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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

FRIDAY THE FOURTH DAY OF NOVEMBER
ONE THOUSAND NINE HUNDRED AND EIGHTY EIGHT

: PRESENT :

THE HON'BLE MR.B.N.JAYA SIMHA : VICE CHAIRMAN
AND
THE HON'BLE MR.D.SURYA RAO : MEMBER (JUDL.)

ORIGINAL APPLICATION NO.433 OF 1987

BETWEEN:-

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| 1. Ungarala Sri Vittal | 18. Kanaparti Mohan Rao |
| 2. B.V.A.N. Dathatreylu | 19. Shaik Md. Gouse |
| 3. Pattan Mahaboob Khan | 20. Abdul Rahaman |
| 4. Pasam Kasaiah | 21. Ankala China Venkaiah |
| 5. Palaparti Amrutaiah | 22. Anne Seetha Ramaiah |
| 6. Pandala Sambasivarao | 23. Senaka Venkateswarlu |
| 7. Epuri Prasada rao | 24. Nanduri Bhaskararao |
| 8. Arja Venkata Rama Rao | 25. Ananta Venkateswarlu |
| 9. Totak Dakshina Murthy | 26. Bhatta Penumarthi Venkata Srinivasarao |
| 10. Konda Sambireddy | 27. Mandu Rama Nancharaiiah |
| 11. Vemuri Vara Prasada Rao | 28. Madireddi Vittal Rao |
| 12. Thirumalasetti Venkata Ramaiah | 29. Barla Veerabhadra rao |
| 13. Jupudi Koteswarrao | 30. Vullangula Sivaiah |
| 14. Shaik Meera Hussain | 31. Jakkam Raja Rao |
| 15. Poddinti Mastan | 32. Shaik Mastan |
| 16. Gorremuchu Venkatesu | 33. Bandi Narasimharao |
| 17. Chilaka Nageswarrao | |

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...Applicants

1. The Government of India, represented by its Secretary, Ministry of Finance, New Delhi.
2. The Director General, Department of Posts, Government of India, New Delhi.
3. The Director General, Department of Telecommunications, Government of India, New Delhi.
4. Senior Superintendent of Post Offices, Guntur Division, Guntur-7.
5. The District Manager, Telephones, Vijayawada-10.

...Respondents.

Application under Section 19 of the Administrative Tribunals Act, 1985 praying that in the circumstances stated therein the Tribunal will be pleased to issue a declaration that the action of the respondents 1 to 3 in not continuing the H.R.A. to the staff of Postal and Telephone Department who are working in Mangalagiri town which is within a distance of 8 Kms from Vijayawada, a notified city for H.R.A. at the rates admissible in the city of Vijayawada beyond 31-1-85 as arbitrary, illegal, unjust and is discriminatory and issue a consequential direction directing the respondents to grant HRA to the petitioners with effect from 1st Feb., 1985 at the rates admissible in Vijayawada, which is a notified city and pass such other and further orders as deemed fit and proper in the circumstances of the case.

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Application under Section 19 of the Administrative Tribunals Act, 1985 praying that in the circumstances stated therein the Tribunal will be pleased to

This Application coming on for ~~order~~/final hearing upon perusing the application and upon hearing the arguments of Mr. S. Satyanarayana Prabodh Advocate for the Applicants and of Mr. N. Bhaskar Rao, Addl. GSC, on behalf of the Respondents.

The Tribunal made/delivered the following Order/Judgment :-

(Seperate sheet attached)

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ORDER OF THE TRIBUNAL

The applicants herein are employees of Postal and Telecommunication Department of the Government of India working in Mangalagiri which is situated 8 Kms. away from Vijayawada. The applicants contend that Mangalagiri is a small town which depends upon Vijayawada for all essential commodities. The employees of both Mangalagiri and Vijayawada face same difficulties with regard to the essential commodities. Even in regard to the State Government employees/^{working in Mangalagiri,}for the purpose of HRA and CCA all of them are given the benefit of HRA at the rates admissible in Vijayawada. Even the applicants were given HRA admissible in Vijayawada upto 31.1.1985 on the basis of a dependency certificate issued by the Collector concerned. The District Collector issued a certificate on 30.4.1985 certifying that Mangalagiri is within a distance of 8 Kms. from the periphery of Municipal limits of Vijayawada and though Mangalagiri is a Municipality, it is generally dependent for its essential supplies like food grains, vegetables etc., on vijayawada. It is contended that under Rule 3(iii) of the Rules, if the District Collector gives a certificate of dependency, the employees of the concerned Municipality are entitled to HRA at the rates admissible in the main city. The certificate issued by the Collector on

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30.4.1985 was valid upto 30.4.1988. The applicants were enjoyed HRA at the rates admissible to the employees of Vijayawada upto 31.1.1985. In view of the sufficient dependency certificate issued by the District Collector on 30.4.1985, the respondents ought to have continued the benefit for a further period of three years. The applicants however state that the respondents seems to have rejected their claim for HRA with effect from 31.1.1985. The applicants further state that the employees working in Ghaziabad Municipality which is within a distance of 8 Kms. from Delhi are given HRA and CCA as applicable to the employees working in Delhi. Similarly, in the case of employees working in Mahe Municipality which is also within 8 Kms. to Pondichery, they were allowed HRA at the rates admissible to the employees working in Pondichery.

2. Two seperate counters were filed, one on behalf of the respondents 2 and 4 viz., Director General, Department of Posts, New Delhi and the Seniority Superintendent of Post Office, Guntur Division and other on behalf of the respondents 3 and 5 viz., the Director General, Department of Telecommunications, New Delhi and the District Manager, Telephones, Vijaywada. No counter is filed on behalf of the Union of India represented by the Secretary, Ministry of Finance, New Delhi. The counter filed on behalf of these respondents

discloses that the HRA was drawn and paid to the Telecom/ Postal staff at Mangalagiri at the rate applicable to Vijaywada city i.e., 15% upto 31.1.1985 as per the sanction of the DG P&T, New Delhi vide his letter dated 2.7.1982. When extension of the sanction was sought for, the Director General, Posts, New Delhi informed on 2.6.1986 that since Mangalagiri is a Municipality, the staff working in Mangalagiri are not entitled to the HRA. The counter filed by the respondents 2 and 4 states that as a matter of gesture the Finance Ministry has decided not to recover the over-payments to avoid hardship to the employees and HRA paid from 1.2.1982 to 31.1.1985 was retained. It is contended that as Mangalagiri is a municipality, condition (i) of the M.O.F.O.M.No.F2(37)-E.II(B)/64 dated 27.11.1965 as amended from time to time is not fulfilled. In regard to the instances cited by the applicants that HRA was granted for employees working in Gaziabad city near Delhi, Mahe near Pondicherry and Gurgaon near Delhi, it is stated that the respondents have no knowledge as to how HRA was sanctioned.

3. We have heard the learned counsel for the applicants Shri Satyanarayana Prasad and the learned standing counsel for the respondents Shri N.Bhaskara Rao, Addl. CGSC. The relevant instructions are contained in the Government of India, Ministry of Finance O.M.No.F.2(37)-E.II(B)/64 dated 27.11.1965, O.M.No.11021/6/76-E.II(B) dated 26.10.77, O.M.No. N.15(5)-E.II(B)/74 dated 5.12.75 and O.M.No.11014/1/83/-E.II(B) dated 16.5.83 the relevant portions of which are extracted hereunder:-

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" AREAS WHERE ADMISSIBLE

- 3.(a)(i) xxxx
- 3.(a)(ii)xxxx
- 3.(b)(i) xxxx
- 3.(b)(ii) xxx

3.(b)(iii) Staff working in aerodromes, meteorological observatories, wireless stations and other Central Government establishments within a distance of 8 kilometres from the periphery of the municipal limits of a qualified city will be allowed house rent allowance at the rates admissible in that city even though they may not be residing within those municipal limits, provided that-

- (1) there is no other suburban municipality, notified area or cantonment within the 8 kilometres limit; and
- (2) it is certified by the Collector/Deputy Commissioner having jurisdiction over the area that the place is generally dependent for its essential supplies, e.g., foodgrains, milk, vegetables, fuel etc., on the qualified city.

Such a certificate will remain valid for a period of three years after which a fresh certificate will be required.

Note 1:- Cases which attract provisions of Para.3(b)(iii), should be referred to the Ministry of Finance (instead of Ministries/Departments themselves granting same) for issue of general orders so as to ensure uniformity in the matter of application of the above proviso.

(For a list of such cases please see at the end of Annexure II)

Note 2:- The orders contained in sub-paragraphs (b)(ii) and (b)(iii) above will not apply to establishments entitled to house rent allowance, compensatory (city) allowance, project allowance, remote locality allowance, hill allowances or other such allowances under any other provision of this O.M. or other general or special orders.

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Clarification 1:- It has been decided that the benefit of the concession of house rent allowance under para. 3(b)(iii) may be extended to the employees working in a place which though a town panchayat is generally dependent for its essential supplies on a qualified city and is within the 8 km limit of the periphery of the qualified city.

Clarification 2:- It has been decided in consultation with the staff side of the National Council (JCM) that house rent allowance will also now be payable to the Central Government employees within the area of the Urban Agglomeration of classified city at the rates admissible in the classified city. The existing provisions for the payment of house rent allowance under paras. 3(b)(ii) and 3(b)(iii) of the Office Memorandum, dated 27.11.65, will, however, continue to be applicable only at places which are within 8 km of 'municipal limits of classified cities,' but which are not included within Urban Agglomeration of any city, subject to fulfilment of usual conditions laid down and subject to issue of specific sanctions therefor as before.

(G.I.M.F.O.M.No.11021/8/76-E.II(B) dated 26th October, 1977)

Clarification 3:- It was pointed out that in the certificate required to be obtained from the Collector of a District for the purpose of grant of house rent allowance under the aforesaid orders, it was to be inter-alia certified that there was no other municipality within the 8 kms. area in which the employees have to work and the same cannot be given where such a municipality exists even though the place is wholly dependent on the qualified city for its essential supplies. While no amendment of the existing provision is concerned necessary, it has been decided that hence forth the enclosed certificate may be obtained from the Collector in all cases where the grant of house rent allowance under para 3(b)(iii) is proposed. In all cases where the Collector certified that the area in question depends for its essential supplies on the qualifying city even though there may be another municipal area within the 8 km radius, Government would consider on merits whether grant of house rent allowances in such cases would be justified."

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4. It will be seen from the clarification 3. given above that while the certificate of Collector on the dependency of the place which is not a municipality will be automatically accepted, the said certificate in respect of a place which is municipality will be considered by the Government on merits for the purpose of granting HRA. On the basis of a certificate given by the Collector in the year 1982, employees working in the Mangalagiri were given the benefit by a Presidential order conveyed by the Director General, Posts & Telegraph's letter No.4/6/82-PAP dated 2.7.1982 which is reproduced below:-

"With reference to your letter No.EST/I-6/Mangalagiri dated 20/21.4.1982 on the above subject I am directed to say that Mangalagiri & Pedavadlapudi situated near Vijayawada city fulfills conditions prescribed in para 3(b)(iii) of the Ministry of Finance O.M.No. F2(37)-E.II(B)/64 dated 27.11.1965. The President is accordingly pleased to decide that regular P&T employees having their place of duty in the above two places may be granted House Rent Allowance at the same rates as appropriate to those posted within the qualified city of Vijayawada subject to fulfilment of conditions laid down as amended from time to time.

2. The orders will take effect from 1.2.1982 (a) upto 31.1.1985 (b) till the conditions prescribed in para 3(b)(iii) of the O.M. dated 27.11.1965 referred to above continues to be fulfilled in respect of concerned places or (c) until issue of any further orders in the matter by the Ministry of Finance (Dept. of Expenditure) whichever period is the shortest.

3. The expenditure is debitable to the head "Salaries under Major Head 355-Postal service/356-Telecom services as the case may be "under relevant abstract and should be met from the sanctioned grant.

4. This issues with the concurrence of P&T finance vide their Dy.No.1913/FA/-III/82 dated 24.6.1982.

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5. The other 10 offices mentioned in your letter under reference are manned by EDAs who are not entitled to HRA."

As already mentioned, no counter has been filed on behalf of the 1st respondent (Ministry of Finance). All that ^{is} mentioned in the counters ^{filed by the 5th respondent} is that the Ministry of Finance had not even agreed to sanction the HRA for the earlier period and the recovery of the over payment was ordered not to be recovered as a gesture. This appears to be incorrect in view of the specific sanction of the President conveyed in the letter referred to above. Since the Collector has given the certificate once again in the year 1985 stating that Mangalagiri continues to be depending on Vijayawada and on the basis of the same certificate, the State Government also extended the benefit of HRA at the same rate as at Vijayawada. We are unable to understand as to why the employees have not been sanctioned HRA as applicable in the absence of a counter from the Union Finance Ministry. Clarification-3, clearly says that "in all cases where the Collector certified that the area in question depends for its essential supplies on the qualifying city even though there may be another municipal area within the 8 km radius, Government would consider on merits whether grant of house rent allowance in such cases would be justified". This would imply that merely on the ground that the qualifying place is a municipality, employees residing therein will not ~~be~~ automatically become disentitled for higher HRA, but the Government has to decide

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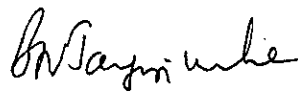
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each case on its merit. The contention raised by the learned counsel for the applicants is that similarly situated places like Gaziabad and Gurgaon near Delhi and Mahe near Pondicherry have been sanctioned HRA as applicable to Delhi/Pondicherry and the factors which weighed in those cases should also be taken into consideration by the Government with regard to Mangalagiri. No reasons are adduced by the respondents as to how employees residing at Mangalagiri differ from those residing in the towns referred to above.

5. As the Central Government has not acted in the manner required as per clarification 3 of the instructions, we direct the 1st respondent to consider all these factors and the observations made in this order and pass an order on the admissibility of HRA to the employees working in Mangalagiri from 1.2.1985 onwards within a period of two months from the date of receipt of this order.

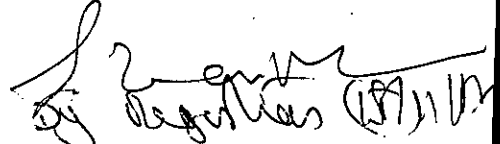
6. The application is accordingly disposed of.
There will be no order as to costs.

Dictated in the open court.


(B.N. JAYASIMHA)
Vice Chairman


(D. SURYA RAO)
Member (Judl.)

Dated: 4th November, 1988.


Registrar (19/11/88)