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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION No.334/92

1993

DATE OF JUDGEMENT: 23 - 3 -

between

G.Ramachandra Rao

.. Applicant

and

1. Chief Secretary,
Min. of Finance & Expenditure
New Delhi
2. The Comptroller and Auditor General
of India,
10, Bahadur Shah Zaffer Marg,
New Delhi.
3. The Principal Director of Commercial
Audit and Ex-Office Member, Audit Board
AG's office complex, Hyderabad-463
4. The Accountant General (Commercial Audit)
Maharashtra, a0 , MK Rd, Bombay-20 .. Respondents

Counsel for the Applicant : Mr M.Rama Rao

Counsel for the Respondents : Mr G.Parameswar Rao

CORAM:

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER(JUDL.)

JUDGEMENT

This is an application filed under Section 19 of the Administrative Tribunals Act by the applicant herein, for a direction to the respondents not to recover HRA from the applicant already paid as the same is contrar to the FRSR rules and pass such other orders as may deem fit and proper in the circumstances of the case.

2. The facts giving rise to this OA in brief, may be stated as follows:

3. The applicant was an officer in the office of the Principal Director of Commercial Audit and Ex-officio Member, Audit Board, Hyderabad. The applicant on promotion as Audit Officer(Commercial) was transferred to Bombay to the office of the 4th respondent - Accountant General(Commercial Audit), Maharashtra, Bombay. After joining duties on 15.10.1986, the applicant applied for Hostel accommodation at Bhandup stating that, he did not have any other facilities in Bombay. Considering the application of the applicant, the applicant was allotted hostel type of accommodation in IAAD pool quarters at Bhandup vide AG(Commercial Audit) letter dated 20.10.86 on the terms and conditions stipulated therein. The accommodation ~~was~~ provided consisted of one bed out of two in a room in a ~~a~~ quarter. The ~~quarter~~ quarter had 3 similar rooms with six beds in all with common kitchen and an unfurnished hall. The allotment was made only on the applicant's specific request and he was informed that he will not be allowed to bring any member of his family as it was a bachelor's accommodation. The applicant was charged Rs.2.50 per day beside service charges @ 4.25 per mensem. The applicant had paid the said amounts. The applicant was transferred back to Hyderabad in the year 1987 and had since retired.

4. The applicant has been paid HRA even though he was allotted Government accommodation for his stay at Bombay, ~~for~~ the period the applicant was in occupation of the Government accommodation. The total amount ~~so~~ paid to the applicant upto 8.4.91 is Rs.5458.00p. According to the respondents, the applicant was not entitled for

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HRA, during his stay at Bombay, for the period, the applicant was provided Government accommodation and was in occupation of the same, and that, by mistake, HRA had been paid to the applicant, and so, the applicant was liable to re-pay the HRA so received by him from the respondents during the period, he was in possession of the said Govt. accommodation at Bombay. Steps were taken by the respondents to recover the said amount from the applicant. Questioning the action of the respondents to recover the amount paid towards HRA, the applicant has filed the present OA for the relief(s) as already indicated above.

5. Counter is filed by the respondents opposing this OA.

6. We have heard Mr Rama Rao Counsel for the applicant and Mr G. Parameswara Rao, Counsel for the respondents.

7. We have gone through the records. It is quite evident from the records placed before us that the applicant had himself applied for allotment of Hostel accommodation at Bombay after the applicant was transferred from Hyderabad to Bombay on promotion as Audit officer. It is only on his request in IAAD pool, the said hostel accommodation had been allotted to the applicant and the applicant had also occupied the same. One of the arguments advanced in favour of the applicant by the learned counsel for the applicant is that the applicant was entitled for better type of accommodation than the one allotted to him, and so

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the applicant had not been allotted accommodation as per his entitlement, that the respondents are liable to pay HRA. No doubt, the applicant might have been entitled for better type of accommodation than the hostel type of accommodation in view of the basic pay of the applicant as an audit officer. Any Govt. servant who seeks Govt. accommodation in his application has to specify the accommodation for which he is entitled. In this case, the applicant had not at all opted for the type of accommodation which he was entitled. In a city like Bombay, probably, it would have taken some months for the applicant to get accommodation, as per his entitlement as per his turn. ~~Probably~~ Being aware of the factual position and the tight situation in Bombay for allotment of Govt. quarters, the applicant seems to have kept his family at Hyderabad itself and opted only for hostel accommodation (bachelor's type) at Bombay. So, as the applicant had never applied for accommodation as per his entitlement, and as he had sought for only bachelor's accommodation, it is not open for the applicant to contend that the allotment of accommodation as per his entitlement was not given to him and so, he is entitled for payment of HRA.

8. Admittedly, as the applicant had opted for Govt. accommodation as per his choice, whether the applicant is entitled for payment of HRA is the main question with which we are concerned in this OA.

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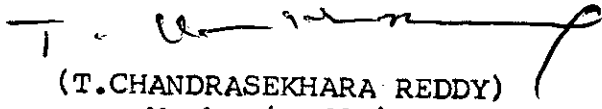
9. According to sub para (b)(i) and (ii) of para 4 of Office Memorandum No.F.2(37)E-II(3)/64 dated 27.11.65 of Government of India, House Rent Allowance shall not be admissible to those who occupy accommodation provided by the Government and the house rent allowance drawn by those who accept allotment of Government accommodation shall be stopped from the date of occupation or from the eighth day after the date of allotment of Government accommodation whichever is earlier. In view of this position the contention of the learned counsel for the applicant that unless the govt. accommodation as per entitlement of the applicant is allotted and in case where the allotment of accommodation is lower than the entitlement of the applicant, the applicant has got a right to be paid HRA cannot be accepted. So, this is a case where we absolutely see no merits.

10. The learned counsel for the applicant had also raised the plea of estoppel. It is the contention of the learned counsel for the applicant, that the respondents had made the applicant believe that HRA would be paid to him and in that belief the applicant had continued in the said accommodation though it was lower than his entitlement and so it is not open for the respondents now to initiate proceedings for recovery of the HRA paid to the applicant. The principle of "Estoppel" does not apply to a case where by mistake certain benefits are gained by a party. Never the respondents had represented to the applicant that in spite of the Govt. accommodation that was shown and which he had occupied that the Govt. would also pay HRA

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The learned counsel appearing for the applicant relied on the decisions reported in AIR 1983 SC 848 Gujarat State Financial Corp., Vs M/s Lotus Hotel Pvt Ltd and 1985(3) SCC 38 Surya Narayan Yadav and others Vs Bihar State Electricity Board and others to substantiate his contention of the plea of estoppel. We have gone through the said decisions and the said decisions are not applicable to the facts of this case. As a matter of fact, the applicant ^{after} getting allotted government accommodation of his choice, it is not open for him to claim HRA. It is not open for the applicant to blow hot and cold. It is the applicant by his own conduct is estopped from claiming HRA as already pointed out, as he got allotment of Govt. accommodation as per his choice and had occupied the same. So, we see no merits in this OA and hence, this OA is liable to be dismissed and is accordingly dismissed leaving the parties to bear their own costs.


(T.CHANDRASEKHARA REDDY)
Member(Judl.)

Dated: 23 March, 1993

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Deputy Registrar(Judl.)

Copy to:-

1. Chief Secretary, Ministry of Finance & Expenditure, New De
2. The Comptroller and Auditors General of India, 10, Bahadur Shah Zaffer Marg, New Delhi.
3. The Principal Director of Commercial Audit and Ex-Office Member, Audit Board AG's office complex, Hyd-463.
4. The Accountant General (Commercial Audit), Maharashtra a), MK road, Bombay-20.
5. One copy to Sri. M.Rama Rao, advocate, 3-4-835, Barkatpura
6. One copy to Sri. G.Parmeswar Rao, SC for AG, CAT, Hyd.
7. One spare copy.

8. copy to All Reporters as per standard list of CAT. Hyd.
Rsm/-

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O.A. 334/92

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CHECKED BY *(Signature)* APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. K. BALASUBRAMANIAN :
MEMBER (ADMN)

AND

THE HON'BLE MR. T. CHANDRASEKHAR
REDDY : MEMBER (JUDL)

DATED: 23/3/1993

ORDER/JUDGMENT

R.P./ C.P/M.A.No.

O.A.No.

T.A.No.

(W.P.No. _____)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions

Dismissed as withdrawn.

Dismissed

Dismissed for default.

Ordered/Rejected.

No order as to costs.

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