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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

D.A. 824/94.

Dt. of Decision : 18.10.94.

G. Satyanarayana Murthy

.. Applicant.

Vs

1. Union of India rep. by
the Secretary, Dept. of Posts,
Dak Bhawan, New Delhi-110 001.

2. The Chief Postmaster General,
Andhra Pradesh Circle,
Hyderabad - 500 001.

3. The Postmaster General,
Visakhapatnam Region
Visakhapatnam-530 003.

.. Respondents.

Counsel for the Applicant : Mr. T.V.V.S.Murthy

Counsel for the Respondents : Mr. V.Bhimanna, Addl. CGSC.

CORAM:

THE HON'BLE SHRI A.V. HARIDASAN : MEMBER (JUDL.)

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DA 824/94.

Dt. of Order:18-10-94.

(Order passed by Hon'ble Shri A.V.Haridasan,
Member (J)).

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In this application filed under section 19 of the A.T.Act, 1985, the applicant Sri G.Satyanarayana Murthy, retired Asst. Post Master General has prayed that the Respondents may be directed to re-pay a sum of Rs.5,549/- ^{him with} irregularly recovered from/interest at the rate of 18% p.a. and to pay H.R.A. admissible to him for the period from 1-3-89 to 31-7-90 with interest at the rate of 18% p.a. quashing the order dt.5-7-93 of the Post Master General, Visakhapatnam Region as arbitrary, unjust and illegal.

The facts in brief can be stated as follows :-

While the applicant was working as Dy.Superintendent of Post Offices, Gaziabad, in the year 1986, owing to his family background he sought transfer to Rajahmundry (A.P. Circle) and was transferred and posted as Superintendent, Postal Stores Depot, Rajahmundry, where he joined on 3-11-86. As he had left his family at Amalapuram, incurring expenses for the rent up to 31-7-90, he shared accommodation with his brother, who was also a postal employee in Type-II quarters allotted to him. According to the applicant, he intimated about the sharing of accommodation ^{with} of his brother to the Post Master General, AP Circle on 4-11-86. However he

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continued to draw H.R.A. admissible to him. While so, the Director of Postal Services, North Eastern Region, Visakhapatnam, informed the applicant vide letter dt.30-12-1988 (Annexure A-2) that the Postmaster General, AP Circle, had decided that the applicant was not entitled to draw HRA and that the HRA so far drawn should be refunded. The applicant in his letter dt.3-3-89 stated that the HRS so far drawn by him since 4-11-86 amounts^{ed} to Rs.5,549/- and that it would be difficult to pay the whole amount in one lump and requested for permission to repay the amount in 14 monthly instalments and started re-paying the amount. In the meanwhile, the applicant submitted a representation on 28-9-89 (Annexure A-6) to the Director General (Posts), New Delhi stating that the order of the P.M.G., AP Circle, Hyderabad holding that the applicant was not entitled to draw HRA and directing him to re-pay the HRA already drawn was against the rules^{requesting} and to allow him to draw HRA. Inspite^{n/r} of repeated representations, the applicant did not get^{any} reply. In the meanwhile the applicant shifted his accommodation to a rented house on 1-8-90 and was allowed to draw^{thereafter} HRA. However, the amount of Rs.5,549/- recovered from the applicant as also the HRA up to 31-7-90 were not paid to him. The applicant retired on superannuation on 31-3-94. In the meanwhile, in reply to his^{repeated} representations, the applicant received the impugned order dt.5-7-93, wherein it was stated that on examination of his^{request} for refund of

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of the amounts and permission to draw HRA, it was held that as he did not satisfy with the conditions incorporated in para-28 of the rules for allocation & allotment of quarters, he was not eligible to draw HRA. It is against this order that the applicant has filed this O.A.

..... The respondent in this case have contended that as the applicant had not shared accommodation with his brother with the permission duly granted and since in accordance with para-2 of M.O.F.(Dept. of Expenditure) O.M.No.11013/4-2/86-E II(B) dt.23-9-86 incurring of expenditure by the employee is a pre-requisite for claiming HRA, which the applicant has not satisfied, the claim of the applicant for refund of the HRA wrongfully drawn by him and for payment of HRA up to 31-7-90 is baseless.

4. I have gone through the pleadings carefully. I have also heard Shri TVVS Murthy, learned counsel for the applicant and Shri V.Bhimanna, learned standing counsel for the Respondents. The only reason why the claim for refund of HRA and drawal of HRA up to 31-7-90 rejected by the impugned order was that the applicant did not satisfy the conditions incorporated in para-28 of the Rules for Allocation & Allotment of Quarters. Para-28(I) of DG letter No.2/20/66-NB dt.25-1-66 "Rules for allocations of quarters" reads as follows :-

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"The allottees of the P&T Quarters can share accommodation only

i) With P&T Officials eligible for accommodation with the P&T or estate Office pool and

ii) close relations.

In such case, prior permission of the competent authority is a pre requisite condition. But such permission should be usually granted unless there are some strong reasons for rejection in any particular case which should be recorded in refusing such permission. The allottees can charge only fair rent from the sharers. For this purpose the following elements should be taken into account

i) The rent paid by the allottee for the accommodation and

ii) HRA foregone by the allottee

These elements may be partitioned according to the area of the portion. Allottee may also charge from the sharer proportionate charges paid by him for furniture, electricity, water etc.,

Blood relations are to be considered as close relations for the purpose of this Rule.

Disciplinary action should be taken and penalties imposed in cases of unauthorised sharing/subletting and profiting."

3. A reading of the above extract from the para-20(1)

of the Rules for allocation and allotment of quarters would only show that a P&T employee alone can share the accommodation of another P&T employee with prior permission, that the allottee can charge only fair rent from the sharer having regard to the HRA foregone by him and the expenditure incurred by him as rent and for the furniture etc.,. It also indicates that if prior permission is not taken, Disciplinary Action can be taken if unauthorised subletting or sharing is done. This rule does not state anywhere that the sharer Govt.

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Quarter with an allottee of the quarter will not ^{be} entitle ^d
in part-V of F.R.S.R.
to claim HRA during the period of his sharing. Rule-5/
relating to conditions of drawal of HRA lays down as
follows :-

"5.(a) * * *

(c) A Govt. servant shall not be entitled to house rent allowance if-
(i) he shares Govt. accommodation allotted rent-free to another Govt. servant; or

(ii) he/she resides in accommodation allotted to his/her parents/son/daughter by the Govt., an autonomous public undertaking or semi-Govt. 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 Govt. State Govt., an autonomous public undertaking or semi-Govt. 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.

(d) * * *

(e) As an exception to sub-paragraphs (a) and (b) above, Govt. Servants other than a Govt. 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 Govt. accommodation allotted to other Govt. servants (excluding those mentioned in (c) above) or private accommodation of other Govt. 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 Govt. servant living in his/her own house or to a Govt. servant living in a house owned by a coparcener, will be without reference to the amount of the gross rental value as assessed by the Municipal Authorities. ***

It is clear from the above extracted provision in the part-V of F.R.S.R. that ^{apart from} ~~the~~ Govt. servant sharing accommodation in a Govt. Quarter allotted rent free to another Govt. Servant or with his or her spouse, parents or children, the sharing of ~~xxxx~~ accommodation with another Govt. Servant does not debar a Govt. Servant from claiming HRA. No ^{other} rule has been brought to my notice which prevents a Govt. employee sharing accommodation with another Govt. Servant not being his spouse, parent or children from drawing HRA admissible to him as per rules. Therefore I am ~~xx~~ of the considered view that the decision taken by the Respondents for the reason that applicant was sharing accommodation with his brother without taking permission from the Competent Authority is not entitled to draw HRA during the period of sharing of accommodation is not supported by any provision of law. Therefore the applicant is entitled to succeed and he is entitled to get back the amount of HRA recovered from him ^{and} also HRA admissible to him up to 31-7-90. However I find that the applicant is not entitled ~~xxx~~ ~~xx~~ for interest as claimed by him. In the result

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the application is allowed partly and the Respondents are directed to refund Rs.5,549/- recovered from ^{applicant} the/and also to ^{from} pay him the amount of HRA/1-3-89 to 31-7-90 as admissible to him within a period of three months from the date of communication of a copy of this order. No order as to costs.


(A.V. HARIDASAN)
Member (J)

DT. 18TH OCTOBER, 1994.
Dictated in Open Court.

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Deputy Registrar(Judl.)

Copy to:-

1. Secretary, Dept. of Posts, Union of India, Dak Bhavan, New Delhi-001.
2. The Chief Postmaster General, A.P.Circle, Hyd-001.
3. The Postmaster General, Visakhapatnam Region, Visakhapatnam-003.
4. One copy to Sri. T.V.V.S.Murthy, advocate, CAT, Hyd.
5. One copy to Sri. V.Bhimanna, Addl. CGSC, CAT, Hyd.
6. One copy to Library, CAT, Hyd.
7. One spare copy.

Rsm/-

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25/11/94.

In the C.A. Hyd Bench
Hyd.

Amr. A.V. Handerson J.M.

Judges

dt. 18/10/94.

in

O.A. 824/94.

O.A. Allowed partly.

No order as to costs.

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Central Administrative Tribunal
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HYDERABAD BENCH