

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 396 of 1999

Monday, this the 13th day of March, 2000

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

1. A.G. Nagalakshmy,
Senior Telecom Operating Assistant (G),
Office of the General Manager, Telecom,
Palakkad.Applicant

By Advocate Mr. Shafik M.A.

Versus

1. The General Manager Telecom,
Palakkad.

2. The Assistant Chief Accounts Officer (Cash),
Office of the General Manager Telecom,
Palakkad.

3. The Accounts Officer (Cash),
Office of the General Manager Telecom,
Palakkad.Respondents

By Advocate Mr. K. Shri Hari Rao, ACGSC

The application having been heard on 13th March, 2000,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

The applicants seeks the following reliefs:

(i) To call for the records relating to Annexures
A1 to A7 and to quash Annexures A1 to A3 being
illegal and arbitrary;

(ii) To direct the respondents not to recover any
amount as overpayment of House Rent Allowance
for the period which are barred by limitation
and non-occupancy;

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(iii) To declare that the applicant is entitled to House Rent Allowance for the periods which she has not occupied the quarters and for the periods to which the law of limitation applies; and

(iv) To direct the respondents to consider and dispose of Annexure A7 representation.

2. The applicant is a Senior Telecom Operating Assistant(G) working under the 1st respondent. Her husband is employed in the State service. He has obtained a quarter during the year 1987. Upto 1995 the applicant and her husband were living at Kalpathy, Palakkad, though official quarter was allotted to her husband. The applicant was drawing House Rent Allowance upto December, 1996. When a reduction was effected from her salary for the month of December, 1996, to her querry she was informed that she had drawn House Rent Allowance inspite of the fact that her spouse is already having an official quarter and since both of them are residing together she is not entitled to draw House Rent Allowance. She did not object to it. While so, A3 was issued proposing to recover Rs.500/- per month in 26 instalments and Rs.390/- in one instalment, altogether totalling Rs.13390/- from her pay from the month January, 1998 onwards. She immediately represented. Again an order was passed without considering the facts highlighted in her representation in a mechanical way stating that the recovery will be effected from the month of December, 1998 onwards. Against that order, she again submitted a representation. Since there was no response to her

representation, she submitted another representation. Inspite of all these, the impugned order, A1, has now been issued again intimating that the recovery will be effected from the salary from March, 1999 onwards. She again submitted a representation against this. The condition that a Government servant shall not be entitled for House Rent Allowance if she resides in the allotted accommodation of the wife/husband was brought by the Government of India, Ministry of Finance OM No. 21011/13/89-E.II(D) dated 28th December, 1989. The action of the respondents to recover the amount beyond that period is illegal since any administrative order is only having prospective effect and not any retrospective effect.

3. Respondents resist the OA contending that as per para 5(c) of the orders on payment of HRA, an employee is not entitled to HRA, when his/her spouse has been allotted accommodation at the same station by Central/State Government, Autonomous, Public Undertakings, Municipality, Port Trust, Nationalised Banks, LIC, whether he/she resides in that accommodation or not. Overpayment was calculated to be Rs.13390/- for the period from 14-8-87 to 30-11-96. A1, A2 and A3 are not arbitrary. The recovery was ordered as per the finding of an Internal Audit Party.

4. Learned counsel appearing for the applicant quite fairly submitted that what is sought in this OA in effect is only to direct the respondents not to recover the House Rent Allowance paid to the applicant during the period when the particular order relied on by the respondents was not in force and also not to recover any alleged excess payment made to her during the period her husband had vacated the quarter.

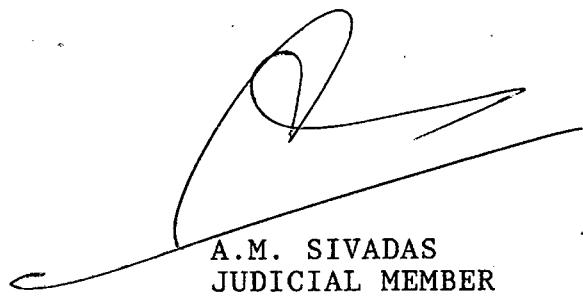
5. Respondents say that as per para 5(c) of the orders on payment of HRA, the applicant is not entitled to HRA, when her husband had been allotted accommodation at the same station by the State Government. Respondents have not cared to produce a copy of that order. Respondents further say that application of the order in retrospective effect is only logical. There is no whisper anywhere in the reply statement to the effect that the said rule specifically says that it has got retrospective effect. In the absence of production of the rule and also in the absence of any whisper to the effect that the said rule has got retrospective effect, what is the logic in saying that the application of the order in retrospective effect is only logical is something unknown. In the absence of any averment in the reply statement to the effect that the order relied on by the respondents has got retrospective effect, it is only to be taken that it is prospective in operation. That being so, the respondents are entitled to recover whatever amount is paid erroneously to the applicant by way of House Rent Allowance only in accordance with the rule and on a logical understanding of it and not in the way in which they say in para 8 of the reply statement.

6. As far as the other aspect pressed into service by the learned counsel for the applicant that the applicant's husband had vacated the quarter during a certain period for which also now recovery is made or sought, is a factual aspect for which the applicant can place materials before the respondents and the respondents can apply their mind and pass appropriate orders.

7. Accordingly, the respondents are directed to reconsider the matter afresh in the light of the observations made above and pass appropriate orders as expeditiously as possible. Until then, the impugned orders A1 to A3 shall be kept in abeyance. A personal hearing to the applicant, if so desired, shall be granted by the respondents.

8. The original application is disposed of as above. No costs.

Monday, this the 13th day of March, 2000



A.M. SIVADAS
JUDICIAL MEMBER

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List of Annexures referred to in this Order:

1. Annexure A1 - True copy of the letter No. ACAO/ICRS/96-99/58 dated 23-3-99 issued by the 3rd respondent.
2. Annexure A2 - True copy of the letter No. ACAO/ICRS/96-99/45 dated 16-12-98 issued by the 3rd respondent.
3. Annexure A3 - True copy of the letter No. ACAO/ICRS/96-99/22 dated 15-1-98 issued by the 2nd respondent.
4. Annexure A4 - True copy of the Representation dated Nil submitted by the applicant before 3rd respondent.
5. Annexure A5 - True copy of the Representation dated 25-1-99 submitted by the applicant before the Director, Finance & Accounts, Office of the 1st respondent.
6. Annexure A6 - True copy of the Representation dated 22-2-99 submitted by the applicant before the Director, Finance & Accounts, Office of the 1st respondent.
7. Annexure A7 - True copy of the Representation dated 19-3-99 submitted by the applicant before 1st respondent.