

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY-400614

O.A. NO.389/86

Shri L. Satchidanandam
Deputy Director(CERA)
Central Excise New Building
Third Floor
Maharshi Karve Marg
Bombay 400020

Applicant

V/s

1. Regional Director
Regional office for
Health & Family Welfare
Dept. of Health & Family Welfare & Estate
Industrial Estate Corner
Bapunagar
Ahmedabad 380024
2. Secretary to the Govt. of India
Ministry of Health & Family Welfare
(Dept. of Family Welfare)
Nirman Bhavan; New Delhi-110001
3. Union of India through
Secretary, Ministry of Health and
Family Welfare (Dept. of Family Welfare)
Nirman Bhavan; New Delhi 110001
4. Accountant General (Audit)
Gujarat, Laq1 Darwaja
Ahmedabad 380001
5. Director of Audit (Central)
Madhu Industrial Estate
Pandurang Budhkar Marg
Worli, Bombay 400013
6. The Pay and Accounts Officer
Office of the Accountant General-I
(A&E) Maharashtra
101 Maharshi Karve Road
Bombay 400020

Respondents

Coram : Hon'ble Vice Chairman B C Gadgil
Hon'ble Member(A) P. Srinivasan

Appearance:

The applicant
in person

Shri P M Pradhan
Counsel
for the Respondents

JUDGMENT
(PER: B C Gadgil, Vice Chairman)

DATED : 29.3.1988

The applicant who was an Accounts Officer with
the Accountant General Ahmedabad is disputing the Govern-

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ment's claim to recover Rs.4,876.38 from him on the ground that House Rent Allowance (HRA) had been wrongly paid to him earlier for the period between July 1974 and 10 July 1977.

2. It is not disputed that the applicant was on deputation during the above period as Accounts Officer in the office of the Regional Director, Regional Office of Health and Family Welfare. He purchased a flat from the Housing Board at Ahmedabad and was occupying that flat. He claimed HRA. He produced a letter dated 7.12.74 from the Housing Board stating that the rent of the flat excluding taxes and other charges would be Rs. 325 per month and that the hire purchase cost would be Rs.37,000. HRA was sanctioned with a rider that it was a provisional payment and was liable to be recovered at any time. The matter was under the correspondence as to whether the applicant was entitled to such HRA. It is not in dispute that the HRA is permissible in accordance with Government memorandum dated 27.11.1965 (vide exhibit at page 67 of the compilation). The relevant paragraph reads as follows:

"7.(i) A Government servant living in a house owned by him, his wife, children, father or mother shall also be eligible for house rent allowance under these orders. In such cases, the gross rental value of the house or, if he is not in occupation of the entire house, of the portion of the house actually occupied by him (as ascertained from its assessed value for municipal purposes or otherwise), without deduction of rebate of 10 per cent on account of repairs and including municipal and other taxes that are legally payable by the owner other than "service taxes" levied separately and described as such, shall be taken as the rent paid by him for private accommodation for the purpose of these orders

When separate amount of assessed value is not available in respect of a portion of a house, it will be calculated proportionately with

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reference to the plinth area actually in the occupation of a Government servant.

If a house is situated within a municipality/local board/notified area/cantonment boards, grant of house rent allowance in above case should invariably be regulated on the basis of gross rental value as assessed by these authorities. Only when assessment by such an authority is not possible assessment made by other local authorities may be accepted as the basis for the grant of House Rent Allowance. (Emphasis supplied)

3. It is common ground that the Ahmedabad Municipal Corporation does not assess the gross rental value of houses which are in occupation of the owner. Of course property tax is levied but it is on the basis of some other principle and not on the gross rental value. In the background of this position, the department took a decision that there is no data in the shape of the assessment of the gross rental value by the Ahmedabad Municipal Corporation. Where such assessment is not possible the assessment made by any other local authority could be accepted. However, the department took the view ~~the~~ the term local authority would not include the Housing Board and consequently the rent certificate given by the housing board would be of no use. This here is a case where the applicant who is occupying his own house is entitled to house rent allowance, but that claim is being rejected on the ground that the gross rental value is neither determined by the Ahmedabad Municipal Corporation or by any other local authority. The applicant contends that this view of the GOVERNMENT is illegal and that he is entitled to HRA on the basis of the rent certificate issued by the Housing Board. Another contention of the applicant is that the Gujarat High Court in Special Civil Appeal No.927/79 held that in the absence of assessment of gross rental value by the Municipal Corporation or any other authority, the controlling officer would have to fall back on some other relevant method for arriving at the true rental value of the house. The High Court therefore, directed the respondents to pay to the applicant (who was an

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employee of the P&T department) the HRA on the basis of the assessment of gross rental value by the Executive Engineer, Posts & Telegraphs department).

4. The respondents resisted the claim. In substance their contention is that in the absence of any assessment of gross rental value either by the Ahmedabad Municipal Corporation or any other local authority the applicant's claim for HRA cannot be granted. As far as the judgment of the Gujarat High Court is concerned it was pointed out that the Gujarat High Court had accepted the rent certificate issued by the Executive Engineer of the Posts & Telegraphs Department and the said judgment is extended to all the employees of the P&T department only.

5. We have heard the applicant in person and Mr. P.M. Pradhan for the respondents. It cannot be doubted even for a moment that the Government policy is to pay HRA even to those employees who are occupying their own houses. Memorandum dated 27.11.65 (page 67 of the compilation) cannot be interpreted to mean that such an employee would not get any HRA if the gross rental value is neither assessed by the concerned Municipal Corporation nor by any other local authority. In our opinion the said memorandum has only indicated one method which can be taken into account while determining the rental value of a self owned house in occupation of the employee. It would be falacious to contend that this methodology would be so strict that the employee occupying his own house would not be entitled to get HRA simply because the Municipality or other local authority is not assessing the gross rental value of the property. This is more so when there are instances when the local authorities like the Municipalities levy property tax not on the basis of annual rental value but on some other principle as for example, the area of the House etc. It is in this background that the Gujarat High Court directed that HRA should be paid on the basis of the assessment made by the Executive

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Engineer of the Posts & Telegraphs Department. The record shows that the Government accepted this decision and applied it to all the employess of the Postal department. However, the Government took a decision that the principle should not be applied to the employees of other departments. The fact that the Government accepted the judgment of the Gujarat High Court is an indication that the method contemplated in the memorandum dated 27.11.65 is not a rigid one and that what is expected to be taken into account by the department is the probable rent of the property owned and occupied by an employee. There does not appear to be any valid ground for the Government to say that this other method should be applied only to the Postal Department and not to other departments. The applicant is right when he contends that the principle laid down by the Gujarat High Court should be applied to him also though he belongs to a department other than the Postal department.

6. The matter can be viewed from another angle as well. On 11.7.73 the Government wrote a letter (page 159 of the compilation) clarifying as to how HRA should be paid when the premises are owned by the Housing Board. Paragraph 2 of that letter reads as follows.

"In the case of flats rented out by the housing boards an exception has, however, been made in as much as rent exclusive of service charges, the housing board would have charged had the tenement been given on rental basis, is treated as rent for processing house rent claims of the concerned Government employees."

This letter would itself show that in the case of housing board flats the hypothetical rent which the housing board would have charged to a hypothetical tenant would be the basis for processing the HRA claims. We have already mentioned that the Housing Board has, on 7.12.74,

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written that the rent of the flat exclusive of tax and other charges would be Rs. 325 per month. It appears that the department has paid HRA to the applicant on the basis of the rent as mentioned by the housing board. Demand to recover the HRA already paid on the ground that the certificate issued by the housing board would not be sufficient is quite unjust and untenable. The intended recovery has to be stopped. Not only that: there should be a direction that the respondents should pay the applicant the HRA from 11.7.1977 to 27.12.1983 by applying the same principle.


ORDER

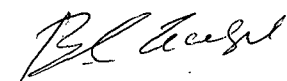
For all these reasons the application succeeds. The respondents are restrained from recovering the amount of Rs.4,876.30 or any part thereof (i.e., the amount paid to the applicant as HRA for the period from 1.11.74 to 10.7.77) from the applicant. It is further directed that if any portion from that amount has already been recovered it should be paid back to the applicant.

The respondents are further directed to pay the applicant permissible HRA from 10 July 1977 to 27th December 1983 on the basis of the rent certificate issued by the housing board.

This order should be complied expeditiously say within a period of two months from to-day.

Parties to bear their own costs of the application.


(P Srinivasan.)
Member(A)


(B C Gadgil)
Vice Chairman