

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

Second Floor,  
Commercial Complex,  
Indiranagar,  
BANGALORE- 560 038.

Dated: 30 SEP 1994

APPLICATION NO: 745 of 1994.

APPLICANTS:- Sri.B.S.Mahagaonkar, Bangalore.,  
V/S.

RESPONDENTS:- Director, Field Publicity, M/o. I&B, N Delhi  
and three Others.

To

1. Dr.M.S.Nagaraja,/  
Advocate, No.11,  
Second Floor,  
First Cross,  
Sujatha Complex,  
Gandhinagar,  
Bangalore-9.
2. Sri.M.S.Padmarajaiah,  
Sr.Central Govt.Stng.Counsel,  
High Court Building,  
Bangalore-560 001.

Subject:- Forwarding of copies of the Order passed by the  
Central Administrative Tribunal, Bangalore.

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Please find enclosed herewith a copy of the ORDER/  
STAY ORDER/INTERIM ORDER/ passed by this Tribunal in the above  
mentioned application(s) on 20th September, 1994.

Issued on

30/9/94 R

  
of for DEPUTY REGISTRAR  
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL,  
BANGALORE BENCH.

ORIGINAL APPLICATION NO. 745/ 1994

TUESDAY, THE 20TH DAY OF SEPTEMBER, 1994

SHRI V. RAMAKRISHNAN

... MEMBER (A)

SHRI A.N. VUJJANARADHYA

... MEMBER (J)

Shri B.S. Mahagaonkar,  
Aged 48 years,  
S/o Shri S. Mahagaonkar,  
Accountant,  
Regional Office,  
Directorate of Field Publicity,  
Bangalore - 560 020.

... Applicant

(By Advocate Dr. M.S. Nagaraja )

Vs.

1. The Director,  
Field Publicity,  
Ministry of Information & Broadcasting,  
Government of India,  
New Delhi - 110 066.
2. The Regional Officer,  
Directorate of Field Publicity,  
Ministry of Information and  
Broadcasting, Govt. of India,  
Bangalore - 560 020.
3. The Regional Officer,  
Directorate of Field Publicity,  
Ministry of Information and  
Broadcasting, Shillong.
4. Union of India,  
represented by Secretary to Govt.,  
Ministry of Information and  
Broadcasting, Shastri Bhavan,  
New Delhi - 110 001.

... Respondents

(By Advocate Shri M.S. Padmarajaiah, Senior  
Standing Counsel for Central Government).

ORDER

Shri V. Ramakrishnan, Member (A)

The applicant in this case who is an Accountant in the  
Directorate of Field Publicity, Ministry of Information and Broadcasting

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is aggrieved by the action of the department in issuing the order dated 28.2.94 (Annexure A-5) in effecting the recovery of house rent allowance paid to him in respect of private hired accommodation which he had claimed to have retained in Dharwar, the last place of his posting on his transfer to the North-Eastern Region.

2. The applicant was transferred from Dharwar in Karnataka to Shillong in the North-Eastern Region in November, 1986 and he has been re-transferred to Karnataka region in 1991. The applicant claims that in terms of the Govt. of India orders extending some concession to employees who are posted to North-Eastern Region vide O.M. dated 29.3.84 he was entitled to draw house rent allowance admissible to him for retaining hired private accommodation at the last station of posting, namely, Dharwar. This will be in addition to the HRA admissible to him in Shillong. The position was clarified by the Government by another O.M. dated 28.5.86 which stipulated that the benefit of HRA at the rate drawn at the old station would not be admissible to those central govt. employees who have shifted their families to a station other than the last place of posting or who brought their families to the place of their transfer and claims transfer TA but later on sent their families to some other place due to some reasons. There was a further O.M. dated 8.3.88 on the same subject according to which such government employees shall be entitled to get HRA with reference to the last place of posting, if otherwise admissible, irrespective of whether they have claimed transfer TA for family or not, subject to the condition that hired private accommodation at the last place of posting is put to bona fide use of the members of his family. The applicant claims that in terms of these instructions, he is entitled to draw HRA both at Shillong and at Dharwar and further contends that the hired private accommodation at the last place of posting was put to bona fide use of the members of the family.

The department initially paid the HRA for both places but subsequently has started recovering HRA in respect of Dharwar accommodation. The Department's stand is that they have come across some materials which clearly indicate that the family members of the applicant were not kept at Dharwar but shifted to Gulbarga and that on the basis of these materials, the Department came to the conclusion that he had not retained the private hired accommodation at Dharwar and as such it cannot be stated that such accommodation at the last place of posting was put to bona fide use of the members of the family. The Department then proceeded to recover HRA in respect of Dharwar accommodation ~~earlier~~ extended to him. The applicant challenges this action and claims that he had in fact paid rent for the private accommodation at Dharwar. According to the applicant the action of the department in effecting recovery of what has already been paid to him legitimately <sup>in bona fide</sup> ~~on mala fide~~ and consideration should be quashed.

3. We have heard Shri Sridhar for Dr. M.S. Nagaraja, the learned Counsel for the applicant and Shri M.S. Padmarajaiah, the Senior Standing Counsel for the department.

4. The short point to be considered in the present application is whether the hired accommodation at the last place of posting was put to bonafide use by the members of the family of the applicant. There is a divergence of view on the part of the applicant and the Department on this question. To our query as to whether the department had issued a

~~show cause notice to the applicant before effecting recovery,~~

Shri Padmarajaiah states that this was not done. As the applicant claims that he could establish that the private accommodation at Dharwar was put to bona fide use by the members of his family which would entitle him to retain the HRA already paid to him, it was incumbent

on the part of the department to have given him an opportunity to place his side of the case before taking a final decision in this regard. Failure to do has resulted in flouting the requirements of the principles of natural justice. In view of this we quash the order dated 28.2.94 as at Annexure A-5 which directs that deduction of alleged excess payment should be continued. We also notice that the department by their communication dated 5.1.94 as at Annexure A-3 and office order dated 24.2.94 as at Annexure A-4 had earlier thought of refunding the amount already recovered, but this was reversed by the order dated 28.2.94. We now direct that whatever has been recovered from the applicant on account of this alleged excess payment of HRA should be refunded to him within three months from the date of receipt of a copy of this order. The department is, however, at liberty to take further action according to law and after following the required procedure such as issue of show cause notice etc. No costs.

Sd/-

Sd/-

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( A.N. Vujjanaradhy )  
Member (J)

( V. Ramakrishnan )  
Member (A)

TCV

TRUE COPY

~~Secretary~~

Central Administrative Tribunal  
Bench  
Bengalore