

(11)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 84/87
XXXXXX

198

DATE OF DECISION 7.12.1989

Shri B.G.Mahimkar Petitioner

Shri S.Y.Gupte Advocate for the Petitioner(s)

Versus

Joint Secretary, Deptt. of Atomic Energy, Bombay Ahr. Respondents

Shri R.C.Kotiankar for Shri M.I. Sethna. Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. M.B.Mujumdar, Member (J)

The Hon'ble Mr. M.Y.Priolkar, Member (A)

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. Whether it needs to be circulated to other Benches of the Tribunal ? No



(12)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400 614

OA.NO. 84/87

Shri B.G.Mahimkar
C/o. Shri S.Y.Gupte,
Advocate,
Ganapati Sadan, Ambedkar Road,
Vishnu Nagar, Dombivli (West).

... Applicant

vs.

1. The Joint Secretary to the
Govt. of India, Deptt. of
Atomic Energy, Bombay.

2. The Director,
Construction & Services Group,
Dept. of Atomic Energy,
Bombay.

... Respondents

CORAM: Hon'ble Member (J) Shri M.B.Mujumdar
Hon'ble Member (A) Shri M.Y.Priolkar

Appearances :

Mr. S.Y.Gupte
Advocate
for the Applicant

Mr.R.C.Kotiankar
for Mr.M.I.Sethna
Advocate
for the Respondents

ORAL JUDGMENT

Dated: 7.12.1989

(PER: M.B.Mujumdar, Member (J))

The applicant was appointed as Lower Division Clerk in the Construction and Services Group of Department of Atomic Energy i.e. Respondent No. 2 on 10.3.1965. He was promoted as Upper Division Clerk in 1973. Now he is getting a Basic Pay of Rs.1560/- in the scale of Rs.1400-2300. In addition he is getting some Dearness Allowance also.

2. The applicant's wife is working as stenographer in the Bombay Municipal Corporation since 1962. At present she is getting a pay of about Rs.2000/-. She is provided with accommodation by the Bombay Municipal Corporation

since 10.12.1972. When the application was filed she was paying standard rent of Rs.75.15 to the Bombay Municipal Corporation. Now that standard rent is increased to Rs.83.35 and she is paying that rent to the Bombay Municipal Corporation every month. She is also getting House Rent Allowance of Rs.96/- from the Bombay Municipal Corporation.

3. The applicant is staying with his wife and children in the accommodation provided to his wife by the Bombay Municipal Corporation.

4. The applicant's grievance in this case is that though he is living with his wife, he is entitled to get House Rent Allowance, which according to him at the present rate comes to Rs.450/-. The applicant was making representations from time to time for getting House Rent Allowance. His last representation dated 11.11.1986 was turned down by the respondents by the reply dated 8.12.1986 by pointing out as under :-

"In this connection his attention is invited to Clause (c)(ii) of para 5 of the Ministry of Finance D.M.No.F.2(37)/E-II(B)/64 dated 27.11.65 as amended from time to time relating to the payment of compensatory City Allowance and House Rent Allowance to Central Government Servants paid from civil estimates. According to the above para, he is not entitled to the payment of HRA as he is residing in an accommodation allotted to his wife by the Bombay Municipal Corporation."

5. On 30.1.1987 the applicant has filed this application praying for directing the respondents to pay House Rent Allowance to him with arrears from 10.12.1972.

6. The respondents have resisted the application by filing the affidavit of Mr.M.Mukundan, Administrative Officer.

7. We have just now heard Mr. S. Y. Gupte, learned advocate for the applicant and Mr. R. C. Kotiankar for Mr. M. I. Sethna, learned counsel for the respondents.

8. General Rules regarding payment of Compensatory (City) Allowance and House Rent Allowance are given in Swamy's compilation of F.R.S.R. Part V H.R.A. and C.C.A., 1986 edition from page 5 onwards. Conditions for drawal of House Rent Allowance are given in para 5 at page 16 of that compilation. According to sub-para (c) of that para, a Government servant is not entitled to House Rent Allowance if his case falls under any of the clauses of that sub-para. Clause (iii) of that sub-para is material in this case and it reads as under :-

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

- (i) (not relevant).
- (ii) (not relevant).
- (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."

It is on this sub-clause that the respondents have relied while rejecting the request of the applicant for granting House Rent Allowance to him.

9. As the applicant's wife is allotted accommodation by the Bombay Municipal Corporation, the applicant will not be entitled to House Rent Allowance in view of the above provision. However, Mr. Gupte, learned advocate for the applicant submitted that the above provision is ultravires of the Constitution because it violates the principle of

equality enshrined in articles 14 & 16 of the Constitution of India. According to Mr. Gupte, a Government employee like the applicant would have been entitled to House Rent Allowance if he was staying in private accommodation by paying standard rent. Moreover, even if the applicant's wife would have been staying in some private accommodation by paying the standard rate, the applicant would have been entitled to House Rent Allowance and the provision in para 5 (c) (iii) would not have come in his way in getting House Rent Allowance. According to Mr. Gupte, simply because the applicant is staying with his wife in the accommodation provided to her by the Bombay Municipal Corporation, it should not come in his way in getting House Rent Allowance. But in our view discrimination for being unconstitutional under articles 14 & 16 of the Constitution should be discrimination amongst the same class of the persons. Provision in para 5 (c) (iii) which is sought to be struck down by this Tribunal by the applicant applies to all persons similarly placed like the applicant. Hence, we do not find anything unconstitutional therein.

10. As already pointed out the applicant's wife is provided with accommodation by the Bombay Municipal Corporation since 1972. Corporation is charging standard rent of about Rs.83/- . She is also getting House Rent Allowance of Rs.96/- . Admittedly the applicant is staying in the same accommodation with his wife and other members of the family. To say that he should be given House Rent Allowance of Rs.450/- per month does not sound reasonable. It would have been a different thing if the applicant's wife would have been staying in some private accommodation because in that case she would not have got the accommodation at the rent of Rs.83/-.

Provisions regarding House Rent Allowance are made on the assumption that the employees do not get private accommodation at reasonable rent commensurate with the pay which they get. House Rent Allowance is never meant to supplement the pay which a Government Servant receives.

11. Hence, we are unable to find any flaw in the impugned provision in para 5 (c) (iii) which is sought to be struck down by the applicant in this case. We do not find the claim of the applicant reasonable also. Hence, we dismiss the application, with no order as to costs.

M.Y.PRIOLKAR
(M.Y.PRIOLKAR)
MEMBER (A)

M.B.MUJUMDAR
(M.B.MUJUMDAR)
MEMBER (J)

Order dt. 29-3-90
Passed by Supreme
Court of India
Served on Applicat
& R. No 142 a dt.

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