

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NOS.945 of 1994

DATE OF ORDER: 5.7.96

BETWEEN:

1. D.YERRAYYA
2. K.SATYANARAYANA,
3. T.STALIN,
4. P.RAJA RAO,
5. A.SATYA RAO

.. Applicants

and

1. The Telecom District Manager,
Visakhapatnam 530 020,
2. The Chairman,
Telecom Commission (reptg. UOI),
New Delhi 110 001.

.. Respondents.

COUNSEL FOR THE APPLICANT: Shri C.SURYANARAYANA

COUNSEL FOR THE RESPONDENTS: SHRI V.BHIMANNA, ADDL.CGSC

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMINISTRATIVE)

JUDGEMENT

(AS PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMINISTRATIVE))

Heard Shri C.Suryanarayana, learned counsel for the applicants and Shri V.Bhimanna, learned standing counsel for the respondents.

2. There are 5 applicants in this O.A. All of them are employees of the Telecom Department working in Balacheruvu Telephone Exchange which was commissioned in January 1983 at Visakha Steel Project for its' exclusive

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use. Eight numbers of Type 'A' and 25 numbers of Type 'B' quarters belonging to the Vizag Steel Plant were rented out to the Telecom officials posted at Balacheruvu Exchange. Though it is stated that the employees were paying house rent as fixed by the VSP authorities, R-1 stopped payment of HRA to the Telecom Staff, working at the Exchange at Balacheruvu with effect from February 1994 on the ground that the employees have not paid the licence fee and other charges to VSP authorities. The applicants, it is stated, made representations to R-1 on 21.4.94 stating that they have paid all the bills issued by VSP authorities upto March 1994 from the date of their respective occupation of the quarters and further requested not only to stop the recovery of the HRA already paid but also to pay them the HRA without interruption. It is stated that, ignoring the above representation dated 21.4.94, R-1 issued the impugned order No.E.27/HRA/89-94/48 dated May 1994 (Annexure A-8) indicating the amounts of alleged over payments to the applicants herein and proposing to recover the same from their salaries every month at the rates indicated in the annexure. It is stated that the recoveries were started from the month of June 1994. Another representation dated 28.6.94 (Annexure A-9) was also submitted urging the respondents to stop recovery and restore the payment of HRA as the stoppage of HRA is irregular and impermissible as the quarters do not belong to the Telecom Department and also the allotment of quarters were made by the VSP authorities direct to them and hence the VSP authorities are the land lords and the employees to whom the quarters

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were allotted are their tenants. The Department only stood as a surety to ensure payment of the licence fee etc. Otherwise R-1 has no locus standi in the matter. In spite of the above objection, the recoveries were made as per pay slips at Annexures A-11(a) to 11(e).

3. Aggrieved by the above, they have filed this OA for setting aside the impugned order No.E.27/HRA/89-94/48 dated Nil-05-1994 holding it as illegal and arbitrary and for a consequential direction to the respondents to pay the HRA retrospectively with effect from February 1994 and to stop the recovery of the amount alleged to be over payment and refund the amount already recovered.

4. The main contention of the applicants in this O.A. is that the Telecom Department is not the lessee nor did it allot its quarters to its employees according to its own rules. R-1 is shown as an allottee in order to ensure that surety is provided for recovery of the licence fee and other charges by the occupants. Hence the HRA cannot be stopped as the quarters were allotted to the applicants herein by the VSP authorities directly without going through the Department on their personal approach to VSP.

5. The applicants have annexed the allotment orders to the applicants and also deduction bills prepared by the VSP authorities and sent to R-1 for necessary recovery to state that the allotment of quarters and the recovery of the licence fee was effected by VSP directly and hence the



Telecom Department cannot claim that the houses were allotted to the applicants herein through the Department. It is further submitted that there are no agreements between the VSP authorities and the Telecom authorities in allotting the quarters to the applicants. In short, the applicants contend that the Telecom authorities mentioned in the allotment order, are only proforma allottees as surety and the real allottees namely the applicants herein pays the dues. In view of the above, the Telecom Department have no authority to stop the HRA and to recover the HRA already paid.

6. A reply has been filed in this connection resisting the prayer. The main point to be noted in this counter is that the quarters were allotted to the staff at the request of the Department. When the Vizag Steel Plant authorities proposed the rent for quarters at 25% of the basic pay of the official, D.E.(External Maintenance), Vizag, had taken up the case with VSP authorities and on their intervention, it was decided to charge licence fee at the rates based on the living area of the quarters as per the letter No.A.D/Est/Telecom/331 dated 25.4.91. Thus they submit that the quarters were allotted to the staff of the Balacheruvu Exchange only because of the efforts of the Telecom Department and but for the intervention of the Department the quarters would not have been allotted to the staff. Even if it has been allotted, they would have been charged a very high rate of licence fee. Hence they submit that the quarters were allotted to the staff through them



and because of that fact, the HRA cannot be paid to them in terms of G.I.M.F.OM.NO.21011/13/89-E-II(B) dated 20.12.89.

7. The main controversy is now whether the quarters in occupation of the applicants herein at Vizag Steel Plant can be said to be Government accommodation for the purpose of admissibility of HRA to the applicants.

8. Before the issue is analysed, the case laws cited by both sides need to be seen to know whether any law has been laid down in this connection.

9. In the reported case (1995) 30 ATC 744 (Bankey Lal Prasad Vs. Union of India and others), C.A.T, Patna had held that where a Government servant procures accommodation from an autonomous/semi Govt. body on his own efforts, there is no provision in the rules which disentitles him to get HRA.

10. The learned counsel for the applicants relied on three case laws. The first one is Jagbandhu Kundu v. Union of India and others (1987) 2 ATC 878) of the Principal Bench. In this case, the applicant therein got the accommodation from the H.A.L authorities of Hyderabad while he was posted there and when it was sought to recover HRA from the applicant by the Govt. it was held that the HRA cannot be recovered as the accommodation provided is not Govt. accommodation but that of the Corporation. But in this citation nowhere it is stated that the Govt. either

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assisted or negotiated with the Corporation to get the accommodation for the applicant therein. Hence it is to be presumed that the applicant got the accommodation directly from the Corporation.

11. The second citation is that of the Patna Bench of the C.A.T reported in 1988(4) AISLJ 451 (Gyan Chand Misra and another vs. Union of India and others) wherein also it was held that "where Government has played no role in getting a house allotted to the applicant, he cannot be denied HRA, if otherwise eligible."

12. The Bangalore Bench of the Tribunal, which is the third citation, in O.A.No.919/94 and 1014 to 1025 of 1994 decided on 10.11.94 had held that the applicants therein are eligible for HRA as the quarters were allotted by I.T.I. direct and cannot be said to be allotted to the applicants by the Government. The view taken by the Bangalore Bench is similar to the view taken in the earlier citations.

13. In the short summary of C.A.T digest enclosed as annexure also brings out the same principle.

14. From the study of the above citations, it is clear that the law laid down in this connection is that accommodation provided to the Govt. servants directly by the autonomous corporation/undertakings by the direct effort of the allottees cannot be construed as

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accommodation provided by the Govt. Department and also cannot be treated as accommodation procured through the active assistance and help of the concerned Govt. Department. Under the above circumstances, the Govt. servants are entitled for HRA. The converse is that if the accommodation is either provided by the Govt. or through their active assistance, cooperation and help, the accommodation is to be treated as the one provided by the Govt. and such allottees are disentitled for HRA.

15. This case has to be looked into from the law laid down by various Tribunals of C.A.T as above.

16. The various documents such as allotment order, bill for the licence fee and other charges prepared by the Vizag Steel Plant and the letter No.B2 B/89-95/149 dated 7.10.94 (Annexure to the rejoinder) were relied upon by the applicants to state that the quarters in question were allotted by the VSP direct to them and the Department is only a proforma allottee for the sake of surety and hence the accommodation provided is not Govt. accommodation. Relying on the same, the applicants also submitted that the accommodation in the Vizag Steel Plant was procured direct. Hence they are entitled for HRA.

17, On the other hand, the respondents submit that they played a very important role in procuring the accommodation for the applicants. Without their assistance and help, the applicants would not have got the

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accommodation. They further submit that the licence fee was reduced because of their effort and all these efforts go to show that the accommodation was to be treated as a Govt. accommodation. They also quote that under the column "name and address of the allottee" of the allotment order issued by VSP, the Telecom District Engineer of the P&T Department is the recipient of the accommodation and through him only the applicants were allotted the quarters. Thus, they emphasise to mean that the allotment is through the department and hence non-payment of HRA is in order.

18. On perusal of the above contention and documents, one cannot come to a conclusive decision one way or other. As the VSP authorities can give the factual position whether the accommodation owned by the VSP is allotted directly to the applicants on their request, or through the Department of Telecom, the Registry was instructed by order dated 19.2.96 to get the necessary details as above by of VSP. In pursuance of the above direction, Registry addressed the letter No.CAT/Hyd/Judl/OA 945/94 dated 1/6.3.1996 to CMD, VSP. The Manager (Estate) of VSP clarified the position by his letter No.TA/EST/ dated 18.3.96. For the sake of clarity, the contents of the letter is reproduced below:

"Kind reference is invited to your letter NO.CAT/HYD/Jud/OA/945/94 dated 6.3.96 on the subject cited above. In this




connection, we would like to inform you that we have allotted houses to the Telecom Deptt for the residence of their staff posted at Balacheruvu exchange. Requests for allotment comes from D.E.(Telecom)/DGM(Telecom) and allotment is made in favour of DE (Telecom)/DGM(Telecom) who is treated as the principal allottee. Bills are also being raised in the name of DE (Telecom). A list containing houses allotted to Telecom Deptt. date of occupation etc. & copies of the A.Os. are enclosed for your kind information."

They also enclosed 5 allotment orders along with their reply and also the details of the houses allotted to some of the employees of the Telecom Department.

19. It has been clearly stated in that letter that "The VSP had allotted the houses to the Telecom Dept. for the residence of their staff posted as Balacheruvu Exchange. Request for allotment comes from D.E.(Telecom)/DGM(Telecom) and allotment is made in favour of D.E.(Telecom) and DGM (Telecom) who is treated as the principal allottee. Bills are also being raised in the name of D.E (Telecom)" (emphasis added).

20. From the above letter it is very clear that the Telecom Department is not a proforma allottee for the purpose of surety. But the Telecom Department is "the principal allottee". It is also clear from the letter that




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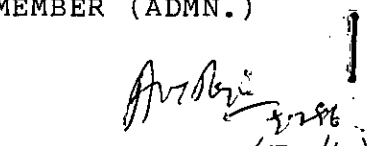
the bills are raised in the name of D.E.(Telecom) and hence that official of the Telecom Department is responsible for clearing the dues. The allotment order enclosed to the letter also shows the names and addresses of the allottees as one of the officials of the Telecom Department and not the individual employee of the Telecom Department. The individual employee of the Telecom Dept. is re-allotted the quarter which was allotted to the officials of the Telecom Dept. by designation. In view of the assertion of VSP that the principal allottee is the Telecom Dept. and the details given in the attached documents to the letter of CMD/VSP, there can be no doubt that the houses were allotted to the Dept. in the designation of the official of the Department and that allotment of the quarter was re-allotted to the individual employee of the Dept. by name.

21. From the above discussion, there can be no doubt in the mind of anybody that the quarters were allotted to the Dept. first and later the re-allotment was done to individual employee. Even if the re-allotment is made by the VSP, it is to be treated as an allotment made through the Department in view of what is stated as above. Hence, it has to be held that the applicants were provided with quarters by the Govt. through their active assistance and help and in that view, the applicants cannot claim HRA.

22. In the result, I find no merit in this O.A. Hence this O.A. is dismissed. No costs.


(R. RANGARAJAN)
MEMBER (ADMN.)

Dated: 5th July, 1996


Dy. Registrar (Judicial)

Copy to:-

1. The Telecom District Manager, Visakhapatnam.
2. The Chairman, Telecom Commission(reptg. UOI), New Delhi.
3. One copy to Sri. C.Suryanarayana, advocate, CAT, Hyd.
4. One copy to Sri. V.Bhimanna, Addl. CGSC, CAT, Hyd.
5. One copy to _____
6. One spare copy.
7. One copy to Hon'ble Sri Rangarajam, Member (A), CAT, Hyd.
8. Copy to All the Reporters as per CAT list, Hyd.

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HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN: M(A)

DATED:

5/7/96

ORDER/JUDGEMENT

O.A. NO./R.A./C.P. NO.

IN

O.A. NO.

945/94

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS.

YLKR

II COURT

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