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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

O.A.1076/99

Date: 24/1/99

Between:

K. Nagaiah

.. Applicant

A N D

Superintendent of Post Office,
Sangareddy Division,
Sangareddy.

.. Respondent

Counsel for the applicant : Mr. S. Rama Krishna Rao

Counsel for the respondent : Mr. K. Narahari

Coram:

Hon. Shri B.S. Jai Parameshwar Member (J)

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O.A.1076/99

Date: 24/11/99

O R D E R

(Per Hon. Shri B.S. Jai Parameshwar, Member (J))

Heard Mr. S. Ramakrishna Rao, learned counsel for the applicant and Mr. K. Narahari, learned standing counsel for the respondents.

2. This is an application u/s. 19 of the Administrative Tribunals Act. Application was filed on 13-7-1999.

3. The applicant herein is working as a Postman in BHEL post office, Ramachandrapuram. M/s. BHEL is a public sector. It has its own township containing residential quarters. The applicant on his own efforts and in his private capacity got a quarter from the BHEL authorities. He has paid Rs.500/- as advance (Annexure A-II) and submits that he has been paying rent regularly to the BHEL authorities.

4. The respondents made enquiries about the applicant securing the residential quarter from the BHEL authorities. Then the applicant submitted his representation as per Annexure A-III. However, the respondents resorted to recovery of Rs.535/- per month w.e.f. May'99 without issuing any order or considering his representation (Annexure A-III).

5. The applicant relies on the order of this Tribunal in OA 614 to 617/97 decided on 9-5-97 (Annexure A-IV), O.A. 67/95, OA 11/97 decided on 9-6-97 and the decision in the case of Jagabandhu Kundu vs. U.O.I. (reported in (1987)2 ATC 878). Annexure A-I is the extract of the pay particulars of the applicant.

6. He has filed this OA to quash the action of the respondent in recovering an amount of Rs.535/- p.m. from his pay towards the irregular payment of HRA from May'99 without issuing an order to that effect,

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declaring the same as arbitrary, illegal, unwarranted, frivolous, misconceived and in violation of Articles 14 & 16 of the Constitution of India and for a consequential direction to the respondents to refund the recoveries already made.

7. The respondents have filed reply stating that the applicant suppressed the information relating to allotment of quarter by the BHEL authorities, that the SPOs Sanagareddy on ascertaining the information that the applicant was allotted the quarter by the BHEL authorities issued orders to the Postmaster, Sangareddy HO not to draw HRA to the applicant and also to recover the HRA already drawn and paid and accordingly the excess paid HRA of Rs.10,746/- was ordered to be recovered in 21 instalments as the quarter was allotted by BHEL to the applicant by virtue of his working as Postman in Ramachandrapuram HE SO. Further they submit that with regard to the decisions relied upon by the applicant they have filed writ petition No.29682/97 against the order passed in OA 11/97 before the Hon. High Court of AP and the Hon. High Court of AP has suspended the order dt. 9-6-97 passed in OA 11/97, that in view of the interim stay granted by the Hon. High Court the OA is liable to be dismissed, that earlier the applicant was allotted a quarter bearing No. 334/ID on 23-2-96 as per Annexure R-2, that the applicant vacated the said quarter on 31-8-96 due to some domestic problems(Annexure R-III). The BHEL (a public sector undertaking unit) authorities allotted the quarter to the applicant by virtue of his employment as postman in BHEL post office and that BHEL authorities are not competent to allot residential quarters to private persons, that version of the applicant that he got the quarter from the BHEL authorities in his private capacity is not correct that he was allotted a residential quarter by the BHEL authorities by virtue of his appointment in the postal department that any accommodation provided by the public sector

undertaking has to be treated as a govt. accommodation and the government officials getting such accommodation are not eligible for any house rent allowance; that as per Rule 5(c)(ii) of FRSR part V-HRA/CCA Rules govt. servants are not eligible to draw HRA incase they reside in accommodation provided by the semi-government organisation such as port trust etc.; that the said rule position was reiterated by the directorate in its letter no.24-3/96-PAP dt. 12-5-96 (Annexure R-V); that there was no need to issue any notice to the applicant for recovery of the excess paid HRA since the HRA was drawn irregularly from 12-7-97 and that the applicant occupied the quarter without informing the respondents that the irregularly paid HRA was thus commenced to be recovered in easy instalments for the convenience of the applicant; that all other officials working in the same office are allotted residential quarters by the BHEL authorities are not being paid HRA. However, the applicant was paid HRA w.e.f. 12-7-97; that payment of HRA from 12-7-97 to the applicant was irregular; that the decision in OA 616 and 624/97 are pending adjudication before the Hon. High Court of AP, that the applicant if he ^{feels} aggrieved by the recovery of HRA and non drawal of HRA he could have appealed to the next higher authority i.e. the Director of Postal Services Hyderabad Region but this was not done. Without exhausting the said remedy the applicant has approached this Tribunal and that the application is premature. Thus they pray for the dismissal of this OA.

8. The main contention of the applicant is that the quarter allotted to him by the BHEL authorities was only due to his personal efforts and in his private capacity. As against this the respondents submit that the BHEL authorities provided residential quarters only by virtue of his being a postman of the area; that the BHEL authorities are not competent to allot a residential quarter to a private person in private capacity

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and the allotment of the residential quarter to the applicant by the BHEL authorities has to be regarded as govt. accommodation under rule 5(c)(ii) of FRSR part V-HRA/CCA Rules irrespective of the fact that the applicant was taken the same in his private capacity, that the applicant was earlier allotted departmental quarter that the applicant on his own accord vacated the same on 31-8-96 and subsequently he occupied the residential quarter allotted by the BHEL; that the applicant failed to inform the said fact to the respondents; that when the BHEL authorities has allotted a residential quarter to the applicant they felt that the applicant is not eligible to claim HRA; that however because of non furnishing the necessary information the applicant was paid HRA w.e.f. 12-7-97 that when they noticed the irregularity they started recovering the HRA and stopped drawing HRA to the applicant. Thus they submit that for all purposes the allotment of a residential quarter by the BHEL authorities to the applicant must be regarded as govt. accommodation and therefore the applicant is not eligible for HRA. Thus they justify the action of the recovery of HRA as indicated in Annexure-1 to the OA.

9. The main contention of the applicant is that allotment of residential quarter by BHEL is not the accommodation provided by the govt. He submits that he got the said quarter from the BHEL authorities on his own efforts and in his private capacity. BHEL may be a public sector undertaking but the agreement between him and the BHEL authorities cannot be considered as an agreement between him and Govt. and his occupation of the quarter allotted by the BHEL authorities cannot be regarded as Govt. accommodation. In support of his contention the learned counsel for the applicant relied upon the decision of the principal bench of this Tribunal in the case of Jagbandhu Kundu vs. U.O.I. (1987)2 ATC 878. Paras 8 ^b to 10 of the order are reproduced below :

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"8. The HAL is a Corporation wholly owned by the Government. Nevertheless it is a distinct corporate body having a legal personality of its own. Merely because it is wholly owned by the Government, the legal character of the Corporation as being an independent legal entity is not lost. It may be that it is an instrumentality of the State but nevertheless it is not a department of the Government. Being a corporate body, it can enter into contracts in respect of the accommodation provided by it to its employees or to those deputed to work with it. The plaintiff-petitioner is a Government employee and is entitled to be allotted Government accommodation on deduction of 10 per cent of his pay. If the Government accommodation is not provided to him under Govt. of India, Ministry of Finance Office Memorandum No.F.2(37)-E.II(B)/64, dated 27-11-1965, as amended from time to time including O.M. No.11014/1/83-E.II(B), dated 16-5-1983, and Director of Estates No.12034(1) 82-Pol.III dated 21-5-1984, he is entitled to reimbursement of House Rent Allowance at the rate of 15 per cent of his pay limited to the rent actually paid by him minus 10 per cent of his pay. This position is not disputed even by the respondents. It is, however, contended, that the accommodation provided by the HAL is Government accommodation. In fact the matter seems to have been examined at various levels and clarifications sought from the Department of Expenditure. On a reference made to it, vide R & D HQRS letter No.955770/976/1/RD-23 (a), dated 23-5-1981, the Ministry of Finance has clarified as under :

HAL is a public sector undertaking, entirely under the administrative control of the Central Government and hence the quarters constructed by them is a Government accommodation. Accordingly the allottee of such accommodation is not entitled to HRA under para 5(c)(iii) of our O.M. dt. 27.11.1963. ...

Obviously, acting upon this clarification of the Ministry of Finance, the House Rent Allowance due to the plaintiff-petitioner was withheld. The claim of respondents 1 and 2 is that the quarters "constructed by the HAL" should be treated as Government accommodation. This contention cannot be sustained because HAL is a corporate body having a distinct legal personality of its own independent of the Government. The accommodation provided by such a corporation not being Government accommodation, Government servants allotted such accommodation would be entitled to same allowances which any other Government servant

is entitled under Fundamental Rules and O.Ms., referred to above. A Government employee who is not provided with the Government accommodation is entitled to House Rent Allowance at the rate of 15 per cent of the pay subject to the rent that is actually paid by him minus 10 per cent of his pay. As agreed by him the petitioner is paying the standard rent initially fixed at Rs.132 and Rs.5 as ad hoc charges for water supply and such rent as is fixed by way of revision from time to time. He is, therefore, entitled to House Rent Allowance subject to the maximum as noted above.

9. It is next contended that the petitioner should not be granted this relief because he has agreed to take the accommodation being provided to him by the HAL on payment of rent specified in the letter of allotment. It must be noticed that even now the plaintiff-petitioner is not disowning that liability. That is being actually deducted from his salary. In fact precisely because he is required to pay the standard rent, he is claiming House Rent Allowance at the rates specified above which is due to him under the aforesaid O.M. He never gave an undertaking that he would not claim whatever is legally due to a Government employee who is not allotted Government accommodation. There cannot be any estoppel against him in these circumstances. The letter dated 12-1-1972 relied upon by the respondents also does not preclude him from claiming this relief. That letter was addressed by the Under Secretary to the Government of India to the Scientific Adviser to the Minister of Defence & Director General, Defence Research & Development, Delhi, in which it was stated as under:

2. M/s.HAL will claim every month the standard rent for each quarter allotted to the above staff by preferring a bill on the CDA Patna/CDA Southern Command, Poona through the RTO Koraput/Nasik The CDA concerned will deduct from the pay bill 10 per cent of the officers/ staff occupying HAL quarters or the standard rent of the accommodation, whichever is less, and credit the amount to the relevant head of account of the Defence Services Estimates ...
3. The electricity, water, furniture and conservance charges will be paid locally by the individuals concerned.
4. The expenditure involved is debitable to Major Head 79, Minor head 6,Sub-head 'C' of the Defence Services Estimates.

5. ...

6. This issues with the concurrence of the Ministry of Finance(Defence), vide their U.O.

10. It will be seen that this letter is silent as regards the reimbursement or entitlement of the Government servant to the payment of HRA. All that it states is that the HAL should claim the standard rent fixed by it in respect of the quarters allotted to the staff by preferring a bill and that the CDA concerned will deduct 10 per cent of the pay of the officers/staff and credit the amount to the relevant head. This letter does not take away the right of the Government servant who is entitled to receive HRA merely because the accommodation was provided by the HAL. So long as the petitioner is not allotted Government accommodation and is required to continue in the accommodation provided by the HAL he would be liable to pay the agreed rent but at the same time he would be entitled to receive HRA as admissible to him under the rules."

10. From the above observations of the Principal Bench of this Tribunal the contention of the applicant has some force. However, the learned counsel for the respondents submitted that the quarter allotted to the applicant by the BHEL authorities is not on account of his private status but only by virtue of being working as Postman in the department. Thus he submits that the allotment of the residential quarter by the BHEL authorities must be regarded as the one provided to the applicant by the Govt. Thus he submits that irrespective of the source of the allotment of the quarter to the applicant by BHEL authorities it has to be regarded as the one provided by the Govt. to the applicant. Thus the learned counsel for the respondents submit that the applicant is not eligible to draw HRA. It is an admitted fact that the applicant was paid HRA w.e.f. 12-7-97. In case it is held that he got the quarter allotted by the BHEL authorities in his private capacity then the

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applicant is eligible to draw HRA. The interpretation of Rule 5(c)(ii) of the FR SR Part-V HRA/CCA are pending adjudication. In fact the earlier decision of this Tribunal in OA 614 to 617/97 and OA 11/97 are pending adjudication before the Hon. High Court of AP. In fact OA 11/97 was decided mainly placing reliance on the order passed in OA 67/95 decided on 5-7-96.

11. In view of the decision of the Principal Bench of this Tribunal in Jagbandhu Kundu case it can only be held that the allotment of residential quarter to the applicant by the BHEL authorities cannot be regarded as a Govt. accommodation. However, this finding is subject to the decision of the Hon. High Court of AP in WP No. 29682/97 filed against the order in OA 611/97 and OA 614 to 617/97.

12. In case the respondent authorities shall take a final decision to recover the HRA from the applicant only after the writ petitions pending before the Hon. High Court of AP are disposed of. In case the writ petitions are dismissed then the applicant is entitled to claim HRA. In that event the recovery should not be made and whatever amount recovered has to be refunded to the applicant.

13. In case the writ petitions are allowed then the applicant is not entitled to claim the HRA and the respondents are entitled to recover the HRA paid to the applicant w.e.f. 12-7-97.

14. If any other direction is given by the Hon. High Court of AP in the writ petitions mentioned above the same shall be ^{applicable to us} complied in case of the applicant also.

The respondents shall not attempt to recover the HRA from the applicant till the Hon. High Court of AP decides the writ petitions mentioned above.

15. With the above direction the OA is disposed of.


(B.S.JAI PARAMESHWAR)
Member (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH.
HYDERABAD.

~~1ST AND 2ND COURT~~

7/12/2000

COPY TO.

1. HON. J.
2. M. (ADMIN)
3. HON. P. M. (JUDL)
4. D. R. (ADMIN)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE HON'BLE MR. JUSTICE DR. HASIR
VICE-CH. J.

THE HON'BLE MR. R. RANGARAJAN
MEMBER (ADMIN)

THE HON'BLE MR. B. S. JAI PARAMESHWAR
MEMBER (JUDL)

DATE OF ORDER 22/12/99

~~MR. RAJ/CP. NO.~~

IN
CA. NO. 1076/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

(6 copies)

CP CLOSED

PA. CLOSED

C DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

फेन्ड्रोय प्रशासनिक व्यविकरण
Central Administrative Tribunal
प्रेषण / DESPATCH

- 4 JAN 2000

हैदराबाद व्यापारी
HYDERABAD BENCH