

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 99/2001

Date of Decision: 9.10.2001

Shri A.A. Zarkar

Applicant

Shri Dattamurthy.

Advocate for Applicant

Versus

Union of India & another

.. Respondents

Shri V.S. Masurkar.

Advocate for Respondents

CORAM: HON'BLE SMT. SHANTA SHASTRY. ... MEMBER (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library ✓

*Shanta S*  
(SMT. SHANTA SHASTRY)  
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 99/2001

THIS THE 9 TH DAY OF OCTOBER, 2001

CORAM: SMT. SHANTA SHASTRY

. MEMBER (A)

A.A. Zarkar,  
Sub Postmaster,  
Santacruz Central Post Office,  
Mumbai-400 054. ... Applicant

By Advocate Shri B. Dattamurthy

Versus

1. Union of India represented by  
The Chief Postmaster General,  
Maharashtra Circle, IInd Floor,  
G.P.O. Building,  
Mumbai-400 001.
2. Senior Superintendent of Post Offices,  
Mumbai City North Division,  
Azad Nagar Post Office Bldg.,  
Mumbai-400 053. .. Respondents

By Advocate Shri V.S. Masurkar.

O R D E R

The applicant is presently working as higher second grade-II Sub-Postmaster, Santacruz Central Post Office, Mumbai. He was earlier working as Sub Postmaster, J.B. Nagar post office, Mumbai from 18.7.1995. There is an official quarter attached to the said post office. When the applicant assumed the charge of the Sub-Postmaster at the aforesaid post office from 18.7.95, the official attached quarter was not vacant. The earlier occupant of the same i.e. Shri E.Y. Gangurde, transferred to Versova Post Office, continued to occupy the quarter from 18.7.95 to 30.4.1996. On

::2::

vacation of the quarter, he handed over the keys of the quarter to the office of the Superintendent of Post Office, Mumbai City, North Division. The applicant, then collected the keys of the quarter from the divisional office on 11th May, 1996 and entered the quarters. He found that the quarters was in an utterly dilapidated condition requiring extensive repair to make it inhabitable. He, therefore, submitted an application describing the condition of the quarters and the details of repairs required vide his letter dated 15.5.96 and returned the keys of the quarter to the divisional office informing that he would occupy the quarters after repairs were undertaken.

2. On receipt of the application, the Sub Divisional Inspector, Shri Surve, from the divisional office, inspected the quarters on 2.8.96 and instructed the applicant to obtain and submit two competitive estimates for the repairs. Accordingly, the applicant obtained and sent two estimates for the repairs for Rs.27000/- and rs.29000/- each vide letter dated 7.8.96 addressed to the divisional officer for approval. Thereafter no action was taken for carrying out the repairs. The applicant continued to stay outside in private rental house.

3. The applicant was getting HRA. According to the applicant, all of a sudden his HRA was discontinued from the month of February, 1998. The applicant

::3::

immediately represented to the Senior Superintendent of Post Offices on 2.3.98 against the allegedly unjustified discontinuance and indicated his readiness to occupy the quarter in case the same is got repaired. Thereafter the quarter attached to the J.B. Nagar post office was suspended with effect from 27.8.98 under orders dated 27.8.98 of the Post Master General, Bombay which were conveyed vide letter dated 21.9.98/9.10.98 by the Senior Superintendent of Post Offices, Mumbai City North Division. It was also conveyed to recover the HRA paid to the applicant for the period from 1.5.96 to January, 98. The applicant again represented to the Chief Postmaster General, Mumbai on 16.8.99 seeking suspension of the quarters from 1.5.96 and to refund the HRA which was being recovered from the pay of the applicant. He sent a further reminder on 22.1.2000. Finally, the Senior Superintendent of Post Offices, under his ~~letter~~ <sup>h</sup> dated 24.2.2000/2,3,2000 conveyed the decision of the Chief Post Master General that the matter was re-examined in view of the representation, however, the decision conveyed earlier vide orders dated 9.10.98 and 9.7.98 stands. The applicant sent further representation on 14.6.2000. He was informed that the earlier decision stands.

4. The applicant submits that HRA paid to the applicant upto January, 1998 was recovered at the rate of Rs.1600/- per month commencing from December, 1999 and ending in December, 2000. Last instalment was

::4::

recovered in December, 2000. A total amount of Rs.19,250/- was thus recovered. he was also not paid any HRA from February, 98 to August, 1998. The applicant has therefore, prayed to quash and set aside the orders dated 9.10.98, 16.12.98 and 3.2.99 conveyed through the letter dated 9.7.99 regarding recovery of the HRA paid from 1.5.96 to 31.10.98. So also the letters dated 16.2.2000, 24.2.2000/2.3.2000 be quashed and set aside. The applicant has also sought that the suspension of the residential quarters attached to the J.B. Nagar Post Office be deemed to have been effective from 1.5.96 and consequently to refund the HRA recovered from the applicant along with interest at 18% till its refund and to pay HRA due for the period from 1.2.98 upto 27.8.98 plus the rent in lieu of the quarters for the period from 1.2.98 to 27.8.98. The applicant has also demanded cost of Rs.2000/-.

5. The respondents have raised the preliminary plea that the dispute pertains to 1996 and 1998, whereas the OA is filed on 3.1.2001, thus the application suffers from delay and laches and hence OA deserves to be dismissed. The respondents have relied on several judgments in this connection. From among them being Ratam Chandra Samanta Vs. UOI 1994 (26) ATC 228, S.S. Rathore Vs. State of M.P. 1989 (2) ATC 521, Boopsingh Vs. UOI AIR 1992 SC 1414 etc.

14

6. According to the respondents the applicant failed to occupy the accommodation attached to his post which he was supposed to occupy as a service condition. Though the quarters required a few repairs, it could not be accepted that the quarters were inhabitable and in dilapidated condition in view of the fact that the quarters had been occupied by the predecessor of the applicant till 30.4.96. The right action on the part of the applicant would have been to take possession of the attached quarters and then to have processed the case with the administration for getting the quarters repaired. It is not that the administration was not interested in getting the quarters repaired or in getting the issue sorted out. But the applicant purposely avoided the same so that the benefit of the HRA can be claimed for the period during which the quarters remained unoccupied. The respondents submit that quarter is a rented quarter coming under the Rent Control Act prevailing in the State. The landlord is bound to keep the premises in proper condition and therefore, the administration could not incur huge amount on repairs during 1996 only on quarters having area of 561 sq. ft. only as the estimates given ranged between Rs.28,985/- and 35,475/-. Lot of time lapsed in the process of rent revision as well as in getting the landlord to carry out the repairs. The matter was under negotiation. Payment of HRA to the applicant with effect from February, 98 was stopped since there was an

audit objection. At that time, the decision to suspend the quarter had not been taken, it was taken much later from 27.8.98.

7. According to Rule 37 of the Postal Manual Volume VI (Part-I) for proper discharge of his duties, the applicant should have occupied the quarters first instead of giving willingness to occupy the quarters after the repairs were carried out. The learned counsel for the respondents has also referred to a letter of the department of Posts, Government of India of 1980 in which it is clearly specified that incumbent to the post to which the quarters are attached should be compulsorily made to occupy the quarter in default of the same, HRA should be stopped. The respondents state that the attached quarters are located on the first floor of the three storied building owned by Rajasthan Co-operative Society. Tenants of other quarters are also residing in their flats in the same building and the building is otherwise fully occupied. The other incumbents are getting HRA as per E and E1 provisions of letter at 'E' as during suspension period of the quarters the incumbent is allowed to draw HRA. The applicant cannot be absolved of the responsibilities merely stating that the keys of the quarters have been handed over in the division office and the division office at no time directed him to occupy the quarters. Further, when the sub-postmaster assumes charge of his office, he is deemed to be in possession of the postal

h

::7::

quarter, if attached to that post from that date. Since in the present case, the predecessor of the applicant had continued to occupy the quarters till 30th April, 96 on academic grounds hence the applicant is deemed to be the occupant of the quarters from 1.5.96. Since the applicant did not physically occupy the quarters, the administration was right in withdrawing the benefit of HRA as per prevailing rules. The respondents submit that the recovery of irregularly paid HRA is supported by instructions from Department and no notice is necessary to be served before ordering such recovery. The applicant had deliberately avoided to occupy the quarter on flimsy grounds, no HRA is payable.

8. The learned counsel for the applicant submits that he had taken precautions at every stage to inform the authorities about his being unable to occupy the attached quarters due to the quarter being in a dilapidated condition of the quarter and had also forwarded the estimates as required for repairs. According to the applicant, since the condition was totally unsuitable and unsafe, action should have been taken to suspend the quarter from 1.5.1996. The order regarding recovery of HRA without any notice or without taking into account the facts, needs to be quashed and set aside. The respondents did not take note of the factual position and without considering the point brought out in the representation of the applicant dated

4



16.8.99. The applicant, therefore, was staying in private accommodation paying monthly rent. The orders of the respondents are arbitrary.

9. The applicant submits that the Tribunal has decided similar case in the past and had allowed the refund of HRA charged from the applicant in OA 293/90 in the case of Mrs. T. Mercy Vs. Union of India represented by Secretary, Railway Board, New Delhi & Others. In this case, the applicant was allotted out of turn accommodation. However, the same was in a very bad condition and the applicant could not move therein. The applicant furnished occupation memo. it was done because the respondents insisted that no repair work would be undertaken until and unless the applicant submits the occupation memo. But neither the applicant nor her family members physically occupied the said quarter. The Tribunal held that it would be unfair and unjust to deduct the HRA from the salary of the applicant for the period when she did not occupy the allotted quarters till she surrendered the said accommodation. The Tribunal directed to refund the rent that was charged and collected from the applicant. The applicant, in the present case submits that in his case, he had returned the keys of the attached quarters and had also given clearly in writing. There was no communication from the respondents insisting on his occupying the quarter. The applicant's case is on a stronger footings.

16

10. The applicant has also relied on another judgment of the Tribunal in the case of Prabhakar Kinhikar Vs. UOI & another in OA 38/96. This was about sub-postmaster retaining the old quarter even though quarter was attached at the new place also. In his case rent was recovered for both the places. He had a grievance relating to the quarters attached to the new post as the quarter was not in a proper condition to be occupied. No HRA was granted to him and there was no privacy as the latrine was located in the post office premises. In this case also the Tribunal decided in favour of the applicant. The accommodation was also not suspended. The court ordered that the allotment of the residence in favour of the applicant should be deemed to have been suspended for the period from which the applicant came to be posted there.

11. In view of these judgments, the applicant pleads that his case being stronger, he should be refunded the HRA recovered from his pay and should be paid HRA for the period from February, 98 till August, 98.

12. The learned counsel for the respondents, however, brushed aside these judgments by stating that the same are distinguishable from the applicant's case as the facts were different in those cases.

*h*

::10::

13. I have heard the learned counsel for the applicant as well as the respondents carefully and have perused the pleadings. According to the respondents, the applicant was duty bound to occupy the quarter irrespective of whether it needed repairs or not as it is a quarter attached to the post and in such case no HRA is paid. Therefore, the respondents were justified in recovering the HRA already paid and stopping the HRA from February, 98. The decision to suspend the quarter was taken only in August, 98. I agree that in normal course, the prescribed rules have to be followed. But in the present case, the applicant, from the day one has kept the authorities informed about his intention of not occupying the quarters as they were inhabitable and they needed extensive repairs. The very fact that the quarters came to be suspended from 07th August, 98 shows that there was substance in applicant's version that the quarter was inhabitable. In all fairness, the respondents should have given the benefit of the order of suspension to the applicant from the day he assumed charge. The learned counsel for the applicant submits that those who were posted to the J.B. Nagar post office after the transfer of the applicant elsewhere, had also not occupied the attached quarters. The applicant did not even keep the keys of the quarters in his possession. The applicant, therefore, in my considered view, had genuine reason for not staying in that quarter. The applicant should not have been punished with the recovery of the HRA paid to him from


4

::11::

the day he joined service i.e. in 1996. Merely the predecessor continued to stay there till April, 96 it does not mean that the quarter was inhabitable. it was the duty of the respondents to have informed the applicant whether they would be carrying out the repairs and that the applicant should go and stay in the attached quarters. No reply was given to the applicant. The arguments advanced by the respondents do not have any convincing effect to reject the claim of the applicant. In the facts and circumstances of the case, the applicant is entitled to the refund of HRA deducted from his pay.

14. As to the point of limitation, no doubt there is a delay. However, considering that it is a genuine case on merit I am inclined to condone the delay.

15. I have perused the judgments produced by the applicant. I find that the facts may not be exactly identical, the main issue was that the accommodation made available to the applicant and the accommodation, which was allotted in the case of the applicants in other two judgments were not in proper condition to be occupied. To this extent there is similarity in this case. In my considered view, therefore, the applicant needs to be given the benefit of the ratio in these judgments.



::12::

16. I therefore, quash and set aside the impugned orders dated 9.7.99, 16.12.98, 3.2.99, 16.2.2000, 24.2.2000 and direct the respondents to refund the amount of HRA recovered from the applicant. Also the respondents shall pay the HRA to the applicant from February, 98 to 27.8.98. The amount shall be refunded within a period of two months from the date of receipt of copy of this order. The OA is disposed with a <sup>order by</sup> direction as above. I do not any costs.

*Shanta*

(SMT. SHANTA SHASTRY)  
MEMBER (A)

Gajan