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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.998/95

Date of Order: 19.7.96

BETWEEN:

V.S.Lakshmi Devi

.. Applicant.

AND

1. The Director General,
E.S.I.Corporation, Kotla Road,
New Delhi.

2. The Regional Director,
Employees' State Insurance Corpn.,
Regional Officer(A.P), 5-9-23,
Hill Fort Road,
Hyderabad - 500 483.

.. Respondents.

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Counsel for the Applicant

.. Mr.P.Naveen Rao

Counsel for the Respondents

.. Mr.N.R.Devraj

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CORAM:

HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

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J U D G E M E N T

X Oral order as per Hon'ble Shri R.Rangarajan, Member (Admn.)

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Heard Mr.P.Naveen Rao, learned counsel for the applicant and Mr.N.R.Devraj, learned standing counsel for the respondent

2. The applicant is now working as Superintendent under R2. Her husband is working as Assistant Secretary to Government, General Administration Department Vigilance and Enforcement at Hyderabad and is having a government quarter allotted by the State Government from 1972 onwards. The applicant joined the ESI Corporation on 13.5.68. She married before 1972 and from the date the state government house was allotted to her

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husband, she is staying with him in that house. She is also claiming HRA from her employer namely the ESI Corporation from 1972, ^{ie} from that date of her staying ⁱⁿ the State Government accommodation along with her husband.

3. The circular No. 52 A/28/16/86-Estt-II dated 3.2.95 (A-A) was issued calling for information from the employees in regard to the spouse having been allotted government accommodation, otherwise they may give a certificate of not having provided with government accommodation for their spouse by their employer. Instead of giving a direct reply to that circular she submitted a representation dated 15.2.95 (A-B) that the State Government does not prohibit payment of HRA to the employee if the spouse is occupying a government quarter allotted to his/her spouse and that rule should also apply to the central government employees also. Indirectly meaning that though she is sharing the quarter of her husband allotted by the State Government her HRA should not be stopped on the account that she is sharing a state government accommodation along with her husband. However by letter No. 52.A/28/16/86.Estt.II dated 24.2.95 (A-C) she was asked to submit particulars of accommodation and allotment date of the house of the state government to her husband and also directing her to refund the HRA amount paid to her from the date of allotment of quarter to her husband. She made a representation to Director General, EST Corporation by her representation dated 15.3.95 (A-D) to allow her to continue to draw HRA even though her husband is provided with state government quarter and she is staying with him. However, she was informed by the impugned letter No.52.A/28/16/86.Estt.II dated 26.7.95 (A-E) to furnish the details as above so as to enable the EST Corporation to recover the HRA paid to her. Payment of HRA from March ¹⁹⁹⁵ was also stopped.

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4. Aggrieved by the above she has filed this OA for setting aside the impugned circular No.52.A/28/16/86-Estt-II dated 3.2.95 (A-A) and letter No. 52.A/28/16/86.Estt-II, dated 26.7.95 (A-E) holding them as arbitrary, illegal and discriminatory and for a consequential direction to the respondents not to recover the alleged excess and to pay her HRA from the month of MARCH 1995 continuously.

5. The respondents have filed their reply resisting the prayer. The contentions are that in terms of rule 5(c) (iii) which stipulates the condition for drawal of house rent allowance, the applicant is not entitled for HRA if her husband is having a government accommodation owned by the State Government, Central Government, an autonomous public undertaking etc. This rule reads as below:-

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

(i) - - - - -

(ii) - - - - -

(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, Post Trust, etc., whether he/she resides in that accommodation or he/she resides separately in accomodation rented by him/her".

6. It is further submitted that under the provisions of Section 17(2) (a) of the ESI Act 1948, Conditions of Service of the Employees of ESI are governed by that Act. Under regulation 7(5) of the Act the employees of the ESI will be entitled to such allowance including

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travelling allowance and concessions as may be admissible from time to time to corresponding category of Central Government servants. This would mean that the instructions of the Central Government in regard to payment of HRA contained in the FRSR will apply mutadis-mudandis in the corporation (emphasis added). The above provision was also informed to all the employees by the ESI Regional Office, Hyderabad by circular No.12(1)-4/66-Estt.II, dated 16.4.66(A-5). In view of the above the learned standing counsel contends that under Rule 5(c)(iii) of FRSR the applicant is not entitled for HRA from the date she is sharing accommodation with her husband who is a state government employee and has been allotted a state government accommodation.

7. The learned counsel for the applicant submitted that the rule regarding non-payment of HRA to the ESI Corporation employees when they are occupying the house allotted to her husband either by state government, public sector undertaking in the year 1971 and it was re-introduced some time etc., was deleted some time in 1990. During the period the rule was not in existence she is entitled for HRA. Only when the said rule 5(c)(iii) of FRSR is in force she is not entitled for HRA. But she could not produce the relevant O.M. wherein the deletion and re-introduction

of the rule during the period as mentioned above issued by the Government of India. However she submits that she will produce that O.M. shortly.

8. In view of the above submissions of both the parties it is now clear that the applicant is not eligible to get HRA in view of Rule 5 (c) (iii) of FRSR if her husband is provided with state government quarter and she stays with him. But when the rule is deleted as per her averment she is entitled for HRA during that interregnum period when the rule was not in the FRSR. Hence recovery has to be made during the period when the rule was in existence. But the relevant O.M. which deleted the rule and the O.M. which once again introduced that rule has to be produced by the applicant to get necessary relief accordingly.

9. The contention, that such a rule is incorporated in FRSR is not in existence in State Government and hence she is not liable to pay back the HRA already paid and is eligible to get HRA continuously, cannot also be accepted as she is governed by ESI Corporation rule and not by State Government rule. Further it is submitted by the learned standing counsel that the rule as above has been scrapped by the A.P. State Government and a rule similar to 5(c) (iii) of FRSR has been introduced in State Government also from early 1994. In any case this contention does not

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merit consideration as she is governed by the rule of her corporation where she is serving and not by rule of any other department/government.

10. The rule 5(c)(iii) cannot also be struck as arbitrary as no material to that effect has been produced. It stands to reason to prohibit HRA when one of the spouses are provided with government accommodation whether it is of Central/State/Autonomous Corporation. What is required is a suitable accommodation to live in. The applicant is possessing such an accommodation and she is not paying any rent also from her salary to that accommodation. Even if she is asked to pay rent for that accommodation from her salary she cannot claim HRA as the government accommodation is in lieu of HRA at subsidised rental value.

11. The applicant further submits that she is getting HRA for a very long time. Hence equity demands that she should not be asked to repay the amount received by her as HRA. The applicant is a responsible ESI official. If the rule prohibits to get HRA, the same equity demands that she should have disclosed that she is staying in government accommodation allotted to her husband by state government and leave it to her employer to decide the payment of HRA. But she kept quite and even when the details of the house allotment to her husband was called for she avoided direct reply. Hence I am of the opinion that the contention that on the basis of equity HRA should not be recovered cannot be countenanced. If she is not eligible to get HRA there is nothing wrong if excess HRA paid to her already is recovered.

12. In view of the above, the following direction is given. The applicant should produce the O.Ms which deletes and re-introduces the rule 5(c)(iii) of FRSR from the rule book.

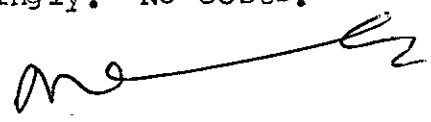
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If such O.Ms are produced she is entitled for HRA during that period. During other periods she is not entitled for HRA. If no such O.Ms as above are produced by her on or before 20.8.96, the Corporation can enforce Rule 5(c)(iii) of FRSR and recover the excess amount paid to her by way of HRA from the date she is staying with her husband in state government accommodation till the payment of HRA was stopped in March 1995 in easy instalments.

13. The O.A. is ordered accordingly. No costs.



(R. RANGARAJAN)
Member (Admn.)

Dated: 19th July, 1996

(Dictated in Open Court)

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Amli-5/96
Dy. Registrar (S)

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Copy to:-

1. The Director General, E.S.I. Corporation, Kotla road, New Delhi.
2. The Regional Director, Employees State Insurance Corporation, Regional Office, (A.P.), H.No.5-9-23, Hill Fort Road, Hyderabad.
3. One copy to Sri. P.Naveen Rao, Advocate, CAT, Hyd.
4. One copy to Sri. N.R.Devaraj, Sr. CGSC, CAT, Hyd.
5. One copy to Library, CAT, Hyd.
6. One spare copy.

Rsm/-

22/8/96

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THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

DATED: 19/7/96

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

O.A. NO. 998/95

- ~~ADMITTED AND INTERIM DIRECTIONS ISSUED~~
- ~~ALLOTTED~~
- ~~DISPOSED OF WITH DIRECTIONS~~
- ~~DISMISSED~~
- ~~DISMISSED AS WITHDRAWN~~
- ~~ORDERED/REJECTED~~
- ~~NO ORDER AS TO COSTS.~~

YLKR

II COURT

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केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
ब्रेषण/DESPATCH
21 AUG 1996
HYDERABAD BENCH