

(16)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.479/97

Date of order: 27th Aug 1999.

1. Sushil Kumar Butani, S/o Shri R.P.Butani, aged around 37 years, R/o 5-Kha-26, Jawahar Nagar, Jaipur, presently posted as Head Clerk, Claim Section, DRM Office, W.Rly, Jaipur.
2. Smt.Neelam Butani, W/o Shri Sushil Kumar Butani, aged around 33 years, R/o 5-Kha-26, Jawahar Nagar, Jaipur, presently posted as Head Clerk, Signal Deptt, DRM Office, Western Rly, Jaipur.

...Applicants.

Vs.

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Signal Telecommunication Engineer (Construction), Western Railway, Jaipur.
3. Divisional Railway Manager, Western Railway, Jaipur.

...Respondents.

Mr.P.P.Mathur - Counsel for applicant.

Mr.Azgar Ali Khan - Proxy of Mr.M.Rafiq - Counsel for respondents.

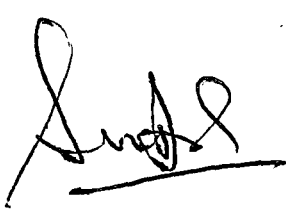
CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member.

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this O.A the applicants have prayed to quash the order dated 2.9.1997 at Annx.A1 and order dated 20.3.1997 at Annx.A2.

2. In brief the facts of the case as stated by the applicants are that the applicants are husband and wife and both are in service of the Western Railway. The applicants were married on 30.6.89. A Govt. Quarter No.273/6 situated at Loco Colony, Western Railway, Jaipur was allotted to applicant No.2, Smt.Neelam Butani, vide order dated 17.2.87. It is stated by the applicants that even after the marriage on 30.6.89, applicant No.1 was residing in his parental house under the circumstances mentioned in this O.A and finally, applicant



No.2 also shifted to the parental house alongwith her mother and Govt. Quarter No.273/6 was vacated on 29.11.96 and the possession of the said house was handedover to Inspector of Works (IOW). It is further stated that an enquiry was initiated against applicant No.2 for sub-letting the house to one Shri R.S.Sharma, a Constable of GPR and in that enquiry the charges did not prove against applicant No.2. Another enquiry was also conducted by Vigilance Department and on the basis of the directions given by the Vigilance Department, the impugned orders dated 20.3.97 and 2.9.97 were issued and both the orders are based on erroneous grounds. The order dated 20.3.97 is ex-facie illegal, unreasonable, unjust and void and order dated 2.9.97 is based on the presumption that after the marriage on 30.6.89, both the applicants are living together, therefore, the House Rent Allowance (HRA) paid to applicant No.1 from 30.6.89 was directed to be recovered vide the impugned order dated 2.9.97. It is, therefore, requested to quash the orders as mentioned above.

3. Counter was filed. In the counter, it has been admitted that the enquiry proceedings against applicant No.2 for the charge of sub-letting was initiated which is pending. But in the rejoinder, the applicants have made it very clear that the charge of sub-letting could not be established at all against applicant No.2. It is also denied that applicant No.2 has vacated Quarter No.273/6 on 29.11.97. Letter dated 18.1.99 was filed with the Affidavit of Shushil Kumar Butani by the applicants which makes it very clear that Smt.Neelam Butani has been exonerated from all the charges levelled against her vide Memorandum dated 19.3.97.

4. Rejoinder has also been filed stating that Smt.Neelam Butani was not found guilty of the charges levelled against her and she was exonerated from all the charges. It is also stated that Quarter No.273/6 has been vacated on 29.11.96, therefore, the impugned orders are unreasonable and unjust and liable to be quashed.

5. Heard the learned counsel for the parties and also perused

the whole record.

6. As regards order at Annx.A1 dated 2.9.97 is concerned, the learned counsel for the applicant has argued that recovery of HRA already paid to the applicant is arbitrary and illegal and against the principles of natural justice. He has also argued that any recovery from the applicant beyond 3 years is barred by limitation. On the other hand, the learned counsel for the respondents has argued that applicant No.1 received HRA knowingly that the same was not permissible to him according to Rules. Therefore, recovery of HRA paid from applicant No.1 is perfectly legal. He has further argued that no show cause notice was necessary before such recovery from the applicant.

7. I gave thoughtful consideration to the rival contentions of both the parties and also perused whole record.

8. It is the admitted fact that the applicants were married on 30.6.89 and both are under the service of the Western Railway posted at Jaipur. It is also not disputed that Smt.Neelam Butani was allotted Railway Qtr.No.273/6 vide order dated 17.2.87. It is expected from applicant No.1 to know the rules regarding the permissibility of HRA and not to accept HRA which was not permissible to him according to rules. HRA is allowed to a Railway employee as per rules prevalent at that time. It is not a source of income to an employee. According to the rules if one spouse is allotted Railway accommodation, another spouse is not entitled to HRA. Mere stating that applicant No.1 was not residing in the accommodation allotted to his wife does not entitle the applicant to HRA, as per rules. The proper course for the applicant in such situation was not to accept HRA even if it is sanctioned to the applicant. Therefore, any recovery made from applicant No.1 for HRA already paid wrongly against the rules is neither arbitrary nor against the principles of natural justice and this recovery beyond 3 years period is not at all barred by limitation. The learned counsel for the applicant was also unable to

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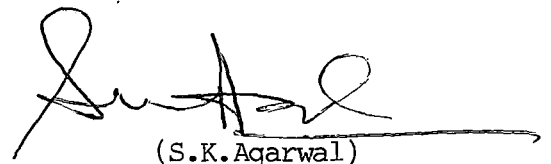
show any rule/law to the effect that recovery beyond 3 years period under the circumstances mentioned above is barred by limitation. Therefore, the contention of the learned counsel for the applicants has no force and recovery made by the impugned order dated 2.9.97 is not arbitrary or illegal or against the principles of natural justice.

9. As regards order passed at Annx.A2 is concerned, the charge of sub-letting could not be proved against applicant No.2 in the enquiry initiated against Smt.Neelam Butani and possession of Quarter No.273/6 has already been handedover to IOW on 29.11.96. Therefore, order dated 20.3.97 appears to be unjust, unreasonable and illegal and cannot sustain in law.

10. This Tribunal by way of an interim direction has already stayed the operation of the impugned order dated 20.3.97. It is also undisputed that principles of natural justice have not been followed before passing the impugned order dated 20.3.97. No show cause notice or opportunity of hearing was given to applicant No.2 before passing the impugned order. In Laxmichand Vs. Union of India 1998 ATC 599, it has been held that if order involved civil consequences and has been issued without affording an opportunity to the applicant to present his case, such an order cannot be passed without complying with audi alteram partem.

11. In view of the above, I am of the considered view that the impugned order dated 20.3.97 is not sustainable under law and is liable to be quashed.

12. I, therefore, allow this Original Application in part and quash the order dated 20.3.97 at Annx.A2. No order as to costs.



(S.K. Agarwal)

Judicial Member