CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

CAMP : PANAJI.

ORIGINAL APPLICATION NOS.: 1353/94
1296/95.

DATE OF DECISION 19.7.96

Dr. Rajiv Nigam & 9 Others, Petitioner in O.A. No. 1353/94.

Dr. A.L. Paropkari & 2 Others, Petitioner in O.A. No. 1296/95.

(By Advocate Shri S. G. Desai)

Versus

Union Of India & Another, Respondents in both the O.As.

(By Advocate Shri S. N. Joshi)

CORAM :

Hon'ble Shri B. S. Hegde, Member (J).

Hon'ble Shri M. R. Kolhatkar, Member (A).

(1) To be referred to the Reporter or not ? ✓

(2) Whether it needs to be circulated to other ✗ Benches of the Tribunal.

(B. S. HEGDE)
MEMBER (J).

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CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

CAMP : PANAJI.

ORIGINAL APPLICATION NO.: 1353/94.

Dated, this 19th, the _____ day of July, 1996.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).
HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

Dr. Rajiv Nigam & 9 Others ... Applicant
(By Advocate Shri S. G. Desai).

Versus

Union Of India & Another ... Respondents
(By Advocate Shri S.N. Joshi)

ORIGINAL APPLICATION NO.: 1296/95.

Dr. A. L. Paropkari & 2 Others ... Applicants
(By Advocate Shri S.G. Desai alongwith
Shri S. G. Bhobe).

Versus

Union Of India & Another
(By Advocate Shri S. N. Joshi) ... Respondents.

: O R D E R :

{ PER.: SHRI B. S. HEGDE, MEMBER (J) }

In these applications, the applicants are challenging the impugned order passed by the respondents vide dated 20.09.1994 levying interest @ 16% p.a. on the H.B.A. and to refund to the applicant the excess interest levied by the respondents and also to include the names of the applicants in the priority list for eligible type accomodation and to allot to the applicants eligible type accomodation, as and when the same becomes available, etc. There are nine applicants in O.A. No. 1353/94. Similarly, three applicants filed another

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application vide O.A. No. 1286/95 seeking the very same relief. Though the O.A. No. 1296/95 has not been admitted, since the issue involved in these O.As. are one and the same, the latter O.A. is also admitted and both the O.As. are disposed of by passing a common order.

2. There is not much dispute regarding the factual averments except the applicants urging that the levy of penal interest on the H.B.A. loans obtained by them is not in accordance with the H.B.A. rules and they should be allowed to continue in the CSIR quarters, since the place of duty and the place of construction of the houses is not one and the same. The main thrust of argument on behalf of the counsel for the applicants is that, in terms of communication dated 25.01.1988 it has been clarified that council servant who built/acquired a house with HBA at some place which is not the place of his duty, such a council servant shall not be required to vacate his council accomodation and not be liable to pay enhanced rate of interest, provided such a council servant offers the built/acquired house to the CSIR for use. He further contends that the built/acquired houses are at the places which is different from the place of duty and since they have offered their said houses to the CSIR for use, there is no question of denying to the applicants the concessional rate of interest or requiring the applicants to vacate the council accomodation. Secondly, the applicants themselves sought clarification on the definition of the term 'the place of duty', since the respondents have not clarified their doubts. Insofar as the payment of H.B.A. loans, the applicants have not committed any default, thereby, levying of penal

interest by the respondents is arbitrary and unconstitutional. Before levying the penal interest, the respondents have not issued any show cause notice nor there has been any compliance with the principles of natural justice in the matter of levy of interest at the rate of 16% p.a. on the H.B.A. instead of 8%.

3. In reply, the respondents denied the various contentions of the applicants by stating that the applicants are fully aware of the CSIR House Building Advance Rules 1985 and they had obtained the House Building Advance subject to the provisions of the CSIR H.B.A. Rules. Having taken the benefits under these rules, the applicants now cannot contradict the rules to suit their own individual interest. For granting the H.B.A. loans, there are certain conditions laid down such as -

(a) An employee should not be owning a house in his name or in the name of his spouse or the children actually dependent upon him either at the place of his posting or at the place where he proposes to construct such a house.

(b) An employee availing of this facility will not be eligible for Council accomodation. In case, he is already in occupation of such accomodation either in his own name or in the name of his spouse, he shall be required to vacate the same on completion or purchase of his own house under this scheme. An undertaking to this effect will have to be given by the applicant alongwith his application for grant of House Building Advance.

(c) An employee owning a house built/acquired under this scheme, on transfer to another place, may offer such house to the Council for use as staff quarters or any other official purpose. In that event, the Council shall allot accomodation to him at the new station (by leasing a house, if necessary) of comparable standards (but not higher than his entitlement for staff quarters).

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Rule (11) of the H.B.A. Rules specifies the Rate of Interest to be charged, which is as under :-

General	Concessional
16% per annum compounded annually.	(i) 7% p.a. simple interest upto first Rs. 25,000/- of advance.
	(ii) 8% p.a. simple interest for the amount of advance above Rs. 25,000/-.

The concessional rate will be applicable in the following cases :

(i) The employee is not in occupation of Council/ Government accomodation either in his own name or in the name of his spouse and also foregoes the right for allotment of such accomodation at a place where he acquires a house with HBA.

(ii) In the case of an employee or his spouse as the case may be who is already in occupation of Council/ Government accomodation, from the date from which he vacates such accomodation.

Thereby, the respondents contend that the applicants could be allowed to stay in the Council accomodation only till the completion of construction of their houses and once the construction was complete, they were duty bound to shift to their own houses. The respondents have issued the impugned memorandum dated 20.09.1994 only after the applicants failed to vacate the staff quarters. The Learned Counsel for the respondents further submits that one of the objectives of the CSIR HBA Advance Scheme is that, after the employees construct their own houses, they shall vacate the staff quarters which can be allotted to the other employees who have not been sanctioned House Building Advance. According to the respondents, nearly 1200 employees are working in N.I.O. at Dona Paula but the said figure has been denied

by the applicants. It was further submitted that some of the houses built by availing CSIR HBA have been occupied by the employees of NIO and some have let out their houses to some third parties. Therefore, the respondents contend that the applicants have approached this Tribunal only on a technical ground that the houses constructed by them are not in the place of their duty. In view of the declaration given by the applicants and the H.B.A. Rules in force, subject to which loans were obtained by them, the submissions of the applicants are not tenable and the same is required to be dismissed.

4. We have heard the rival contentions of the parties and perused the records. It is true that the short point for consideration in these O.As. is whether the place of duty is one and the same as that of the construction of houses by the applicants. Further, whether the respondents are justified in levying penal interest @ 16% p.a. firstly, on non-vacation of the Government quarters and perhaps for non-adherence to the conditions laid down for obtaining the H.B.A. Loans. The respondents have categorically stated that the applicants have let out their accomodatiom. The contention of the applicants are far from truth that there is no nexus of any conveyance where they have constructed their houses. Infact, the CSIR buses pick-up the employees from the place of the newly constructed house. Some have already moved to the newly constructed house. Only few of the employees, like the applicants, have not adhered to the conditions laid down for obtaining the H.B.A. It is also an admitted fact that the applicants have not challenged the vires of the H.B.A. Rules and it is further submitted that some of the employees have not even mortgaged their houses to the C.S.I.R., which is a mandatory condition before obtaining the House Building Advance.

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It is rather amazing to see how the respondents have given the House Building Advance to the persons who have not complied with the required conditions for obtaining the H.B.A. Unless these conditions are fulfilled, the question of releasing the H.B.A. to such of those employees could not have been considered. If there is any such fault, the concerned officer should be asked to give his explanation as to why full compliance had not been done before disbursing the House Building Advance to the concerned employees. Vide O.M. dated 09.09.1986 issued by the respondents to each of the applicants, it was specified that interest shall be levied @ 8% p.a. subject to the fulfilling certain conditions. The conditions relevant for the purpose of present case is mentioned hereunder :-

> "(c) He shall forego his right for allotment of a Council/Govt. accomodation on acquiring/owning a house by him and getting its possession.
>
> In the event of any default of the above conditions from (a) to (c) on his part, the individual will be charged interest @ 16% per annum on the entire amount of H.B.A. being sanctioned to him."

At the time of availing the House Building Advance, the applicants were required to give an undertaking in terms of the conditions referred to in communication dated 25.01.1988 issued by and on behalf of Respondent No. 1. The applicants lay heavy emphasis on the letter issued by the Respondents vide dated 25.01.1988 wherein it is clarified that concessional rate of interest (8% per annum) was not to be denied to such a Council Servant who built/acquired a house with HBA at his native place or at some other place to settle down after his retirement, which is not the place of his duty and occupation of CSIR accomodation. Such

officer will also not be required to vacate the Council's accomodation provided the newly built/acquired house is offered to the Respondent No. 1 for its use, irrespective of whether the Respondent No. 1 makes use of it or not. The applicants heavily relied on this circular on the pretext that the place of duty and place of construction of the house is not one and the same and the benefit of concessional rate of interest should be extended to them. However, in view of the clarifications issued by the Respondents vide letter dated 18.10.1991 stating that CSIR considers all places in Goa as one place of duty, the contention of the applicants that the place of duty and the place of construction of houses is one and the same, has been rejected. The applicants have constructed the houses at Porvorim, the Village Panchayat of Soccorro under whose jurisdiction the N.I.O. Employees Co-operative Housing Society falls. The department declared that the said place cannot be treated as "other place" and it is treated as the same place of duty, taking into consideration that grant of compensatory allowance, HRA, CCA, is covered for all towns and villages of Goa states uniformly and not for a particular town or city.

5. During the course of hearing, the Learned Counsel for the respondents has drawn our attention to the decision of the Principal Bench of this Tribunal in the case of Shri R.S. Verma V/s. Union Of India & Others (O.A. No. 1068/94 decided on 25.11.1994). Similar situation arose in that case also. Ultimately, after consideration of the rival contentions of the parties, the Tribunal had dismissed the O.A. Accordingly, the Learned Counsel for the respondents submit that the said

decision squarely applies to the facts of this case. In that case also, the CSIR employees were involved, therefore, there is no merit in the O.A. and the same is required to be dismissed. It is an admitted fact that from the place of duty to the newly constructed house it is only 14 kms. and the respondents have acceded to the request of the applicants and that they would arrange to pick them up and drop them at their places. Neverthless, the applicants in behalf a technical plea and submit that the place of duty and the place where they have constructed the house is not one and the same and that the respondents cannot enforce their letter dated 20.09.1994 directing them either to vacate the CSIR accomodation or to pay the general rate of interest of 16% per annum compounded annually as provided under CSIR HBA Rules, 1985. Under any circumstances, this cannot be treated as an arbitrary decision because in that letter it is stated that 'Porvorim' falls within the definition of 'Same Station'. Hence, the NIO staff who have built houses there and are residing at NIO colony have either to vacate the CSIR accomodation or pay the general rate of interest of 16% per annum compounded annually as provided under CSIR HBA Rules, 1985. During the course of hearing, it is understood that many of the employees have paid back the H.B.A. loans and occupied their newly constructed houses. Only few of those like the applicants, though completed their houses, did not shift to their new residence and continue to stay in the CSIR Staff Colony, by which they have contravened the conditions laid down for obtaining the H.B.A. Thereby, they are not justified in staying in the CSIR Staff Quarters and they are also not entitled to claim any higher class of accomodation for the reasons stated above.

6. In the result, we do not see any merit in the O.As. and in our view, the decision taken by the Respondents cannot be treated as arbitrary or invalid and thus our interference as against the administrative decision of the respondents is not called for. Thereby, the respondents are at liberty to take appropriate action in accordance with law in recovering the penal interest or to evict the applicants from the departmental quarters, as they deem fit. Since the O.As. are now admitted, in the facts and circumstances of the case, both the O.As. are dismissed at the admission stage itself.

(B. S. HEGDE)
MEMBER (J).

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(Per M.R.Kolhatkar, Member(A))

I agree with my learned brother that these OAs are liable to be dismissed. However, I wish to give my own reasons. My learned brother has generally dealt with the facts of the case. The two fold prayers in these OAs are:

(a) That the Respondent be directed to refrain from levying interest at the rate of 16% per annum on the HBA and to refund to the applicant the excess interest levied and appropriated by the respondents in respect of the HBA with interest at the rate of 18% per annum from the date of such deduction/levy till effective payment.

(b) For a direction to include the names of the applicants in the priority list for eligible type accommodation and to allot to the applicant eligible type accommodation as and when the same becomes available.

The respondents have contended that the issue is no longer res-integra and that the judgment of the Principal Bench of C.A.T. in O.A. 1068/94 in R.S. Verma vs, CSIR completely covers the matter. A perusal of the judgment shows that the Tribunal has proceeded on the footing that the applicant at the time of applying for HBA had bound himself to the terms and conditions contained therein and therefore he cannot now go back on his undertaking. This is one aspect of the matter and although it is a single bench judgment, as it relates to the same issue I see no reason to depart from the same, but in the instant case, in addition to the issue of the binding nature of the terms and conditions which were accepted by the applicants of their own free will. another point has been raised namely whether the place where the applicants have built their houses can be said to be at the same station as their NIO office is located in Dona Paula. According to the applicants, same station has been defined in Rule 5(c)(iii) of FRSR Part-V as including all places which are treated as contiguous to the qualified city/town in terms of para 3(a)(i) and those dependent on the qualified city/town in terms of para 3(b)(ii) and 3(b)(iii) and also those places which are included in the Urban Agglomeration of a qualified city. According to the applicants, the village panchayat of Soccorro, under whose jurisdiction

the NIO Employees' Cooperative Housing Society falls, is not contiguous to Panaji Municipal Council where the place of duty is. It is contended by the applicants that according to census report 1991 their Housing Society is not located in Panaji Urban Agglomeration vide extract at Annexure-IX, page 37. Further they have produced a certificate from the Director of Municipal Administration vide Annexure-X, page 38 that the N.I.O. Co-operative Housing Society falling under the jurisdiction of village Panchayat of Soccorro near Porvorim is not generally dependant for its essential supplies, e.g. foodgrains, milk, vegetables, fuel etc. on Panaji city. Therefore the applicants contend that their housing society is not at the same station. If it is not at the same station, then they rely on the circular dt. 25-1-1988 at Annexure-II page 28 which states as below:

> ".....as per provisions made in HBA Rules concessional rate of interest is not to be denied to such a Council Servant who built/acquired a house with HBA at his native place or at some other place to settle down after his retirement, which is not the place of his duty and occupation of CSIR accommodation. Such an officer will also not be required to vacate the Council's accommodation provided the newly built/acquired house is offered to CSIR for its use, irrespective of whether the CSIR makes use of it or not. However, if the said Council servant is subsequently transferred to that place where he has built/acquired his house, he will not be eligible for Council's accommodation in that station."

8. The applicants also refer to the O.M. dated 18-10-1991, at Annexure VII, page 35 which states that CSIR considers all places in Goa as one place of duty which according to the applicants cannot be factually correct because Goa is a state made up of towns and villages and the place of duty has to be at a particular station and not in the whole of Goa.

9. The applicants further contend that they have offered the said houses to the CSIR for use in terms of communication dt. 25-1-88 but the same was not accepted by the respondents.

10. Respondents on the other hand contend that the place where the applicants have constructed their houses is just 14 Kms. from Dona Paula and respondents have provided office transport for coming and going to the office at Dona Paula. Moreover Goa Govt. have also constructed their staff quarters at Porvorim at a distance of less than 1 Km. from the housing society and most of these officers of the Govt. of Goa are working in Panaji being the capital city.

11. I have considered the matter. The reliance placed by the respondents on the communication dt. 25-1-88 appears to be entirely misplaced. The circular states that the concessional rate of interest viz. 8% is not to be denied to such a Council Servant who built/acquired a house with HBA at his native place or at some other place to settle down after his retirement. According to the applicants Socorro (Porvorim) is some other place in terms of above communication. This contention appears to be incorrect in terms of the maxim Noscitur a Sociis.

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According to "Principles of Statutory Interpretation" by G.P.Singh, the definition of the rule of Construction "Noscitur A Sociis" is as below :

> "The rule of construction noscitur a sociis as explained by LORD MACMILLAN means: "The meaning of a word is to be judged by the company it keeps." As stated by the Privy Council: "it is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them." The rule has been lucidly explained by GAJENDRAGADKAR.J. in the following words: "This rule, according to MAXWELL, means that when two or more words which are susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. The same rule is thus interpreted in Words and Phrases."

Thus the term "some other place" is to be construed as being a place similar to native place away from the place of duty or same station. It would not, therefore, include the place like village Soccorro-Porvorim which is 14 Kms. from the NIO which is the place of duty. In fact, the taking of the HBA for construction of a house at Soccorro has a close nexus to the place of duty and Soccorro cannot be considered to be analogous to a native place or such other outstation place. The same circular refers to the CSIR servant offering his house built up with HBA to CSIR and its consequences. Such a circular cannot be taken to modify express provisions of HBA rules vide condition No.3(c) quoted by my learned brother. Since applicants were not transferred, the action of the applicants in

offering the accommodation to the respondents and the failure of the respondents to accept the same cannot have the consequences visualised by the circular and no adverse inference can be drawn from the failure of the respondents to accept the offer. So far as the definition of same station is concerned it does not appear in the relevant rules of HBA. It appears in rules relating to HRA and CCA. The definition applies, if at all, by analogy and while thinking analogically the main issue to be taken into account is the nexus of the place with the NIO being place of duty. According to me, Soccorro/ Porvorim where Govt. of Goa quarters are situated and which is only 14 Kms. from the place of duty can be considered as contiguous to the place of duty and from that point of view being located at the same station. I, therefore, do not consider that the reliance placed on the census report or the certificate of Director of Municipal Administration helps the applicants much. The contention of the Respondents that the whole of Goa is a place of duty cannot be accepted but nothing turns on this aspect of the matter.

12. In view of the above discussion namely because of the binding precedent of the C.A.T. Principal Bench decision in R.S.Verma's case as well as the connotation of the term "same station" in relation to place of duty I am of the view that the applicants are not entitled to the reliefs claimed at (a). So far as the relief (b) is concerned, the question of change of accommodation does not arise when the applicants are disentitled to Govt.quarters. The OAs therefore fail and are required to be dismissed.

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13. In passing I would like to state that the observations made by my learned brother at page-6 beginning with "It is rather amazing"... and ending with "concerned officer should be asked to give his explanation" etc, I take to be in the nature of obiter dicta and I do not associate myself with them, because Court or a Tribunal may not exhort the departmental authorities about their administrative chores.

(M.R.KOLHATKAR)
Member(A)

ORDER

14. In the result, we do not see any merit in the OAs and in our view, the decision taken by the Respondents cannot be treated as arbitrary or invalid and thus our interference as against the administrative decision of the respondents is not called for. Thereby, the respondents are at liberty to take appropriate action in accordance with law in recovering the penal interest or to evict the applicants from the departmental quarters, as they deem fit. Since the OAs are now admitted, in the facts and circumstances of the case, both the OAs are dismissed at the admission stage itself.

(M.R.KOLHATKAR)
Member(A)

(B.S.HEGDE)
Member(J)

M