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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY,
CAMP AT AURANGABAD.

Original Application No.874/89.

Kum. S.B.Varma.

... Applicant.

V/s.

Union of India & Ors.

... Respondents.

Coram: Hon'ble Member(J), Shri D.Surya Rao,
Hon'ble Member(A), Shri P.S.Chaudhuri.

Appearances:-

Applicant present in person.
Respondents by Mr.R.G.Deo.

Oral Judgment:-

¶ Per Shri P.S.Chaudhuri, Member(A) ¶ Dated: 7.11.1990

This application under Section 19 of the Administrative Tribunals Act, 1985 was filed on 20.11.1989. In it the applicant, who is an employee of the Telecommunication Department, is challenging the order dt. 16.8.1989 passed by the third respondent in terms of which the excess payment made to her from 9.1.1986 to 31.7.1989 amounting to a total of Rs.9,037.20 is being recovered from her pay for August, 1989 onwards at the rate of Rs.500/- p.m.

2. The applicant joined the Telecommunication Department w.e.f. 9.1.1986, she was paid HRA at the prescribed rates from that date, and was posted at Nashik. On 10.1.1986 she submitted her Home Town Declaration in which her residential address was shown as: P/38/2 Wing V, Artillery Centre, Nashik Road. We may clarify here that this was the quarter allotted to her father who is a civilian employee in the Artillery

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Centre, Nasik Road Camp. She gave a similar address in the form regarding her residential address signed by her on 2.5.1988.

3. It is the case of the applicant that within a week of her appointment she chose to stay away from her parents in the nearby locality sharing private rented accommodation with some acquaintance respected and called as 'Uncle' by the applicant. Initially due to inadvertance the applicant new and ignorant as she was about the rules of employment and service could not inform the said fact in writing, though she duly informed the same orally to her office. But none in her office suggested or advised her to do so in writing. However, of her own on 14.5.1988 she sent a letter to the respondents stating:

"As I am living with my Uncle's family since 01 May,1988. My residential address may please be amended as below. But my Postal Address remains unchanged so as to avoid misplacement of Dak (letters) as my residential Address is not well known and in remote village area.

Residential Address

Ms.Sangita Varma
C/o. Mr.Bhuktare
In between Pathardi
Village and Vadner
Village

This is for your kind information please."

Subsequently, on 4.7.1988 she sent another letter to the respondents stating that:

"Your kind attention is drawn to my application quoted above. I was suffering from Rpectic

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fever at the time of submission of the above application. Therefore, I wrote 01 May, 1988 erroneously instead of 15th Jan. 86. I am living with my uncle Shri N.K.Bhuktare. Necessary service records may please be amended accordingly.

My Postal Address will remain as under. My Residential House has no number being located in rural area and is very old. Which is nearby Artillery Centre Gate (Devlali Gate).

Postal Address

P/38/2 Wing V
Arty Centre
Nasik Road Camp
422 102

Residential Address

Ms.Sangita Varma
C/o. Mr.N.K.Buktare
Outside Artillery
Centre Gate
Pathardi Road
Near Vadner Dumala
Nasik."

4. In May, 1989 an Audit Inspection Report pointed out that:

"Para 7 :

23/5/89: HRA to Ku. Sangita Varma

The Official is residing at

P/38/2 Wing V Artillery Centre NRC -

422 102. Presumably this seems

to be quarter allotted to Military personnel i.e. Govt. official.

If the official is residing in

Govt. quarter then payment of HRA

is not regular and this may pl.

be regularised from the time it is being paid".

...4.

Based on this report the impugned order was passed on 16.8.1989. A copy of the Audit Report (supra) was also sent to the applicant on 15.9.1989. The applicant made representation on 17.8.1989, but this was rejected on 16.9.1989 stating that "it is proved beyond doubt that you are staying in Government Quarters with your parents". She made other representations also, but these need not concern us. Being aggrieved she filed the present application on 20.11.1989.

5. The respondents have opposed the application by filing their reply. We have heard the applicant in person and Mr.R.G.Deo, learned advocate for the respondents.

6. It is the applicant's case that she was never given a show cause notice before her HRA was stopped and orders passed for effecting recoveries of alleged earlier overpayment. She has further alleged mala fide against the third respondent. She has also alleged discrimination inasmuch as another Lower Division Clerk, viz.

Mrs.R.Seshadri and others though not entitled to HRA have been spared.

7. It was Mr.Deo's case that there were apparent amendments and contradictions in the various statements made by the applicant as detailed above. There was also no need for her to suddenly decide to inform the respondents about her address almost 2 years after she had given her first declaration and confirmed the same on 2.5.1988. The respondents had verified from the Artillery Records that the quarter mentioned in the applicant's declarations dated 10.1.1986 and 2.5.1988

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was a Government Quarter which had been allotted to the applicant's father. It was his case that the respondents did not take any cognizance of her letters dt. 14.5.1988 and 4.7.1988 and did not want to take any disciplinary action based thereon. However, they had verified the correctness or otherwise of the applicant's statement by sending registered letters to the purported address and these were returned un-delivered on 15.9.1989 and 19.9.1989. Mr. Deo went on to deny the charges of mala fide against respondent No.3 and submitted that no evidence had been placed before the Tribunal in support thereof. It was his further submission that, in any case, the question of mala fide does not arise in this case as the action had been taken on the basis of an Audit Report, which had not been challenged as being tainted by mala fide, and in conformity with the rules.

8. The applicant attempted to counter ~~these~~ these submissions of Mr. Deo by stating that she had received registered letters at her purported address C/o. Mr. N.K. Bhutkare. It was her further submission that the letters mentioned by Mr. Deo were returned un-delivered because she was away in Delhi at that time.

9. After going through the various submissions and considering the arguments of both sides we find ourselves unable to go along with the submissions of the applicant. We are unable to see any satisfactory reason why she waited for two years before informing the residential authorities of her correct address. We are unable to see any reason why she should have written 1.5.1988 erroneously instead of 15.1.1986. During the course

of oral arguments the applicant mentioned that her 'Aunt' viz. Mr.N.K.Bhuktare's wife, was also living in the house in question. We see no reason to doubt this statement. But Mrs.Bhuktare would have probably been at home when the Postal Peon came to deliver the registered letters sent to the applicant by the respondents but did not do so because the applicant was not in the house at the time. It is pertinent to mention that the four letters that have been delivered at the address were all delivered after the first two had been returned undelivered. It is not impossible that the applicant came to know about the undelivered letters and apprehending that this might be construed as her not residing at her purported residence, she took the precaution of arranging for receipt of registered letters at the purported address or even residing there thereafter. We are unable to verify as to who received the four letters in question, as, quite obviously, the acknowledgements would be with the senders and not with the applicant. Based on this discussion, we are unable to go along the applicant's contentions that her residential address was C/o.Mr.N.K.Bhuktare. Once we reach this conclusion we have to accept that she was staying at the address furnished by her on 10.1.1986 - viz. with her father in government accommodation allotted to him. From this it is obvious that she is not entitled to HRA for the period in question and any payments made have to be recovered. We see no merit in her plea of not being heard because her representation to the superior authority was considered but rejected. In view of this position we are also of the view that the allegation of mala fide



has no bearing on the legality of the impugned order of recovery. Having said this we must, however, point out that the rate of recovery of Rs.500/- p.m. does appear to be far too harsh for a low paid government employee. Nothing was produced before us to justify so high a rate of recovery. It is most unfortunate that we cannot do much in this regard now because 15 months' of recovery at this abnormally high rate have already been effected, but we propose to give a direction minimising the said recovery.


10. As far as the question of discrimination is concerned, the respondents' reply states that "These respondents have conducted several enquiries in this regard with the appropriate authorities. These respondents state that against those who are really not entitled to House Rent Allowance these respondents are taking proper action on confirmation of the confidential reports which would be gathered by these respondents in support of the claim." Mr. Deo submitted that, in view of this position, there was no question of any discrimination against the applicant. It was his case that the recoveries being effected from her were strictly in conformity with the rules. Whilst we see considerable merit in these submissions, we do express the hope that the respondents will complete their inquiries and take action as warranted thereon as expeditiously as possible.

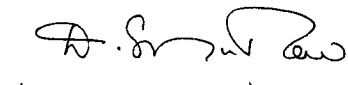
11. Based on this analysis and discussion we see no merit in the application.

12. In this view of the matter, the application is dismissed with a direction to the respondents that



the remaining recoveries pertaining ^{to} the above mentioned
sum of Rs.9,037.20/- shall be at the rate of Rs.100/- p.m.
There will be no order as to costs.


(P.S. CHAUDHURI)
MEMBER (A)


(D. SURYA RAO)
MEMBER (J).