generally understood to be a place geographically contiguous to a notified city. One geographically contiguous entity consists of more than one town or village or Municipality or Panchayat and HRA becomes applicable to that entity. According to the respondents Puthenkurus is at Ambalamedu as per the statements in the counter affidavit. They say that both Ambalamedu (Annexure R-1C) and Puthenkurus (Annex. R-1E) come under Cochin B-2 class city for the purpose of regulating payment of HRA. This statement of the respondents has not been denied or controverted by the applicant. Hence it is a place geographically contiguous to Cochin City. Therefore, the place where the applicant is residing is within the 'same station' as explained in by this Tribunal in O.A. 236/89.

12. The applicant's claim for HRA can be negatived on another ground as well. It is stated in the counter affidavit that the applicant produced certificates as provided in Annexure-II in the form in Annexure R-1A stating that she is incurring expenditure towards payment of rent and her husband had not been allotted any accommodation in the same station. This appears to be not correct. In fact according to the respondents, the applicant had misled them and received HRA from September, 1975. It indicates that there is suppression of the real facts which disentitles the reliefs by the applicant. The real facts were known to the respondents only at a later stage when they made enquiries in connection with medical claims of the applicant and they found that the statements in the certificate are false. The applicant had supprressed the real facts and received HRA from the respondents for a long period. She had not appraoched

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the Tribunal with clean hands. The claim of the applicant is not commentable. She had not fairly stated the correct facts in the certificates produced in the form referred to in Annexure R-1A. So she is not entitled to retain the amounts already received in this manner and her objection to the recovery of the amount already received as HRA from 1975 cannot be allowed.

13. Having regard to the facts of the case a more important aspect to be considered in connection with the grant of HRA is whether the claim for HRA can be sustained in the light of the object and purpose for the grant of HRA. Admittedly HRA is a compensatory allowance to be paid to Government servants. The very object and purpose of the HRA is to grant the house rent allowance only to deserving people who genuinely require residential facilities for the discharge of their official duties and that they are compelled to spent money by way of rent. Persons like the applicant, who has the facility of free accommodation by sharing the residential quarters granted by a Government of India undertaking to the relative or colleques in a place contiguous to the notified city where such persons are working are not legally entitled to HRA. The applicant is not compelled to spent any amount towards HRA as claimed by her. There is no materials to prove that she is spending any amount towards the payment of rent. On the other hand, the respondents after enquiry came to the definite conclusion that the applicant is not at all incurring any expenditure in connection with the payment of rent or contribution towards rent. The rent is being recovered from the salary of her husband. The claim for HRA made by the applicant under these circumstances is opposed to the very object

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of the grant of HRA and it cannot be sustained and it would be a misuse of the provisions in case it is granted to the applicant. In order to prevent such misuse and to protect the public interest, para 8 of the HRA Notification insists the production of Certificate in Annexure-II as a condition precedent for drawal of the HRA. Clause 8(a) reads as follows:

> "Every Government servant shall furnish along with his first claim for house rent allowance a certificate in the Form given in Annexure-II."

As stated above the applicant had produced certificates with incorrect details and received HRA from 1975 onwards. In this view of the matter it is unnecessary to consider all the other arguments advanced by the learned counsel on both sides.

14. I am of the view that the impugned orders at Annexure-I and II are to be held valid and the application is to be dismissed and I do so. There will be no order as to costs.

8.11.90

(N. Dharmadan)
Judicial Member
8.11.1990

ORDER OF THE BENCH

1) As we have not been able to deliver a unanimous order, we direct the Registry to make a reference to the Hon'ble Chairman, Central Administrative Tribunal under section 26 of the Administrative Tribunals Act 1985 to enable him to take appropriate action thereunder. The points of difference between us are in respect of our answers to the following questions:

(a) Is the O.M.No.21011/13/89-E.II(B) dated 20th December 1989 (Exbt. R1-D) a mere clarification of the HRA order or is it an amendment to para 5(c)(iii) thereof incorporating a new decision?

(b) On the facts and in the circumstances of the case, is the applicant disentitled to HRA under the provisions of para 5(c)(iii) of the HRA order on the ground that the accommodation allotted to her husband in Puthencruz by FACT is in the 'same station', and if so from what date?

2) The reference be made after issuing copies of our respective orders and this order to the parties.

8.11.90.

(N.Dharmadan)
Judicial Member

8/11/90

(N.V.Krishnan)
Administrative Member

8.11.1990

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 235/89 ~~T.A. No.~~ ~~109~~

DATE OF DECISION 29.11.1990.

Dr. P.J. Cecily — Applicant (s)

Shri P.V. Mohanan — Advocate for the Applicant (s)

Versus

Director, Central Instt. of ~~Fisheries Technology and~~ two others — Respondent (s)

Shri P.V.M. Nambiar — Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? yes
2. To be referred to the Reporter or not? yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

(By Hon'ble Mr. P.K. Kartha, Vice-Chairman)

The applicant, who is presently working as Technical Officer in the Central Institute of Fisheries Technology under the Indian Council of Agricultural Research, is aggrieved by the decision of the respondents to disentitle her from getting House Rent Allowance (HRA) on the ground that she is staying at FACT, Cochin Division Quarters, Ambalamedu, allotted to her husband. She has also called in question their decision to recover the amounts drawn by her towards H.R.A. from September, 1975 to-date (vide

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impugned orders at Annexures 1 and 2.

2. The application was admitted on 19.4.1989. On 20.4.1989, the Tribunal passed an ad interim order staying the operation of the impugned orders at Annexures 1 and 2. By virtue of the interim order, House Rent is being paid to her every month and no recovery is being effected from her salary.

3. The application came up for hearing before a Division Bench consisting of Hon'ble Shri N.V. Krishnan, Administrative Member, and Hon'ble Shri N. Dharmadan, Judicial Member. They have written separate and dissenting judgements on 8.11.1990 and have referred the following points of difference under Section 26 of the Administrative Tribunals Act, 1985 to the Hon'ble Chairman:-

(a) Is the O.M. No.21011/13/89-E.II(B) dated 20th December 1989 (Exbt. R1-D) a mere clarification of the HRA order or is it an amendment to para.5(c) (iii) thereof incorporating a new decision?

(b) On the facts and in the circumstances of the case, is the applicant disentitled to HRA under the provisions of para.5(c)(iii) of the HRA order on the ground that the accommodation allotted to her husband in Puthencruz by FACT is in the 'same station', and if so, from what date?

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4. While Hon'ble Shri Krishnan has come to the conclusion that the impugned orders are not legally sustainable and are to be quashed, he has clarified that the respondents are not prevented from taking any action to terminate the applicant's entitlement to receive H.R.A., if so advised, in accordance with law and in the light of the observations contained in his judgement. Hon'ble Shri Dharmadan has, however, come to the conclusion that the impugned orders are to be held valid and that the application is liable to be dismissed.

5. I have carefully gone through the reference order dated 8.11.1990 and the records of the case and have heard the learned counsel for both the parties.

6. At the outset, it is necessary to state precisely as to what is the concept of House Rent Allowance being paid to Government servants. Pay Commissions set up by the Central Government had occasion to consider the matter. Compensatory Allowance and housing subsidy are separate categories of the terms of service conditions. As regards H.R.A., the Second Pay Commission has observed as under:-

> "The rent concessions dealt with here are of two kinds: (i) provision of rent free quarters, or grant of a house rent allowance in lieu thereof; and (ii) grant of a house rent allowance in certain classes of cities to compensate the employees concerned for the specially high rents that have to be paid in those cities. The former is allowed only to such staff as are required to reside on the premises where they have to work, and is thus

> intended to be a facility necessary to enable an employee to discharge his duties. In some cases, it is a supplement to pay, or substitute for special pay etc., which would have been granted but for the existing of that concession. In either case, it is not related to the expensiveness of a locality. The latter, on the other hand, is a compensatory or a sort of a dearness allowance, intended to cover not the high cost of living as a whole but the prevailing high cost of residential accommodation; and it has no relationship to the nature of an employee's duties."
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> (Cited in the Management of Indian Oil Corporation Ltd. Vs. its Workmen, AIR 1975 SC, 1856 at 1862).

7. Thus, the Pay Commission has treated H.R.A. as a concession. So is the case with Compensatory Allowances (City Compensatory Allowance) being paid to Government servants. H.R.A. being in the nature of a concession and not a legal right bestowed upon a Government servant, it has to be construed strictly and not liberally.

8. The general rules and orders governing the grant of H.R.A. and C.C.A. are contained in the office memoranda issued by the Government from time to time which have been reproduced in Swamy's Compilation of F.R.,S.R., Part V, H.R.A. and C.C.A. by P. Muthuswamy.

9. The areas where H.R.A. is admissible have been mentioned in para.3 of O.M. dated 27.11.1965 as amended from time to time. Para.4, inter alia, provides in

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substance that those occupying Government accommodation, are not eligible for H.R.A. Para.5 deals with the conditions for drawal of H.R.A. Para.5(c) (iii), which is relevant in the present context, reads as under:-

> "5(c): A Government servant shall not be entitled to House Rent Allowance if -
> .....
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> (iii) his wife/her husband has been allotted accommodation at the same station by the Central Government, State Government, an autonomous public undertaking or semi-Government organisation such as the municipality, Port Trust, etc., whether he/she resides in that accommodation or he/she resides separately in accommodation rented by him/her."

10. Para.8 provides, inter alia, that every Government servant shall furnish, along with his first claim for House Rent Allowance, a certificate in the form given in Annexure-II. In the said certificate, the Government servant has to certify, inter alia, whether or not her husband has been allotted accommodation at the same station by the Central/State Government/autonomous public undertaking or semi-Government organisations such as municipality, Port Trust, etc., or that she is incurring some expenditure on rent or contributing towards rent.

11. In the instant case, the applicant has throughout been residing since 1975 in the accommodation provided to her husband by FACT, in which he is an employee. The husband is paying standard rent to FACT for the said accommodation and the same is deducted from his salary

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every month. The FACT quarter, where they are living together, is situated about 25 kms. away from the office where the applicant is working.

12. The question arises whether the accommodation allotted to her husband is 'at the same station'. If the answer is in the affirmative, she will be disentitled from claiming House Rent Allowance separately in view of the provisions of para.5 (c)(iii). She would be disentitled to H.R.A. whether or not she resides in that accommodation and even if she resides separately in accommodation rented by her. The underlying purpose appears to be that the husband and wife are to be treated, at least for the purpose of the claim for H.R.A., as one legal entity.

13. It will be noticed that the expression 'at the same station' in para.5 (c)(iii) is somewhat vague and has been the subject matter of further clarifications and elucidations by the Government subsequently.

14. Para.3 (b) (iii) provides, inter alia, that staff working in Central Government establishments within a distance of 8 kms. from the periphery of the municipal limits of a qualified city will be allowed House Rent Allowance at the rates admissible in that city even though they may not be residing within those municipal limits,

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provided that -

(i) there is no other Suburban municipality, notified area or cantonment within the 8 kms. limit; and

(ii) it is certified by the Collector/Deputy Commissioner having jurisdiction over the area that the place is generally dependant for its essential supplies, e.g., foodgrains, milk, vegetables, fuel, etc., on the qualified city.

There are two notes and three clarifications under para.3. Clarification 1 states that it has been decided that the benefit of the concession of House Rent Allowance under para.3 (b) (iii) may be extended to the employees working in a place which though a town panchayat, is generally dependant for its essential supplies on a qualified city and is within 8 kms. limit of the periphery of the qualified city. Clarification 2 states, inter alia, that it has been decided that H.R.A. will also be payable to the Central Government employees within the area of the Urban agglomeration of classified city at the rates admissible in the classified city. The aforesaid clarifications were issued by Government of India, Ministry of Finance O.M. dated 26.10.1977.

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15. On 3.3.1984, the P & T Department issued a circular letter regarding the grant of H.R.A. to the P & T staff posted at places near Cochin. It has been, inter alia, stated in the said letter that Ambalamedu situated near Cochin-B II Class city, fulfils the conditions prescribed in para.3 (b) (iii). Accordingly, it was decided that P & T employees having their place of duty in Ambalamedu, etc., may be granted H.R.A. at the same rate as appropriate to those Central Government employees posted within the classified city of Cochin, subject to the fulfilment of the conditions laid down in the Ministry of Finance O.M. dated 27.11.1965.

16. On 18.2.1988, the Ministry of Finance (Department of Expenditure) has issued O.M. No.11023/2/E.II(B)/88 to all ministries/departments of the Government of India on the subject of payment of H.R.A. It has been stated in the said O.M. that Puthancruz near Cochin in Kerala, fulfils the conditions prescribed in para.3(b) (iii) of O.M. dated 27.11.1965, and that the President has decided that the Central Government servants having their places of duty in Puthancruz, may be granted House Rent Allowances at the same rate as is appropriate to those posted within the classified town of Cochin subject to fulfilment of the conditions laid down in the Office Memorandum dated

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27.11.1965. These orders will, however, be valid from 1st October, 1987.

17. Difficulty had been experienced in various quarters in regard to the interpretation of the phrase "at the same station" occuring in para.5(c) (iii) and clarifications had been sought from the Ministry of Finance in this regard. In view of this, the Government of India, Ministry of Finance issued their O.M. No. 21011/13/89-E.II(B) dated 20th December, 1989. It is stated in the said O.M. that references had been received in the Ministry of Finance seeking clarifications about the interpretation of the phrase "same station" occuring in para. 5(c) (iii). The matter had been considered and the President decided that the phrase "same station" includes all places which are contiguous to the qualified city/town in terms of para.3 (a) (i) and those dependant on the qualified city/town in terms of para.3 (b) (ii) and 3(b) (iii) of the O.M. dated 27.11.1965 and also those places which are included in the Urban agglomeration of the qualified city.

18. Thus, the Government of India in the Ministry of Finance for the first time on 18th February, 1988, clarified and decided that the Central Government employees having their places of duty in Puthancruz, may

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be grant[redacted]n the ground that it is near Cochin [redacted]ls the conditions prescribed in para.3(b) (iii) of O.M. dated 27.11.1965. Again, the Government of India in the Ministry of Finance, for the first time on 20th December, 1989, clarified the meaning of the expression "same station" occuring in the O.M. dated 27.11.1965, so as to bring within its ambit those places which are treated as contiguous to the qualified city/town in terms of para.3(a) (i) and those dependent on the qualified city/town in terms of para.3(b) (ii) and 3(b)(iii) and those which are included in the Urban agglomeration of the qualified city. In case the meaning of the expression "the same station" were clear, no occasion for such clarifications and decision would have arisen.

19. In the instant case, the applicant has been drawing H.R.A. after furnishing a certificate in the prescribed form periodically. The respondents paid to her H.R.A. all these years without any pre-conditions or qualifications. She was not put to notice before the passing of the impugned orders dated 3.4.1989 and 12.4.1989 that in case she was found to be not entitled to the same at a later date, it was liable to be recovered from her.

20. In the facts and circumstances mentioned above, both parties proceeded in the matter as if the payment has been made and received in accordance with rules. When the Government of India, Ministry of Finance came out with their clarification on 20th December,

1989, it became clear to the respondents that the applicant is not entitled to House Rent Allowance as the accommodation allotted to her husband is at the "same station" within the meaning of para.5 (c) (iii) of the O.M. dated 27.11.1965.

21. In the above view of the matter, I am of the opinion that the applicant is not entitled to H.R.A. w.e.f. 20.12.1989, when the Ministry of Finance issued their O.M. mentioned above. In case she has been paid House Rent Allowance after the said date, the respondents will be within their right to recover the same from her in easy instalments.

22. At the same time, I hold that the proposed recovery of excess payment of H.R.A. to the applicant for the period from 1975 to 20.12.1989, is not sustainable in law or equity. In A.S. Sangwan Vs. Union of India, 1981 SCC (L&S) 378 at 380, the Supreme Court has observed that in the absence of any statutory rules, policy decisions can be changed by Government at any time and a new policy can be laid down provided it is not arbitrary and capricious. It was observed that "whatever policy is made, should be done fairly and made known to those concerned." (emphasis added). The non-entitlement to H.R.A. was made known to the

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applicant only when the Ministry of Finance issued their Office Memorandum on 20.12.1989.

23. In Municipal Board, Pratapgarh and Another Vs. Mahendra Singh Chawla & Others, 1983 (1) SLJ 440 at 444, the Supreme Court has observed that "While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations not to take it to the logical end, this Court would be failing in its duty if it does not notice equitable considerations and mould the final order in exercise of its extraordinary jurisdiction".

24. Equitable considerations would come into play when the respondents seek to recover a huge amount of money from the applicant for a period when they themselves were uncertain about/correct the/legal position. Accordingly, my answers to the questions referred to by the Division Bench are as follows:-

(i) O.M. No.21011/13/89-E.(II) (B) dated 20th December, 1989 (Exhibit R-1D) is not a mere clarification of the H.R.A. order. The expression "at the same station" occuring in para. 5(c) (iii) of O.M. dated 27.11.1965 was susceptible of different

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interpretations and had been the subject matter of subsequent clarifications. The O.M. dated 20th December, 1989 has to be viewed as indicating a change in the policy of the Government, thus constituting a new decision.

(ii) In the facts and circumstances of the case, the applicant is disentitled to H.R.A. under the provisions at para.5(c) (iii) of the H.R.A. order on the ground that the accommodation allotted to her husband in Puthancruz by FACT is in the same station. This disentitlement arises only from 20th December, 1989, when the change in policy and the decision of the Government was made known to all concerned by the Office Memorandum issued by the Government. For the period prior to the issue of the said memorandum, any H.R.A. paid to the applicant or received by her, is not liable to recovery in law or equity for the reasons mentioned above.

25. The Division Bench may pass appropriate orders in the light of the aforesaid answers and observations.

29/11/90

(P.K. Kartha)
Vice-Chairman (Judl.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 235/89 ~~199~~
~~TA No.~~

DATE OF DECISION 7.12.90

Dr.P.J.Cecily — Applicant (s)

Mr. P.V.Mohanan — Advocate for the Applicant (s)

Versus

~~The Director, CIFT & 2~~ others. — Respondent (s)

Mr.P.V.M.Nambiar — Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V.Krishnan, Admve. Member

The Hon'ble Mr. N.Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? ✓

JUDGEMENT

N.V.Krishnan, AM

In view of the difference of opinion, the matter was referred to the Hon'ble Chairman, Central Administrative Tribunal under section 26 of the Administrative Tribunals Act. Subsequently, the Hon'ble Shri P.K.Kartha, Vice Chairman has answered the reference by his decision dated 29.11.90.

2. In the light of his judgement, the application is allowed and the impugned orders dated 3.4.89 (Ann.I) and 12.4.89 (Ann.II) are quashed. It is also made clear

that the applicant is disentitled to HRA from 20th December 1989 i.e. the date on which the Exbt. R1-D O.M. was issued under the provisions of para 5(c)(iii) of the HRA order. This judgement will not stand in the way of the respondents to pass any order in accordance with law based on the clarification at Exbt. R1-D and taking into account the observations andeconclusions made in the judgement of Hon'ble Shri P.K.Kartha.

(N.Dharmadan) 7.12.90
Judicial Member

(N.V.Krishnan) 7.12.90
Admve. Member

7.12.90