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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

ORIGINAL APPLICATION NO 1097 OF 1996
(7th 42 1996 for CAT Act 1985)

BETWEEN :

T. SATYA NARAYANA MURTHY
S/o. Late Sri T. Surya Narayana Murthy
Aged about 36 years, Senior Clerk
Central Research Institute for
Dryland Agriculture (ICAR)
Santoshnagar, Hyderabad - 500 059 ... APPLICANT

THROUGH: Sri K.K. Chakravarthi, Advocate
2-104, Maruthi Nagar, Hyderabad

AND

1. The Director, Central Research Institute for Dryland Agriculture (ICAR)
Santoshnagar, Hyderabad - 500 059
2. The Senior Administrative officer
Central Research Institute for Dryland Agriculture (ICAR)
Santoshnagar, Hyderabad - 500 059
3. The Director General, Indian Council of Agricultural Research
Krishi Bhavan, New Delhi - 110 001. ... RESPONDENTS

DETAILS OF APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THIS APPLICATION IS FILED:

This O.A. is filed against the impugned order No.4-6(6)/95-EMS, dt.12.1.96 ^(not found) confirming that the earlier impugned order No.4-6(6)/90-EMS, dt.10.11.94 in O.A. No.723/95 is in order and thereby confirmed the fixing of the SLF at higher rates is proper and started recovery of arrears of SLF w.e.f. 1.7.87 in five instalments from January, 1996.

2. JURISDICTION OF THE HONOURABLE TRIBUNAL :

This Bench of Central Administrative Tribunal has got jurisdiction to entertain this application under Section 14 of Central Administrative Tribunal Act, 1985 as the applicant is working at Hyderabad under 1st and 2nd Respondents. ^{organization L.H.B.S}

3. LIMITATION :

Since the impugned order dt.12.1.96 ^a is implemented in Jan., 1996 and ~~the~~ representation dt. 23.1.1996 is still pending, the O.A. is within time. ^{42 21 of the CAT Act 1985}

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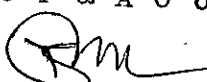
4. BRIEF FACTS OF THE CASE :

- a. The applicant submits that he joined CRIDA, Hyderabad on 6.11.84 as Jr. Clerk and subsequently he was promoted to the post of Sr. Clerk on 11.9.89 and working continuously till date in the same post. He also qualified ICAR Audit and Accounts Exam., 1994 equivalent to the SAS exam conducted by the other organised accounts departments.
- b. He was allotted a residential quarter No.B-6 in Type 'B' of CRIDA Residential Quarters at Santoshnagar, Hyderabad vide office order No.11-6/85-86-Estt., dt.30.8.85 and he occupied the same on 1.9.85. Since then he is in possession of the said quarter and the department is deducting the standard licence fee (SLF) @10% of the emoluments from the pay bill of the applicant. Consequent on the implementation of the IV Central pay commission recommendations, the Govt. of India vide O.M. No.12035(1)/85-Pol.II (Vol.III) dt.1.6.87 has prescribed the schedule of rates based on which the 1st Respondent fixed the SLF @ Rs.35/- p.m. with effect from 1.6.87 since the living area of the quarter is 26.5 Sq.mtrs. as per the report of the committee of CRIDA appointed for the purpose. The Schedule of measurements as measured by the applicant is enclosed (A-1). This rate is fixed as per the Annexure -I (item No.5) of the Govt. of India O.M. and under FR 45-A. Subsequently, it has been revised to Rs.45/- P.M. with effect from 1.7.90 as revised by the Govt. of India vide O.M. No.18011/18/89-Pol.III, dt.28.6.91 and settled at Rs.45/- p.m. even from 1.7.93 though the Govt. of India has revised the same to Rs.47/- p.m. vide its O.M. No.18011/1/92-Pol.III, dt.26.7.93. Accordingly, the SLF @ Rs.45/- was deducted from his pay bill till 31.5.95.
- c. There is ^{no} whisper at any time about the revising of SLF by the department. All of a sudden the R-2 has ~~xxx~~ issued an office order No.4-6(6)/90-EMS, dt.10.11.94 changing the slab rates of SLF of only Type 'B' quarters on higher side and fixed the slab rates at next higher stage with effect from 1.6.87. In the above order, it is also stated that arrears of SLF due from 6/87 to 10/94 would be recovered from the concerned occupants of the quarters.
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in five instalments beginning from the pay of Nov., 1994. But for the reasons best known to the respondents, the recovery of new rate and recovery of arrears was not effected from the pay of Nov., 94 and all of a sudden, they started recovering only the new rate from the month of Jan., 1995 onwards and till date. The recovery of arrears on this account was not effected till Jan., 1996 i.e. till the issue of the present impugned order. The earlier impugned order dt.10.11.94 was questioned in the Hon'ble Tribunal vide O.A. No.723/95, as the respondents cannot rise the SLF slab rates as the living area of the quarter is only 26.5 Sq.mtrs. and the quarters were constructed under crash programme in 1980. The respondents stated in their counter affidavit dt.22.7.95 to the above O.A., that the range of living area is ~~22~~ 32-40 Sq.mtrs. and the actual living area is 28.48 Sq.mtrs. and hence the applicant has to pay the SLF @ Rs.60/- p.m. w.e.f. 1.6.87 and so on, at higher rate i.e. next higher slab. They have also stated that the Fin. & Acc. officer of CRIDA pointed out that the SLF should be fixed with reference to the Type of the Quarter but not on the basis of living area(since it is only 26.5 Sq.m.) Where as the applicant claimed the quarter to be Type 'B' (Not Type II) with living area of only 26.5 Sq.m. constructed under Crash Programme.

d. Hearing on the both sides, the Hon'ble Tribunal gave a direction to the respondents that R-1 should check up the living area of the quarters allotted ^{to} the applicant and if it is 26.5 Sq.m. only, the applicant is entitled to pay SLF at the old rates, If area is more than 26.5 Sq.m. then the new rates are applicable. R-1 should also check up whether the said quarter is constructed under Crash programme or not. If constructed under crash programme, then the rent is leviable only as per the rates stipulated for such quarters constructed under the crash programme. Thereby, the Hon'ble Tribunal has endorsed the argument of the applicant that the SLF should be based on the area but not with reference to the Type of the quarter as opined by the F & A O of the Institute.



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e. As a result, the respondents have issued the present impugned order No.4-6(6)/95-EMS, dt.12.1.96 informing that in pursuance of the Hon'ble Tribunal's Judgement dt.2.8.95 in O.A. 723/95, the living area of the Type 'B' Quarters has been checked up in consultation with CPWD and its living area is 26.93 Sq.m. It was also informed that the said quarters were not constructed under the crash programme and hence, the earlier impugned order No.4-6(6)/90-EMS, dt.10.11.94 in O.A. 723/95 was confirmed to be in order. As a result, the higher rate of recovery of SLF @ Rs.85/- with effect from 1.1.95 is confirmed and also the recovery of arrears of Rs.2880/- has been started from the pay for the month of Jan, 1996 @ Rs.565/- in addition to normal recovery of Rs.85/- p.m. in five instalments. The order dt.12.1.1996 was not served by the respondents for the reasons stated in the 1st para of the applicant's representation dt.23.1.1996. The applicant has submitted a representation dt.23.1.96 against the above order dt.12.1.96 by Regd. Post Ack. Due to the 1st Respondent on 24.1.96 and the same was received by his P.A. (Sri G. Jagan Mohan Rao) on the same day it self. But the representation was not considered and the recovery of arrears was also not withheld as requested by the applicant. Hence this O.A.

f. The applicant again assails the action of the Respondents in fixing higher slab rates @ Rs.60/- with effect from 1.6.87 and so on, on the following grounds:

g. The respondents have stated vide 10th line of the para 3 of P.2 of the Counter affidavit dt.22.7.95 in O.A. 723/95 that the actual living area of the Type II Quarter as intimated by the CPWD is 28.48 Sq.m., While the applicant claimed the quarter to be Type 'B' (Not Type II) and its living area is only 26.5 S.m. as measured by the applicant and a schedule of measurements of the measurements amounting to only 26.5.Sq.m. was also filed in the O.A. 723/95. Now the respondents have come out with a new/ different living area of the quarter that it is 26.93 Sq.m. as

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informed by the CPWD, which is contradicting to ~~their~~ own above statement that the living area is 28.48 Sq.m.

7.1.a In this connection, kind reference is invited to the notings on the file made in 1988, where in the report/measurements made by a committee (consisting of CRIDA Engineers) appointed in 1988 for the purpose, confirming that the living area of the Type 'B' quarters is only 26.5 Sq.m., was considered and based on which the SLF of the 'B' Type quarters was fixed @ Rs.35/- p.m. ~~vide SAO Note~~ w.e.f. 1.6.87 vide SAO Note dt. 2.2.90, even after the Audit objection from F & AO on P.no.43/N on the OIC-EMS's note dt.5.11.88, who has fixed the SLF @ Rs.35/- w.e.f. 1.6.87 in 1988. Subsequently, on revising the same vide Govt. of India O.M. No.18011/18/89-Pol.III, dt.28.6.91, the rate revised rate of Rs.45/- was fixed w.e.f. 1.7.90 in 1991. At this stage also, the respondents have no thought of charging the ~~slab~~ slab rates to higher side.

7.1.b From this, it is evident that the office records are speaking that the living area of the quarters is only 26.5 Sq.m. but not over and above, though the actual living area was intimated by CPWD to be 28.48 Sq.m. in the living area range of 32-40 Sq.m. in 1988 itself vide lrs. No.4(1)/88/HYCSD-II/448, dt.17.5.88 and 1(5)/88HCD I/3442, dt.11.7.88. It is also very clear that since the living area of the quarter is only 26.5 Sq.m., the office has again written a letter dt.5.11.88 to CPWD seeking a clarification on the living area which is not received even till date and hence the rate was continued till 11/94 and F & AO's objection while clearing the fixing of revised rates w.e.f. 1.7.93. But for the objection from the F & AO that the recovery of licence fee should be made with reference to the Type of Quarter (B) first and also based on CPWD letter dt.17.5.88 (applicable to only Type II but not Type 'B' Quarters), the SLF slab rates have been changed from Rs.35/- to 60/- p.m. w.e.f. 1.6.87, ignoring the actual living area.

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At this stage, it is to mention that even the CPWD could not justify how they have categorised/brought even the quarters with living area of 28.48 Sq.m. (as stated by CPWD) under the category of living area range of 32-40 Sq.m. Now, the CPWD, after measuring the quarter of applicant, intimated the office that the living area is 26.93 Sq.m. and the reasons for arriving out the difference within their living areas viz. 28.48 and 26.93 Sq.m. are not mentioned. Now, the respondents also, just for 0.43 Sq.m. more, categorised/brought the quarter under the range of living area of 32-40 Sq.m. raising the 0.43 Sq.m. to the extent of 5.5 Sq.m. (32.0 - 26.5), and thereby exhibited their stubborn attitude to fix their higher rate of SLF. Hence, it is highly against the natural justice to charge ~~more~~ Rs.38/- more (85-47) for just 0.43 Sq.m. more. The respondents while denying/ignoring the just 0.43 Sq.m., wanted to avail the benefit of 5.5 Sq.m. over and above the 26.5 Sq.m. to fix the slab rates from June, 87.

According to the SLP (civil) No.5197 of 1993 in the case of Kedar Nath Vs. Union of India and another (1995) 29 ATC 489 SC (dt.15.7.94), if the Hon'ble Tribunal's order has to be implemented in the letter and spirit, it would not be permissible for the respondents to place its own interpretation.. The proper course for the union of India was to move the Tribunal in review pointing out its difficulty and seek a modification of the order. If an application is moved for modification of the order in the said matter, the tribunal may deal with it on merits. The appeal will stand allowed accordingly.

In the present case, a clarification would suffice.

Misinterpreting the version of the Hon'ble Tribunal's orders that " If area is more than 26.5 Sq.m., then the new rates are applicable", the respondents fixed the SLF at new rates. But the respondents did not realise that " more

than 26.5 Sq.m. should always refer to 28.48 Sq.m. only as stated by the respondents/CPWD but not " for each and every ~~xxx~~ additional inch over and above 26.5 Sq.m. (claimed by the applicant) upto 28.48 Sq.m. or 32.0 Sq.m. The CPWD itself gave two different measurements viz. 28.48 Sq.m. and 26.93 Sq.m. where as the actual living area is only 26.5 Sq.m. This was also confirmed by the Committee appointed in 1988 consisting of Engineers of CRIDA, based on which (available on file), the respondents have fixed the slab rate at old rates i.e. @ Rs.35/- w.e.f. 1.6.87 in 1988 and continued upto Nov., 1994, which can be confirmed by calling the records from the respondents. The committee given a living area even less than 26.5 Sq.m. for Type 'B' Quarters for the reasons mentioned at S.no.3 below.

7(2) it is learnt that the quarter of the applicant was measured by a Jr. Engineer of CPWD on 2.11.95 in the absence and without the knowledge of the applicant. Hence, it is not known what method he has adopted in taking measurements and ascertaining the living area of the quarter and thereby obtained a different living area to that of the Committee of CRIDA in 1988 and also the applicant. Unless, a re-measurement of the quarter either by CPWD OR BY ANY other committee in the presence of the applicant is arranged and reconciled with the measurements of the applicant, it cannot be concluded by the respondents that the measurements of CPWD to the tune of 26.93 Sq.m. is fair, proper and final.

7(3) While the difference between the CPWD measurements (28.48 - 26.93) is 1.55 Sq.m., the difference between the CPWD measurements and the measurements of the applicant (26.93 - 26.5) is only 0.43 Sq.m, which is less than 1/2 Sq.m. and even can be ignored.

7(4) On the other hand, it is to submit that the committee appointed in 1988 gave a measurement of even less than 26.5 Sq.m. The committee had measured a quarter in Ground floor of the Bldg. This difference is due to the construction of quarters with Granite Stones for the first two floors i.e. Ground Floor and Ist Floor and remaining two floors i.e. IIInd floor (occupied by

the applicant) and IIIrd floor with House Bricks. The Bldg. is consisting of Four Floors in total. Hence, due to the wall thickness in the Ground floor, the living area is less than 26.5 Sq.m. as observed by the committee. Hence, it is required to be considered that the quarters are constructed under the Standard type of living area with 26.5 Sq.m. only.

7.4. As per the Annexure - II of the CPWD letter No.4(1)/88-HY CSD/II/448, dt.17.5.88 and also as per Annexure - I of the Govt. of India O.M. No.12035(1)/85-Pol.II(Vol.III), dt.1.6.87, there are only three standard types of Type 'B' quarters Viz. A) 26.5 B) 32-40 C) 41-50 Sq.m. and there is no quarter with living area of 26.93 Sq.m. i.e. only in excess of just of 0.43 Sq.m. which could have been obtained due to some mis-conceptions such as increasing "one inch" on each side in the measurements etc. As such there is no slab rate to the quarter with living area of 26.93 Sq.m. which the respondents cannot categorise to be under the living area range of 32-40 Sq.m. due to misinterpretation taking advantage/benefit of 5.5 Sq.m. Hence, it is nothing but the standard type of quartered with living area of only 26.5 Sq.m.

7.5) Further, the office has made three contradictory statements with regard to the construction of quarters under CRASH programme in the following manner:

7.5(A) The administration while sending the SLF file to F&AO for his clearance has recorded on P.No.56/C that the quarters were constructed under Crash Programme as pointed out by the F&AO on 57/C (para 3) enclosed to the counter affidavit (R-6) and confirmed accordingly to the F&AO for fixing slab rate @ Rs.35/- w.e.f. 1.6.87.

7.5(B) The office also stated vide 4th line of para 3 of the P.4 of the counter affidavit that "the averment of the applicant that the quarter where he is residing was constructed under Crash Programme in 1980 does not appear to be correct" and thereby the office itself felt a doubt by the words Does not appear to be in support of their action/decision.

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7.8) C) Now, the respondents have stated vide office order dt.12.1.96 that it is not constructed under Crash programme as per the records of the office/CPWD.

7.5.2 (i) But it is a fact that the quarters with living area of 26.5 Sq.m. are constructed only under Crash programme as per the Annexure II of the CPWD letter dt.17.5.88 and Annexure I of Govt. of India O.M. Hence, it can be concluded that the present quarters are also constructed under crash programme only since their living area is only 26.5 Sq.m.

g. With regard to allowing only 5 instalments for recovery of arrears, the respondents stated in their counter affidavit that the 5 instalments is as per the Govt. of India O.M. No. 18011/13/89-Pol.III, dt.10.2.92 and also the applicant has not requested at any time for increasing the number of instalments. Now, also, the respondents did not increase the number of instalments at first instance.

g. In this connection, it is to mention that the respondents are making their own interpretations in deciding the matters. In fact the 1st para of the order stipulates the 5 instalments only for recovery of arrears on account of revising the slab rates where the difference is meagre for only two years but not on account of change of slab rates which is done that too on the instance of F&AO and at the fault of the office for not fixing the slab rates in 1988 or even in 1990. As a result the recovery of arrears due for eight years in five instalment @ Rs.565/- in addition to normal SLF of Rs.85/- amounting to a total of Rs.650/- is on a very high side.

g. (b) Reference is also invited to the ii) para of the above O.M. that "cases of those Govt. Servants who have since vacated the accommodation and got a no demand certificate from the competent authority need not be opened" (for recovery of arrears on account of revision of slab rates).

g(c) If the para (i) is applicable in the present case, as stated by the respondents, the respondents should have taken the para (ii) also into consideration and as such they should not have included the name of those officials who have vacated the quarters as on 10.11.94. Accordingly, the respondents have effected the recovery of arrears from all the officials included in the impugned order dt.10.11.94. Hence, either of the above action (mostly first one) of the respondents is illegal and arbitrary. From this, it is once again clear that the respondents are making their own interpretations for their easy convenience and fixed the slab rates on higher side arbitrarily.

g(a) In view of all above, the Hon'ble Tribunal is prayed to quash both the impugned orders dt.10.11.94 and 12.1.96 and direct the respondents to fix the slab rates of the Type 'B' quarters constructed under Crash programme @Rs.35/- p.m. with effect from 1.6.87 and @Rs.45/- w.e.f. 1.7.90 and also @ Rs.47/- w.e.f. 1.7.93 and also to refund the amount of SLF excess collected over and above the normal rates and such ~~xxxxxx~~ other orders as the Hon'ble Tribunal may deem fit and proper in the interest of Justice.

5. LEGAL PLEAS :

1. The action of the respondents 1 and 2 in not disposing off the representation of 23.1.96 of the applicant and also effecting the recovery from Jan, 96 is arbitrary, illegal and thus violative of Article 14&16 of Constitution of India.

2. The action of the respondents 1 and 2 in making their own interpretations for their own convenience is violative of rules and contempt of court.

6. DETAILS OF REMEDIES EXHAUSTED :

The applicant submits that he has no other alternative remedy to exhaust, since the recovery of higher slab rates have already been started in June 95 and recovery of ~~xxxx~~ arrears is effected in Jan, 96. ~~and no opportunity is given~~

7. MATTERS NOT PREVIOUSLY FILED OR PENDING :

The applicant submits that he has not filed any writ appli-

cation or Suit before any court of law, nor any such proceedings are pending before court of law, that is sought for in this O.A.

8. MAIN RELIEF:

In view of the above facts, the applicant prays the Hon'ble Tribunal ~~to quash both the impugned orders dt. 10.11.94 and~~

12.1.96 under F.No.4-6(6)/90-EMS, as illegal and improper and direct the respondents to fix the slab rates of the Type 'B' quarters constructed under crash programme Rs.35/- P.m. w.e.f.

1.6.87 and Rs.45/- w.e.f. 1.7.90 and also Rs.47/- w.e.f. 1.7.93 and also to refund the amount of arrears of SLP excess collected over and above the normal rates and pass such other orders as the Hon'ble Tribunal may deem fit and proper in the interest of Justice.

9. INTERIM RELIEF:

Pending disposal of this O.A., the applicant prays the Hon'ble Tribunal to pass Orders: direct the respondents not to recover the arrears.

10. PARTICULARS OF THE POSTAL ORDER: Rs.50

- | | | |
|----------------------------|----|-------------------------------|
| a. No. of the Postal Order | : | 809562858 |
| b. Date | :: | 5-7-1996 |
| c. Name of the post office | :: | High Court of A.P. Hyderabad. |
| d. Amount | : | Rs. 50/- |

Stamp: O.D. Revenue

Handwritten signature

11. List of enclosures:

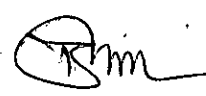
Vakalat, Material papers, postal order, Covers, pads etc.

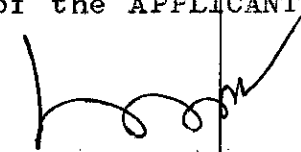
VERIFICATION

I, the above named applicant, do hereby verify that the contents of above paras are true to the best of my knowledge and belief and on legal advice and that I have not suppressed any material facts.

Place :

Date :


Signature of the APPLICANT


Signature of the COUNSEL
for the applicant.

3/10/96

DA: 1097/96

Typed By
Compared by

Checked By
Approved by

1748244

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

DATED: 12/9/96

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

D.A. NO.

in

1097/46

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

YLKR

II COURT

No Spare Copy

केन्द्रीय प्रशासनिक अधिकरण Central Administrative Tribunal प्रेषण / DESPATCH 30 SEP 1996 हैदराबाद न्यायपीठ HYDERABAD BENCH

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