

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 774/91

Transfer Application No:
xxxxxxxxxxxxxxxxxxxxxxxx

DATE OF DECISION

18/3/92

Shri Mishrilal Gupta Petitioner

Shri S.P. Saxena Advocate for the Petitioners

Versus

The General Manager Respondent
Ammunition Factory, Kirkee, Pune
and anr.

Shri R.K. Shetty Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri V.D. Deshmukh, Member (J)

The Hon'ble Shri

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes.*
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

} *no.*



(V.D. DESHMUKH)
MEMBER (J)

NS/

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 774/91

Shri Mishrilal Gupta
V/s.

... Applicant.

The General Manager
Ammunition Factory,
Kirkee, Pune.

The Director General,
Ordnance Factories,
10 A, Auckland Road,
Calcutta.

... Respondents.

CORAM: Hon'ble Shri V.D. Deshmukh, Member (J)

Appearance:

Shri S.P. Saxena, counsel
for the applicant.

Shri R.K. Shetty, counsel
for the respondents.

JUDGEMENT

Dated: 18 Mar 73

¶ Per Shri V.D. Deshmukh, Member (J) ¶

The applicant who is an ex-serviceman from SRPF is a civilian employee working as Khansama -Chowkidar in the Ammunition Factory, Kirkee, Guest House under respondent No.1. The applicant joined the said service in 1974. The respondents have produced zerox copy of the appointment order dated 31.10.74. However it appears that the applicant joined his duties with effect from 4.11.74.

The applicant by virtue of his duty as Khansama-Chowkidar is necessarily required to attend to the guests and visitors for 24 hours, to cook food etc. for them and also to carry out the duties of Chowkidars at the said guest house. The applicant is admittedly provided with single rest room which can be considered as an out house.

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The respondents paid to the applicant HRA from 4.11.74 to 31.12.84. They, according to the applicant stopped the payment of house rent allowance thereafter. The respondents again started paying the HRA to the applicant with effect from 1.3.86 and continued to pay HRA to the applicant till 31.3.88, since when the HRA was stopped. The applicant therefore filed the present application claiming that he was entitled to HRA for the period for which he has not been paid HRA and for continuous payment of HRA as per Rules. The respondents filed their written statement and I heard learned counsels for the parties.

The short question that arises for consideration in the present application is whether the room or the out house which is provided to the applicant can be taken as the accommodation allotted to him by the respondents. It is admitted position that the applicant as Khansama - Chowkidar is entitled for type I accommodation. Para 5 of the written statement itself shows that the type I accommodation is suitable for comfortable living for a family of four members. It is not the case of the respondents that the room or the out house where the applicant is residing is allotted to him and does fulfil the requirements of type I accommodation. In fact the applicant had never applied for allotment of quarters. He was not allotted any quarter. It is in these circumstances, it appears that the respondents paid to the applicant HRA for ^{the} continuous period of about 10 years i.e. from 4.11.74 to 31.12.84, and although stopped thereafter, they again resumed the payment with effect from 1.3.86 to 31.3.88. It is contended on behalf of the respondents that as per the letter dated 31.7.67 of the Under Secretary to the Government of India (Annex. R to the written statement) it was decided that the Khansama - Chowkidar should not be given rent free accommodation,

they should be charged house rent under the normal rules, and pursuant to this letter the applicant was charged a rent of Rs. 5/- per month. If this letter was of 1967 it is difficult to see how the respondents have paid to the applicant HRA from 4.11.74 to 31.11.84 and again from 1.3.86 to 31.3.88. The respondents cannot rely upon this letter for not paying the HRA to the applicant.

As has been stated earlier the applicant has not applied for allotment of any quarter as per his entitlement. The appointment order does not show that the applicant was required to stay at the out house by virtue of conditions of service. The respondents do not rely upon any Rule by which it was compulsory for the applicant to reside at the out house ~~by~~ as a condition of service. It is therefore clear that the accommodation provided to the applicant is not either a regular government quarter which is allotted to him as per his entitlement or as transit accommodation, nor it is an accommodation where the applicant has to compulsorily stay. In these circumstances it is impossible to accept the contentions of the respondents that the applicant is not entitled to HRA because he is residing in government owned premises.

Learned counsel for the respondents relied upon certain guidelines incorporated in various compilations as regards the allotment of residential quarters and payment of HRA. At the out set it must be mentioned that these guidelines and instructions are concerned with the proper residential quarters which ~~are~~ allotted as per the entitlement ~~of~~ the application made by the government employees. He relies upon following para 4 in one extract:

" (a)(i) To those Government servants who are eligible for Government accommodation the allowance will be admissible only if they have applied for such accommodation in accordance with the prescribed procedure, if any; but have not been provided with it."

However he could not point out the circular from which these extracts were taken. Para 4 of this extract shows that the government employee is not entitled to HRA if he applies for government accommodation in accordance with the prescribed procedure and the government accommodation is allotted to him. It however provides that if any accommodation is not provided in spite of the application, the employee shall be entitled to HRA. In the present case it is an admitted position that the applicant never applied for government accommodation and the room/ out house where he is residing was not allotted to him pursuant to his application as residential accommodation.

The learned counsel for the respondents relied upon the guide lines based on the order dated 9.8.90 reproduced at page 339 in Swamy's compilation of FR & SR (Part I) of 1992 edition. The guidelines no doubt provide that the officer or the persons to whom the accommodation is allotted shall not be liable for HRA admissible as per government rules. However in the first place these guidelines deal with the rent free quarters and HRA payable and in the second place even the principle would not be applicable where the employee is not properly allotted a proper accommodation as per his entitlement. He also relied upon the General instructions of the Min. of Finance (O.M. dated 19.2.87 Swamy's compilation of FR & SR 1992 edition part V page 118). These instructions also relate to HRA in lieu of rent free accommodation and cannot be applied in the present case especially as the concerned premises are not regularly allotted government quarters. These instructions on the other hand show that as per the recommendations of the IV th Pay Commission as accepted by the Government, the HRA shall be payable to all employees who are not

provided government owned / hired accommodation without production of rent receipts. The respondents cannot take the benefit of these instructions also.

The learned counsel for the respondents relied upon the instructions regarding HRA under Railway Establishment Rules and labour laws. As per these instructions HRA is not payable where the employee is occupying government accommodation or has refused government accommodation. He has also pointed out that the Railway Establishment Manual as per order dated 30.4.62 provides that class IV employee residing in Railway quarters including out house are not entitled to HRA. These rules and instructions are expressly concerned with Railway Establishments and they cannot be applied in the present case. Even if the principle would be applicable it would be applicable only in case where the government employee has been allotted government accommodation on his application as per the prescribed rules and procedures and the accommodation is a residential accommodation. The principle may apply in case where according to the conditions of service, an employee is required to reside in a particular premises. Neither of the requirements are fulfilled in the present case. It is obvious that even the respondents were not sure ^{for whether} where the applicant was entitled to HRA or otherwise they would have never paid the HRA to the applicant for a long period from November 74 to December '84 and again from March '84 to March '88. It is impossible to accept that these payments were made by mistake.


The applicant relies upon an instance of one Shri M.G. Mandre. The applicant contended that said Shri Mandre is staying in the adjacent out house of the guest house and he is being paid HRA. The applicant produced the salary slip of the said Shri Mandre of

dated 5.1.91, which shows that HRA was paid to Shri Mandre. However according to the respondents Shri Mandre is not staying in the aforesaid premises. The applicant however has produced the zerox copy of the ration card of Shri Mandre and Electoral Roll of 1991 which prima faice show that he is residing in the out house of the same guest house. It was contended that Shri Mandre was a labourer and was not a Khansama. However I do not find ^{that} it can ^{be} taken as a distinguishing feature. Various circumstances therefore show that the applicant is entitled to HRA.

The respondent^s stopped payment of HRA to the applicant from 31.12.84 and resumed the payment with effect from 1.3.86. However the applicant's ^{claim for} ~~claim~~ for HRA for the period preceding the commencement of the Administrative Tribunal's Act shall not be within the jurisdiction of this Tribunal. In view of the provisions of section 21 (ii) of the Administrative Tribunal's Act the applicant shall not be entitled to arrears of HRA prior to November 1985. In the result I pass the following order :

The respondents are directed to pay to the applicant HRA as admissible under Rules and the arrears of HRA as admissible under Rules from the month of November 1985 to February 1986 and from April 1988 to the date of order.

There shall be no order as to costs.


(V.D. DESHMUKH)
MEMBER(J)

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