CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH,JAIPUR

Date of Order : 10.12-2003

O.A. No. 181/1999

Jaswant Singh S/o Shri Lahori Singh, Aged 48 years, Resident of E 153, Ramesh Marg, C Scheme, Jaipur and presently working as Director (Mech.), E & T, Division, Geological Survey of Idia, Western Region, Jaipur.

.....Applicant.

versus

1. The Secretary to the Government of India, Ministry of Steel and Mines, Department of Mines, Shastri Bhawan, New Delhi 110 001.

2. The Director General, Geological Survey of India, 27 Jawahar Lal Nehru Road, Calcutta 700 016.

3. The Deputy Director General, Geological Survey of India, Western Region, 15-16, Jhalana Doongri, Jaipur 302 004.

.....Respondents.

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CORAM :

Hon'ble Mr. J.K. Kaushik, Judicial Member
Hon'ble Mr. A.K. Bhandari, Administrative Member

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Mr. U.D. Sharma, counsel for the applicant.
Mr. N.C. Goyal, counsel for the respondents.

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ORDER
[BY J.K. KAUSHIK]

Shri Jaswant Singh has filed this Original Application praying for the following reliefs :

"(i) by an appropriate order or direction this Hon'ble Tribunal may be pleased to quash and set aside the letter

dated 14.10.1996, Annexure - A/1 and may be further pleased to direct the Respondents to restore the payment of the H.R.A. to the applicant from October, 1996 and also to pay the arrears from October, 1996 onwards till date together with interest thereon at 20% p.a. The Hon'ble Tribunal may be pleased to restrain the Respondents from stopping the payment of the H.R.A. thereafter,

(ii) that this Hon'ble Tribunal may also be pleased to quash and set aside the letters dated 3.7.1997, Annexure A/2, dated 4.3.1999, Annexure A/3 and may also be pleased to specifically quash the determination of the alleged over payment of the HRA to the tune of Rs. 1,03,928/- and may also be pleased to restrain the Respondents from affecting any recovery from the salary of the Applicant from the month of March, 1999 or any subsequent month, thereafter."

2. The abridged facts of this case are that the applicant was initially appointed as Mechanical Engineer on 27.5.1974 in Geological Survey of India and was posted at Shilong. He was transferred to Jaipur and thereafter, to Calcutta and was subsequently re-transferred to Jaipur in June 1984 and since then, he has been working at Jaipur. His wife, Smt. Prem Lata, who is employed as Assistant Manager, State Bank of India, at New Delhi, came on transfer in July 1984. The applicant hired a House No. D-36, Chomu House, 'C' Scheme on a monthly rent of Rs. 1550/-. After joining of his wife at Jaipur, she was entitled for re-imbursement of the house rent from the bank. A formal lease document was got executed between the Bank and the owner of the said premises so that the benefit of House Rent could be given to the wife of the applicant. Since the Bank had no accommodation of its own, his wife was not allotted with any accommodation.

3. The applicant was, therefore, being paid Hose Rent Allowance as admissible to him as per the rules and the said house was retained till December 1988 when the possession was surrendered to its Landlord in December 1988. Thereafter, the applicant with his own efforts got hired a House No. B-16 A, Chomu House 'C' Scheme, Jaipur on a monthly rent of Rs. 1850/- and a request was made by his wife to the Bank authorities to accept the said premises and to pay rent thereof to the extent of her entitlement to the owner and accordingly, a formal lease document was executed between the Bank and the owner of the said premises. Applicant's wife Smt. Premlata was sanctioned a monthly rent of Rs. 1050/- for the said premises which was paid by the Bank and the balance amount of Rs. 800/- was being paid by the applicant to the Landlord.

4. The wife of the applicant was transferred from Jaipur to Dausa in April 1991 and she remained there up to December 1992. During the intervening period, applicant retained the accommodation by paying rent of the premises directly to the Land Lord. The same was surrendered by him in January 1992. Applicant hired an another accommodation on a monthly rent of Rs. 1900/- from 1992. His wife was re-transferred from Dausa to Jaipur in 1992 and she requested to extend the facility of paying rent by the Bank in respect of the said premises. Her request came to be accepted by the Bank authorities. She was entitled for grant of Rs. 1650/- as rent and the balance amount of Rs. 250/- was required to be paid by her. This also was done

through a formal document drawn between the owner and the bank.

5. The applicant was being paid HRA from 1984 till 1993 and suddenly, it was stopped in 1993 without any information. He submitted representations to the concerned authorities and on consideration of the same, he was paid HRA along with arrears and thus, the HRA was continued to be paid to the applicant till 14.10.1996 when an order came to be issued to stop the payment of HRA. It was also informed that the recovery was being worked-out. The said communication was issued without issuing any show cause notice to the applicant. The applicant represented against the action of the respondents and reminded the matter a number of times but with no response. The matter was referred to the higher authorities and it was found that the HRA was not admissible to the applicant and the over-payment was worked out to Rs. 1,03,928/- and recovery was to be made at the rate of 2,500/- per month from the month of July 1997 onwards. The applicant endeavoured to apprise the authorities that the provision of Rule 5 (c) (iii) of House Rent Allowance Rules, was not applicable in his case and the same applies only when one is allotted Government or Bank owned accommodation and not a rented accommodation on lease. The matter remained under correspondence between the applicant and the various authorities.

6. The impugned orders have been assailed on diverse grounds mentioned in para 5 and its sub paras. We would be dealing the grounds which have been stressed during arguments

by the learned counsel for applicant a little later in this order. The respondents have resisted the claim of the applicant and have filed a detailed and exhaustive reply to the O.A. They have taken a preliminary objection regarding the jurisdiction of this Tribunal to entertain this application and also regarding the limitation and have stated that the O.A. deserves to be dismissed on these counts itself. It is averred in the reply that if the Bank takes an accommodation on lease basis as per the entitlement of the concerned employee and the rent is directly paid to the landlord, it does not alter the position so long the accommodation is provided by the Bank to its employee and surrender or possession by the applicant directly from the land owner, does not make any difference., As regards the balance amount of Rs. 800/- which was said to be paid by the applicant the same was for the additional accommodation beyond the entitlement of the wife of applicant. The applicant was residing with his spouse in an accommodation taken on lease by the SBI where the wife of the applicant is employed and in accordance with the rules in force the Government servant is not entitled to HRA. The SBI is an autonomous public sector undertaking of Government of India. The wife of the applicant did not get any HRA from the SBI for the reason that the entire family was residing in the accommodation provided by the Bank.

7. The further defence of the respondents is that the applicant was residing with his wife in an accommodation taken on lease by the SBI and, therefore, the action of the respondents in issuance of Annexures A/1, A/2 and A/3 is perfectly legal and

valid and in consonance with the service law jurisprudence. The applicant is not entitled to grant of HRA as he has been residing with his spouse. The accommodation made available to her by the SBI which is an autonomous undertaking of Government of India. The grounds have been generally denied and the rules position has been elaborated, therefore, the OA may be dismissed with costs. A short rejoinder has been filed to the reply of the O.A.

8. We have heard the elaborate arguments advanced by the learned counsel for both the parties and have bestowed our earnest consideration to their submissions, pleadings and the records of this case as well as the rules position thereof.

9. The learned counsel for the applicant has reiterated the facts and the grounds mentioned in the pleadings of the applicant. He has placed reliance on the decision of Bombay Bench of Tribunal in S.G. Rajarshi Vs. Union of India and Others reported in (1995) 25 ATC 761 and has submitted that the applicant was fully entitled for grant of the HRA. He has also submitted that in the alternative, no recovery can be made for such over payment as per the settled law in this regard and for that purpose he placed reliance on the verdict of the various Courts in K.R. Raghu Nandan Vs. Government of India and Ors. Reported 1999 (1) SLJ CAT 609. He has drawn our attention and has submitted that in case of wrong pay fixations when any over payment has been made, the various courts including the

Apex Court have categorically held that no recovery of over payments is to be made until there is any misrepresentation on the part of the applicant. He contended that no recovery whatsoever could have been affected against him for recovering the amount of HRA. Per contra, the learned counsel for the respondents has submitted that as per the rules regarding payment of the HRA, the applicant was not at all entitled for the HRA. He has submitted that he himself was disbursing officer and drawn the HRA. He has also submitted that at one occasion when the HRA had stopped the matter was represented by the applicant himself and it was continued. Thus, it is not a case where the applicant had absolutely no knowledge regarding the payment of the HRA. He has also submitted that HRA is not a part of the pay and cannot be equated with the over-payment made due to wrong fixation. He has also submitted that once the applicant was residing in the same accommodation which was occupied by the wife of the applicant, he is not entitled to HRA at all, therefore, the applicant has no case worth interference by this Tribunal and the very O.A . is mis-conceived.

10. We have considered the rival submissions made on behalf the parties. There are two primary issues involved in this case for adjudication. The first issue is regarding the admissibility of the very HRA to the applicant and the second issue is as to whether any recovery of the amount already paid as HPA can be made. The second issue is required to be dealt with only in case the first issued is answered in negative.

11. Taking the issues in seriatim before adverting to the crux of the matter, we find it imperative to extract the FPSP Part (V) Rule 5, which deals with the conditions under which an employee is disallowed HRA, as under :-

> " A Government servant shall not be entitled to house rent allowance if-
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> (i) he shares, Govt. accommodation allotted rent-free to another government servant or
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> (ii) he/she resides in accommodation allotted to his/her parents/son/daughter by the Central Government, State Government, an autonomous public undertaking or semi-Government organisation such as a Municipality, Port Trust, Nationalised Banks, Life Insurance Corporations, etc.
>
> (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, Port Trust, etc, whether he/she resides in that accommodation or he/she resides separately in accommodation rented by him/her."

12. The case of the applicant falls in sub-clause (iii) of the aforesaid part. The learned counsel for the applicant has placed reliance on S.G. Pajarshi's case (supra) and has submitted that the same squarely applies to the case of applicant. The applicant was fully entitled for grant of HRA since his wife was neither allotted any government accommodation nor the SBI is covered under the definition of Semi Government Organisation. On the other hand the learned counsel for respondents has cited judgement of the Full Bench of the Tribunal in case of All India Postal Employees Union & Anr. 2003(3) ATJ 419 and has urged that as per the doctrine of precedents, the law laid down by the larger bench would prevail over the judgement of a smaller bench.

13. We have carefully waded the aforesaid judgements and are of the firm opinion that the full bench has settled the controversy as regard the first issue involved in this case. However, the consistent plea of the applicant has been that he arranged for the accommodation. This fact has not been negatived but, it is also admitted that every time the SBI entered into a lease agreement with the owner of the said accommodation. Certain portion of the rent was directly paid to the land owner by SBI and also the wife of the applicant was not paid any HPA. If that be so, the contention put forward on behalf of the applicant would not make any difference and it could be safely taken that the said accommodation was provided by the SBI.

14. The applicant had admittedly been residing in the same accommodation, which was in occupation of his wife and did not make payment of any rent for the same. It also seems that said accommodation was of a higher standard than that of entitlement of his wife and, therefore, certain extra rent was required to be paid. Therefore, we have no hesitation in following the decision given by the full bench of the Tribunal in case of All India Postal Employees Union & Anr. (supra) and therefore, we hold that the applicant was not entitled for grant of HRA.

15. Now examining the issue from yet another angle, the purpose of giving HRA is to compensate the employee who is deprived of an accommodation. If the spouse of the Government servant is allotted Government accommodation then there is no question of compensating such an employee. It has been held by

the Supreme Court that HRA is not part of wages. In para 7 in the case of Director, Central Plantation Crops. Research Institute, Kesaragod v. M. Purushothaman, reported in AIR 1994 SC 2541 dealing with the concept of HRA made the following pertinent observations (para 7) :

> "We are afraid that the Tribunal is not right in including the HRA in the definition of wages. The Fundamental Rule 9(21) (a) which is applicable to the respondents-employees defines "Pay" as follows:-
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> "9(21)(a) Pay means the amount drawn monthly be a Government servant as -
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> (i) the pay, other than special pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre; and
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> (ii) overseas pay, special pay and personal pay; and
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> (iii) any other emoluments which may be specially classed as pay by the President."

16. It is only an ingenuity brought out by the applicant in claiming some benefits which the applicant neither deserve in law nor in equity. When his spouse is in occupation of Government accommodation, which is shared by the applicant, the applicant cannot enrich himself unjustly by claiming HRA and in the process put him in a better position than their counterparts in other the Government Organisations. The interpretation of the provision in the manner suggested by the learned counsel for applicant would give him some thing, which

is prohibited by law for the cogent reasons. This will clearly lead to absurd and anomalous situation and no such interpretation can be given which leads to absurdity. One may conclude by quoting the following principles stated by Lord Shaw in the following words :

> "Where words of a statute are clear, they must, of course, be followed but in their Lord-ships' opinion, where alternative constructions are equally open that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system." (Shannon Realties Ltd. v. St. Michel (Ville De), 1924 AC 185 (PC) pp. 192, 193).

Thus we find ourselves unable to subscribe to submission made on behalf of the applicant and reach to an irresistible conclusion that the applicant was entitled for grant of HRA and there is absolutely no infirmity or arbitrariness in the action of the respondents in issuing the impugned orders.

17. Now, turning to the second issue. We have perused the enormous rulings relied upon by the learned counsel for the applicant but we are afraid to notice that none of them is direct on the point. The decision cited relate to the pay fixation done under mistake and overpayment thereof sought to be recovered. Firstly, the facts of the case are quite different. Secondly, in all those cases, the condition was that that there was no misrepresentation on the part of the employees. But such is not the situation in the instant case. In the present case the applicant was residing in the accommodation allotted to his wife and there is no question of any mistake or misrepresentation. The applicant very well knew law relating to he conditions of

making payment of HRA. He should have also known that once he is not paying any rent, how the question of grant of HRA would arise. In fact, at one occasion, the respondents endeavoured to stop the payment of HRA but the same was continued at his insistence and and instance thus, it can not be said that there was no representation for payment of HRA to him. Thus we are of the firm opinion that none the case law cited by learned counsel for the applicant applies or support his case.

18. The upshot of the aforesaid discussion is that the Original Application has no force and sans merits. The same fails and stands dismissed. The rule issued earlier is discharged forthwith. In the facts and circumstances, the parties shall bear their own costs.

(A.K.Bhandari)
Administrative Member

(J.K.Kaushik)
Judicial Member

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