CENTRAL ADMINISTRATIVE TRIBUNAL: ERNAKULAM BENCH

Date of decision: **11-12-1989**

Present

Hon'ble Shri NV Krishnan, Administrative Member

and

Hon'ble Shri N Dharmadan, Judicial Member

OA 236/89

Smt Jessy Joseph C : Applicant

Vs.

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

2 The Director General
Indian Council of Agrl. Research
Krishi Bhavan, New Delhi-1. : Respondents

Mr PV Mohanan : Counsel of Applicant

Mr PVM Nambiar, Sr CGSC : Counsel of Respondents

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Shri NV Krishnan, Administrative Member.

This application raises an important issue involving the interpretation of certain provisions relating to the payment of House Rent Allowance (HRA for short) to employees of the Central Government, which have admittedly been made applicable to the employees of the organization under whom the applicant is working.

2 The undisputed facts are that the applicant joined on 3.1.1986 the Central Institute of Fisheries & Technology, CIFNET, for short (an organization under the Indian Council of Agricultural Research, an autonomous body functioning under the Ministry of Agriculture of the Government of India) as a Hindi Officer. Her place

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of duty is located in the city of Cochin. It is admitted that the HRA and the City Compensatory Allowance (CCA, for short) are admissible to the employees of the CIFNET on the basis of the orders which apply to the Central Government employees in this behalf. It is also admitted that the husband of the applicant is working as a Reader in the Department of Hindi in the Cochin University, an Autonomous body under the State Government and that he has been allotted quarters in the Cochin University Campus in Trikakara Panchayat which is adjacent to the Cochin Corporation, but a different local self governing body. The applicant has been staying with her husband ever since her appointment with Respondent-1.

3 On her furnishing a certificate dated 13.1.86 in the prescribed form, which has been exhibited as R1-A by the Respondents, the applicant was granted HRA by Respondent-1 from 1986 onwards. However, by the impugned letter dated 3rd April, 89 (Annexure-1), the applicant has been informed by Respondent-1 that she was not entitled to get HRA, " since she is staying at the Cochin University Quarters allotted to her husband". As such, she was informed that HRA for the month of March, 1989 already drawn, will not be paid to her and that further, no HRA will be paid to her in future. By another order dated 12th April, 89 (Annexure-II) she was informed that the HRA paid to her from January, 86 to February, 89 was inadmissible and that therefore, it would be recovered at

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@ Rs.450/- per mensem from her salary from April, 89. The reason for this decision was indicated to her in that order in the following terms after mentioning that she was staying in the Cochin University quarter allotted to her husband:-

> "In accordance with the HRA Rules an employee is not entitled to HRA, if his/her family member has been allotted accommodation at the 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 she/he resides separately in accommodation rented by him/her. As such, House Rent Allowances already drawn and paid to Smt. Jessy Joseph from 1/86 to 2/89 is inadmissible."

4. Aggrieved by these orders (i.e. Annexure I and Annexure II) which were to take effect immediately, this application was filed to quash them. The operation of these two letters has been stayed until further orders, in the meanwhile.

5. The Respondents have filed a reply affidavit stating that HRA was granted to the applicant when she submitted a certificate in the prescribed form (Ext.R1-A). Besides stating that she was incurring expenditure on rent, she also stated in para 6 of that certificate as follows:-

> "I also certify that my wife/husband has not been allotted accommodation at the same station by the Central/State Government, an autonomous public undertaking or semi-Government organisations such as Municipality, Port Trust etc."

When it came to the notice of the Respondents that she had been staying all along with her husband in the Staff Quarter allotted to him by the Cochin University at Trikkakara and that, therefore, she was not entitled to HRA, orders were

issued as in Annexure I and Annexure-II.

6. It is stated by the Respondents that HRA is not admissible to the applicant because of para 5(c) (iii) of the order dated 27.11.65 relating to payment of HRA to Government employees, to the effect that a government servant shall not be entitled to HRA, if his wife/her husband has been allotted accommodation at the same station by the Central Government/State Government/Autonomous Public Undertaking or semi Government Organisations, such as Municipality, Port Trust, etc., whether he/she resides in that accommodation or he/she resides separately in accommodation rented by him/her. Respondents have stated that Govt. of India have allowed HRA to employees in the locality described as "Cochin Urban Agglomeration", which includes the Corporation of Cochin, the Trikkakara ~~Eloor~~ out growth, Eloor and Kalamassery non-Municipal areas and Tripunithur a Municipality. It is contended that the applicant's husband has thus been allotted accommodation at the 'same station' by the Cochin University as the place where the applicant is working. Hence, the applicant is not entitled for HR A and, therefore, this application has to be dismissed.

7. To understand the stand of the parties, it is necessary to look into the relevant provisions which govern the grant of HRA to employees of the Central Government. The benefit of HRA was first made available by the Ministry of Finance OM No.F2(37)-E.II(B)/64 dated 27th November, 1965,

HRA Orders, for short. This has been amended from time to time and published in Swamy's Compilation of FR&SR Part-V - HRA & CCA, corrected upto 1st December, 1988, which was referred to by the parties. The relevant provisions of the HRA Orders as they stand at present are reproduced below from that Compilation:-

"1) "In supersession of all orders issued on the above subject from time to time the President is pleased to sanction the grant of Compensatory (City) Allowance and House Rent Allowance at the following rates to the Central Government servants paid from Civil Estimates and stationed in 'A', 'B', 'B-2' and 'C' class cities detailed in Annexure I, with effect from 1st October, 1986."

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Rates of Allowances

(II) House Rent Allowance

Pay Range (Basic Pay + N.P.A.)	Amount of HRA (in Rs./p.m.		
	A, B-1 and B-2 cities	C Class cities	Unclassified places
xxx	xxx	xxx	xx

No verification of Rent Receipt

"House rent allowance is admissible, without reference to the quantum of rent paid, to all employees without requiring them to produce any rent receipts."

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Areas where admissible

"3.(a) (i) The limits of the locality within which 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) 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.

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(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."

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(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 kilometers; and

(2) the staff concerned have to reside within the 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 Government establishments within a distance of 8 kilometres 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 municipality, notified area or cantonment within the 8 kilometres limit; and

(2) it is certified ~~kma~~ by the Collector/Deputy Commissioner having jurisdiction over the area that the place is generally dependent for its essential supplies, eg, 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."

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"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 municipali 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."

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" Conditions for drawal of House Rent Allowance

5.(a) Deleted

(b) Deleted

(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 alloted 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.

(d) Deleted.

(e) As an exception to sub-paragraphs (a) and (b) above, Government servants (other than a Government servant who is living in a house owned by him) shall be eligible for house rent allowance at the rates specified in paragraph 1 above even if they share Government accommodation allotted to other Government servants (excluding those mentioned in (c) above) or private accommodation of other Government servants (including those mentioned in (c)(ii) and c(iii) above) subject only to the condition that they pay rent or contribute towards rent or house or property tax but without reference to the amount actually paid or contributed. As an exception to para 7, the grant of house rent allowance to a Government servant living in his/her own house or to a Government servant living in a house owned by a Hindu undivided family in which he is a coparcener, will be without reference to the amount of the gross rental value as assessed by the Municipal Authorities.

Note. - In cases where husband/wife/parents, children, two or more of them being Central Government Servants or employees of State Governments, autonomous public undertakings or semi-Government organisations like Municipality, Port Trust, Nationalised Banks, Life Insurance Corporation of India, etc, share accommodation allotted to another Government servant, house rent allowance will be admissible to only one of them, at their choice.

The term "accommodation" includes the accommodation allotted to the employees of State Governments, autonomous public undertakings, Semi-Government organisations such as Municipality, Port Trust, etc."

8. The issue involved in this case essentially turns around the interpretation placed on the expression "same station"

used in para 5(c)(iii) of the HRA order. We have carefully perused the records and heard the learned counsel for the parties at great length.

9. The applicant's primary contention is that her office is located in the Corporation of Cochin while her husband has been allotted a house in Trikkakara, which is an entirely different local body, it being a Panchayat about 25 Kms away from her office. Therefore, her husband has not been allotted a house at the same station as her office. The Cochin Urban Agglomeration is an artificial concept and cannot obliterate the reality that Trikkakara Panchayat is a local body different from Cochin Corporation.

10. Shri P.V. Mohanan, the learned counsel for the applicant, advanced the following further arguments to repel the contention of the respondents in this regard:-

(i) "Under the Rules "Station" denotes the periphere of eight Km. unless it has been notified to be included other places. The Cochin University in which the husband of the applicant is working situates at a place called Thrikkakara, Thrikkakara Panchayat, about 25 Km away from CIFT. The Quarters allotted to her husband is situated at Thrikkakara Panchayat Area. This is not in the same station wherein C.I.F.T. situate." (Para 3 of rejoinder)

(ii) The expression has already been interpreted by the Ernakulam Bench of this Tribunal in OAK 127/88 and that interpretation is in favour of the applicant and, therefore, this is a settled matter.

(iii) The applicant is entitled to HRA under the provision of the Note below para 5 of the HRA order.

11. Before we consider any of the other arguments advanced by the learned counsel for the applicant, we have to consider

whether this case can be disposed of on the basis of the earlier judgment of this Bench, delivered in OAK 127/88 by the Hon'ble Shri S.P. Mukerji, Vice Chairman, sitting as a Single Member Bench.

12. The facts of that case and the issue involved as stated in the judgment are as follows:-

> "The contention of the applicant is that the entitlement to house rent allowance is barred under Clause 5(c)(iii) of the House Rent Allowance Orders when husband or wife is allotted accommodation at the same station where the other spouse is working. According to him, in his case while his place of working is situated in Quilon Municipality, his wife has been allotted accommodation within the limits of Eravipuram Panchayat, therefore, she cannot be taken to have Government accommodation at the same station where he is working. The respondents, however, has stated that since Eravipuram Panchayat has been notified to be contiguous to Quilon Municipality, for drawal of house rent allowance, that Panchayat has become a part of Quilon Municipality for house rent purposes and therefore, the wife's accommodation and the husband's place of work are to be considered to be at the same station."
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> "The point at issue before me is whether the applicant's place of work within Quilon Municipality and his wife's accommodation within Eravipuram Panchayat can be taken to be in the same station or not."

13. After quoting para 3(a)(i) of the HRA Order, the judgment proceeds as follows:-

> "The above Clause indicates that in the following areas house rent allowance would be applicable:-
>
> (a) named municipality or corporation,
>
> (b) suburban municipalities, notified areas or cantonments as are contiguous to the named municipality or corporation as at (a) above, and
>
> (c) other areas as the Central Government may from time to time, notify.

A close reading of the aforesaid clause would indicate that only those areas contiguous to named municipality or corporation would qualify for house rent allowance which are not only contiguous to named municipality or corporation, but are themselves suburban municipalities or notified areas or cantonments. This will show that a Panchayat even though contiguous to named municipality or corporation would not qualify for house rent allowance, merely by vietue of its contiguity, though such Panchayats can also be declared to be admissible area by a Central Government notification, independent of its contiguity to a named municipality or corporation. Accordingly, the mere declaration of Eravipuram Panchayat as contiguous to Quilon municipality would not qualify the Panchayat area for admissibility of house rent allowance. If that be so, the argument of the learned counsel for the respondents that by implication Eravipuram Panchayat and Quilon municipality should be considered to be the same station for the purpose of Clause 5(c)(iii) of HRA & CCA Rules, as quoted above, is not warranted.

4. Even otherwise since Clause 5(c)(iii) refers pointedly to "same station" and not to "same station including contiguous stations or such stations as are notified for the purpose of Clause 3(a)(i)", it will not be proper to import these concepts while interpreting this clause. The Maxim "EXPRESSUM FACIT CESSARE TACITUM (ie, where there is express mention of certain things, then anything not mentioned is excluded) has to be followed in the interpretation of this Clause."

14. Shri PV Madhavan Nambiar, the learned counsel for the respondents submitted that, perhaps, this judgment can be distinguished as it interprets the expression 'same station' in the context of the contiguity of the Eravipuram Panchayat to Quilon Municipality. In the present case the Respondents do not rely on any such notification declaring Trikkakara Panchayat as contiguous to Cochin Corporation for purpose of HRA. They rely on the fact that the place of work of the applicant and the house allotted to her husband are both in the Cochin Urban Agglomeration. which is "the locality" to which HRA has been applied.

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15. We have considered this submission. It is true that the grounds on which the allotted accommodation is stated to be in the 'same station' is different in the two cases. However, there is one common element, which is not self evident. That element is that though an Urban Agglomeration consists of a number of units of administration, it is a contiguous geographical area. There is a principal urban area (Cochin Corporation - in the present case) and the other areas included in the Agglomeration are contiguous to that principal urban area, either directly or through the intervening areas which are parts of that urban Agglomeration. It is a geographically continuous locality centring round the classified city. As the decision in OA 127/88 deals with the issue of contiguity we find it necessary to examine that decision.

16. We have gone through this decision carefully. It appears to us that this decision has been rendered in a different set of circumstances. Therefore, as will be shown presently, the ratio of that decision cannot be applied to the facts of the present case.

17. At the very outset, we notice that para-1 of the HRA order sanctions HRA to Govt. servants "stationed in A, B-1, B-2 and C Class cities", detailed in Annexure-1 to that

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Order. Therefore, if the expression 'station' is used elsewhere in the HRA Order it should be construed in the manner in which it is understood in para 1 of the Order. Obviously, the verb 'stationed' used in para 1 of the Order refers to the cities of A, B1, B2 and C Class (Classified cities, for short) as stated in that para.

18. Para 3(b)(i) of the HRA Order clarifies that the basic criterion for eligibility for HRA is that the place of duty of the claimant falls within the "qualifying limits" of the classified city referred to in para 1 of that Order, irrespective of whether the claimant resides whithin those limits or not. Therefore, reading paras 1 and 3(b)(i) of the HRA Order together, 'station' means the 'limits' of the classified city where the place of duty of the claimant is located.

19. 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 (ie, 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 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.

20. In the light of this analysis of the HRA Order, we now examine the judgment in OAK 127/88 to see why its ratio is inapplicable to the present case. At the outset, we notice that the ~~g~~ notification declaring Eravipuram Panchayat to be contiguous to Quilon Municipality for purposes of HRA has not been reproduced therein. The respondents had

no doubt, stated before the Bench that it had been so notified. Apparently, this does not seem to be correct. It is precisely for this reason that the judgment states as follows:

> "This will show that a Panchayat even though contiguous to named municipality or corporation would not qualify for HRA merely by virtue of its contiguity, though such Panchayats can also be declared as admissible area by a Central Government notification, independent bodies contiguity to a named municipaliry or corporation." (emphasis ours).

It is obvious that a notification firstly declaring that Eravipuram Panchayat was congiguous to Quilon Municipality and secondly extending HRA to that Panchayat on that ground under para 3(a)(1) of the HRA order was not produced before that Bench. Therefore, the above decision was rendered with the underlined portions of which alone was agree. As a necessary corrolary, the learned Vice Chairman rightly held that the argument of the Respondents that, by implication, Eravipuram Panchayat and Quilon Municipality should be considered to be the 'same station' for the purpose of para 5(c)(iii) of the HRA order was not warranted.

21 In the present case the situation is different. It is not anybody's case that HRA has been extended to Trikkakara Panchayat where the applicant's husband has been allotted accommodation- by a notification under para 3(a)(i) of the Order. In the instant case, the expression "same station" has to be construed in the context of the fact that both Cochin Corporation (within the limits of which the applicant has her place of work) and

Trikkakara outgrowth (where the applicant's husband has been allotted accommodation) are, admittedly, in the Cochin Urban Agglomeration, to which locality HRA is applicable. This is the first reason why the aforesaid judgment will not apply to the present case. That judgment would still have been relevant if it had declared that, in relation to a claimant who has her place of work in a classified city, the residence of her spouse cannot be held to be in the "same station," for purposes of para 5(c)(iii) of the Order if it is located within the limits of the contiguous suburban municipality or notified area or cantonment, as referred to in para 3(i)(a) of the HRA Order. This is the second reason why that judgment cannot help us in disposing of this case. We are of the view that the aforesaid judgment in OA 127/88 has been delivered in a totally different context. Therefore, she is not hit by the applicant's contention that para 5(c)(iii) of the HRA Order relating to "same station" cannot get any support from the aforesaid judgment.

22. Nevertheless, we consider it necessary to refer to para 4 of that judgment wherein it is stated that without the addition of certain words - which is not permissible on the basis of the maxim "Expressum facit cessare tacitum." - it cannot

be held that the bar in para 5(c)(iii) relating to the "same station" hits the applicant in that case. 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).

23. 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 if his wife/her husband has been allotted accommodation at the same station as the station where his/her place of duty is located'.

24. It is clear that the expression "station" used in para 5 of the HRA Order will have to take its colour from the similar expression used in para-1 thereof. Thus, if the office where the applicant is working namely, CIFNET was located in Kalamassery, instead of in the Cochin Corporation, it would still be located in the same station for purpose of HRA, because both these places are included in the Cochin Urban Agglomeration. Similarly, if in addition to the applicant's office located in Cochin, other offices of the Central Government are located in places like Trikkakara, Eloor, Kalamassery or Thripunithura, it can be stated that for the purpose of HRA, all these Central Govt. offices are located in the same station, viz, the Cochin Urban Agglo-

meration. In other words "station" means the "locality" to which HRA has been made applicable and within which the claimant's place of duty falls. It may mean the classified city only, if no notification under para 3(a)(i) has been issued or there is no 'urban agglomeration' having the same name as the classified city. Otherwise, it will be the 'locality' as defined in para 3(a)(i) of the Order or the Urban agglomeration, as the case may be. For the same reason, if the husband of claimant is allotted Govt. accommodation in Trikkakara (or for that matter even in Kalamassery) ~~in Kakkanad~~ that house will be treated to be allotted at the "same station" for purpose of HRA if Cochin Corporation is the place where the claimant's place of duty is located. Therefore, on the facts and in the circumstances of this case, we hold that the claim of the applicant to HRA is rightly barred by the Respondents on the basis of para 5(c)(iii) of the HRA Order.

25. We can now consider the argument of the applicant's counsel that the limits of a station are within 8 Kms of the periphery of a town. Apparently, he gets an inspiration for this argument from para 3(b)(ii) and 3 (b)(iii) of the HRA Order which refers to 8 Kms. That reference is, however,

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for an entirely different purpose. That does not lend any support to the aforesaid contention of the applicant in this regard. Normally, HRA is available only if the place of duty is in the classified cities. As an exception to this rule two contingencies have been provided. In the first case (para 3(b)(ii) ibid) the office is located outside the limit of classified city but the employees have, due to force of circumstances, to stay within the city as a matter of necessity. Even then, the employees may be given HRA provided the office is located within 8 Kms. of the periphery of the classified city. The second case (para 3(b)(iii) ibid) applies to certain offices like aerodrome, wireless stations, etc., generally located outside the classified city though the employees too have to reside near the office. Therefore, both the office and the residence of the employees are located outside the classified city . HRA becomes payable if the place of duty is within a distance of 8 Kms. from the periphery of the classified city and they depend for their supplies on such a city. It is clear that there is nothing in the orders relating to these cases to warrant a conclusion that two places can be stated to be two different "stations" for HRA, if they are separated

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by a distance of morethan 8 Kms.

26. The learned counsel for the applicant claims that in the last resort, the applicant is entitled to the benefit of HRA under the Note below para 5 of the HRA Order. That note has been reproduced in para 7 ante. That Note will apply if two or more govt. employees who are closely related (i.e., parents, children, spouses) share accommodation allotted to a stranger. That is not the case here. Hence, this argument is baseless.

27. Having thus considered in detail the issues raised in this application and the arguments of the learned counsel of the parties, we are of the view that this application has no force and it has to be dismissed. It is accordingly ordered. The interim orders passed by us restraining the respondents from recovering the excess HRA paid to the applicant in the past and from denying HRA to her prospectively are vacated.

28. There will be no order as to costs.

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(N. Dharmadan) (N.V. Krishnan)
Judicial Member Administrative Member
11-12-1989