

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 335/97

Date of Decision : 7th June 2021.

V.L.Gawand _____ Applicant

Shri D.V.Gangal _____ Advocate for the
Applicant.

VERSUS

Union of India & Ors. _____ Respondents

Shri V.D.Vadhavkar for
Shri M.I.Sethna _____ Advocate for the
Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Shri Govindan S. Tamai, Member (A)

(i) To be referred to the reporter or not ? Yes

(ii) Whether it needs to be circulated to other ~~the~~ Benches of the Tribunal ?

(iii) Library Yes

ASST/-
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.335/97

Dated this the 7th day of June 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Shri Govindan S. Tampi, Member (A)

Vasant Ladagya Gawand,
Artist Engraver,
India Govt. Mint,
Mumbai.

...Applicant

By Advocate Shri D.V.Gangal

vs.

1. Union of India through
the Secretary,
Ministry of Finance,
Department of Economic Affairs,
New Delhi.

2. The General Manager,
India Govt. Mint,
Mumbai.

3. The Chief Accounts Officer,
India Govt. Mint,
Mumbai.

...Respondents

By Advocate Shri V.D.Vadhavkar
for Shri M.I.Sethna

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 seeking to quash and set aside the order Annexure-'A-1' dated 6.12.1994, stopping of H.R.A. with effect from 1.12.1993 which is illegal and payment of the same.

J.(gmr)

..2/-

2. Perusal of the impugned order is necessary for proper appreciation of the subject matter which is as under :-

"No.I-188/282/Estt(c)/1994 Date: 6.12.1994

M E M O

With reference to his application dated 23.3.1994, Shri V.L.Gawand, Artist Engraver, is informed that since his wife is in occupation of Govt. accommodation at the same station, he is not entitled for drawal of H.R.A. with effect from 25.12.74. Accordingly, his H.R.A. recovery for the period from 25.12.74 to 30.11.93 is worked out to Rs.77,329/-.

He is therefore hereby directed to remit the above amount in the Mint Treasury either in lumpsum or in suitable instalments by cash or through his monthly salary so that entire amount of recovery may be made before his retirement."

Sd/-
DEPUTY GENERAL MANAGER"

3. The perusal of the impugned order makes it clear that H.R.A. recovery for the period commencing from 25.12.1974 to 30.11.1993 for an amount of Rs.77,329/- is ordered and the matter is left at the discretion of the applicant to remit the amount in the Mint Treasury either in lumpsum or in suitable instalments by cash or through his monthly salary so that the entire amount of recovery may be made before his retirement.

4. It is no one's case that any amount of recovery has been made till the filing of the OA. It is also true that H.R.A. is not paid since 1.12.1993 to the applicant.

A. (sgk) -

5. The applicant held the post of Junior Artist/Engraver since 10.7.1974 to 15.1.1985 and thereafter since 16.1.1985 that of Artist Engraver and is posted in Mint Mumbai. His wife Mrs.Vaishali Vasant Gawand holds the post of Staff Nurse at Naval Armament Depot, Naval Hospital, Karanja, Teh.Uran, Dist. Raigad and the date of marriage between them is 25.12.1974.

6. Shri Gangal, learned counsel for the applicant relied on Rule 5 (c) which deals with conditions for drawal of House Rent Allowance which is as under for ready reference :-

"5 (a) -----.

(b) -----.

(c) A Government servant shall not be entitled to house rent allowance if --

(i) he shares Government accommodation allotted rent-free to another Government servant; or

(ii) he/she resides in accommodation allotted to his/her parents/son/daughter by the Central Government, State Government, an autonomous public undertaking or semi-Government organisation such as a Municipality, Port Trust, Nationalised Banks, Life Insurance Corporation of India etc.

(iii) his wife/her husband has been allotted accommodation at the same station by the Central Government, State Government, an autonomous public undertaking or semi-Government organisation such as Municipality, Port trust, etc., whether he/she resides in that accommodation or he/she resides separately in accommodation rented by him/her."

He has placed reliance on Rule 5 (c) (iii) and his emphasis is on the word same station referred in it which is defined vide G.I.M.F.O.M.No.21011/13/89-E II(B) dated the 20th December, 1989 which is as under :-

8.4/-

..4/-

" Same Station" defined -- The phrase, "same station" occurring in para.5 (c)(iii) includes 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.
[G.I.,M.F.,O.M.No.21011/13/89-E.II (B), dated the 20th December,1989.]

As an exception to sub-paragraphs (a) and (b) above, Government servants other than a Government servant who is living in a house owned by him shall be eligible for house rent allowance at the rates specified in paragraph 1 above even if they share Government accommodation allotted to other Government servants [excluding those mentioned in (c) above] or private accommodation of other Government servants [including those mentioned in (c) (ii) and (c) (iii) above] subject only to the condition that they pay rent or contribute towards rent or house or property tax but without reference to the amount actually paid or contributed. As an exception to para.7, the grant of house rent allowance to a Government servant living in his/her own house or to a Government servant living in a house owned by a Hindu undivided family in which he is a coparcener, will be without reference to the amount of the gross rental value as assessed by the Municipal Authorities."

F.R.S.R. page 9 3 (b) (i) :-

A Government servant whose place of duty falls within the qualifying limits of a city shall be eligible for both the Compensatory (City) and House Rent Allowances, irrespective of whether his place of residence is within such limits or outside."

As the applicant is posted at Bombay - constituents of Urban Agglomerations is as under :-
Greater Bombay (UA)

1. Greater Bombay (M Corp)
2. Kalyan (M Corp)
3. Mira-Bhayandar (M)
4. New Bombay (Thane)(CT)
5. Thane (M Corp)
6. Ulhasnagar (M)

The perusal of the same makes it clear that Karanja is not included in Greater Bombay (UA).

7. The learned counsel for the applicant argued that :-

"House rent allowance is admissible, without reference to the quantum of rent paid, to all employees without requiring them to produce any rent receipts."

He argues that as House rent allowance is payable without production of any rent receipt or quantum of rent paid and the applicant is not covered under Rule 5 (c) (iii), the order passed by the respondents is illegal one. He further submitted that the posting of the applicant at Bombay and his case not being covered by Rule 5 (c) (i) & (ii) entitled him to receive the House Rent allowance.

8. The learned counsel for the respondents relied on Exhibit-2, Office Memorandum dated 3rd August, 1982 dealing with the subject "Grant of House Rent Allowance at Bombay rates to the central Government employees working in New Bombay (including Panvel and Uran) area." He argued that even at Uran since 3.8.1982 House Rent Allowance is paid at Bombay rates, the applicant is not entitled to H.R.A. To appreciate the argument of the learned counsel for the respondents, it is worth mentioning that 'Uran' and 'Karanja' are not one and the same place. 'Karanja' is part of Tehsil 'Uran' and is not included

P.W.D.

..6/-

or covered by Urban Agglomeration as stated above. In the result, the argument of the learned counsel for the respondents fails and we find no reason to disallow the applicant for H.R.A.

9. The learned counsel for the respondents argued that the applicant has filed the present OA. on 7.4.1997, the order challenged is dated 6.12.1994, the applicant is claiming the H.R.A. since 1.12.1993, the OA. is barred by time.

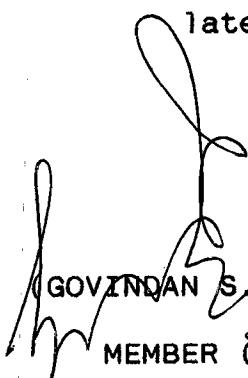
10. It is worth mentioning that the payment/refusal of H.R.A. is on completion of the month, may be paid separately or along with salary but it accrues on 1st of the next month. Thus, it is a recurring cause of action. As the OA. is filed on 7.4.1997, the applicant is not entitled to claim H.R.A. for a period of for more than one year. Thus, the applicant is entitled to claim the H.R.A. w.e.f. 1.4.1996 and onwards and not earlier to it.

11. The applicant has replied to the memorandum dated 6.12.1994 vide A-10 on 19.12.1994, A-15 on 18.9.1995, A-16 vide 12.2.1996, A-17 - 21.8.1996, A-10 - 5.11.1996 but not replied by the respondents and no recovery has been made in pursuance of the same. Only an order leaving payment of the amount at the discretion of the applicant, keeping silence on the representation of the applicant, not acting in pursuance of the order - the conduct of the respondents leads us to conclude that the respondents' in-action does not give rise to a cause of action, hence respondents are not entitled to make recoveries on the basis of the alleged illegal order. The result is that the order A-1 deserves to be quashed and set aside.

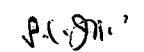
12. In the result, OA. deserves to be allowed partly and is allowed as under :-

- (a) The order Annexure-1 dated 6.12.1994 is quashed and set aside.
- (b) The applicant is entitled to H.R.A. since 1.4.1996 and onwards and the respondents are directed to pay the same at the rates payable as per Rules.
- (c) The respondents are ordered to pay costs of the OA. to the applicant Rs.650/- (Rs.500/- as legal practitioner's fee + Rs.150/- as other expenses).

The compliance of the order mentioned above in para (b) & (c) be made within a period of not later than 3 months.



GOVINDAN S. TAMPI)
MEMBER (A)



(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Contempt Petition No.120/2001
in
Original Application No.335/97

Dated this Friday the 22nd Day of March, 2002.

Hon'ble Shri S.L. Jain, Member (J)
Hon'ble Smt. Shanta Shastry, Member (A).

Shri Vasant L. Gawand .. Petitioner
(By Advocate Shri S.V. Marne)

Versus

1. Shri S.D. Swamy,
The General Manager
India Government Mint,
Shahid Bhagat Singh Marg,
Mumbai - 400 023.
2. Shri Samuel T. Bing,
Chief Administrative Officer,
India Government Mint,
Shahid Bhagat Singh Marg,
Mumbai - 400 023.

.. Proposed
Contemnors

Order (Oral)
{ Per : S.L. Jain, Member (J) }

Applicant's Counsel stated that order passed in O.A. has been complied with, though there is a delay in compliance of the order. We find that there is no intentional delay; as there is no wilful disobedience of the order. In the result, the C.P. stands dismissed. Notices issued to the respondents are discharged. No order as to costs.

Gawand

(Smt. Shanta Shastry)
Member (A)

S.L. Jain
(S.L. Jain)
Member (J).

H.