

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 28/2000
T.A. No.

199

DATE OF DECISION 20/4/2001

SWAROOP KRISHNA AGRAWAL Petitioner

Applicant in person

Advocate for the Petitioner (s)

Versus

VOI & OTHERS

Respondent

MR. L. N. BOSS

MR. S. PAREEK

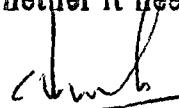
Advocate for the Respondent (s)

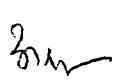
CORAM :

The Hon'ble Mr. A.K. MISRA, JUDICIAL MEMBER

The Hon'ble Mr. N.P. NAWANI, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal? No.


(N.P. NAWANI)
Adm. Member


(A.K. MISRA)
Judl. Member

In the Central Administrative Tribunal, Jaipur Bench,
Jaipur

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Date of Order : 20.4.2001

O.A. No. 28/2000

Swaroop Krishna Agarwal S/o Late Shri B.P. Agarwal, aged 59 years, R/o D-33, Malviya Nagar, Jaipur and at present Judicial Member, Central Administrative Tribunal, Jaipur Bench, Jaipur.

..... Applicant.

Versus

1. Union of India through Secretary to the Government of India, Ministry of Personnel, Pension & Public Grievances, Department of Personnel & Training, Central Secretariat, New Delhi.
2. Registrar, Central Administrative Tribunal, Principal Bench, Faridkot House, Copernicus Marg, New Delhi.
3. Registrar, Central Administrative Tribunal, Cuttack Bench, Cuttack.
4. Registrar, Central Administrative Tribunal, Allahabad Bench, Allahabad.
5. Registrar, Central Administrative Tribunal, Jaipur Bench, Jaipur.

..... Respondents.

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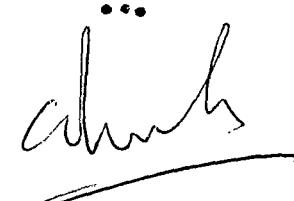
Applicant present in person.

Mr. L.N. Boss, present for the respondent No. 1.

Mr. S. Pareek, present for the respondents No. 2 to 5.

...

for



CORAM :

HON'BLE MR. A.K.MISRA, JUDICIAL MEMBER
HON'BLE MR. N.P.NAWANI, ADMINISTRATIVE MEMBER

O R D E R

Per Hon'ble Mr. A.K.Misra, Judicial Member :

The Applicant, who is presently a Judicial Member of Central Administrative Tribunal, Jaipur Bench, Jaipur, had filed this Original Application with the prayer that the orders dated 16.7.1999 (Annexure A-1) issued by the respondent No. 1, dated 20.7.1999 (Annexure A-2), issued by the respondent No. 2 and the Audit Objection (Annexure A-3), be quashed and declared illegal. The applicant had also prayed for in interim relief seeking a direction against the respondents not to recover the amount in pursuance of the impugned orders Annexures A-1 and A-2.

2. After the case was considered the same was admitted and notices were ordered to be issued to the respondents. The operation of the impugned orders was stayed and the respondents were directed not to make any recovery from the applicant till further orders.

3. The respondent No. 1 filed a reply to which a rejoinder was also filed by the applicant. Other respondents did not file any reply.

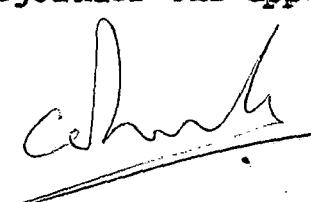
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4. It is contended by the respondents that this Tribunal has no jurisdiction to hear the case of a Member because the Jaipur Bench has only two Members, out of which, one is the applicant. The applicant was wrongly paid House Rent Allowance from 15.11.1997 to 20.4.1998 amounting to Rs. 18,368/- and, therefore, the same amount is being recovered. The respondents have a right to correct the mistake committed by them in wrongly paying the House Rent Allowance. It is also stated by the respondents that if the House Rent Allowance has been wrongly sanctioned to the applicant and has been paid to him that does not mean that the applicant had a right to receive and retain the same. The applicant had in fact been living in Circuit House run by the Government of Orissa and thus, he was living in a accommodation and was, therefore, not entitled to have House Rent Allowance. The objection raised by the Audit is perfectly valid and the amount is being recovered as per the provisions in this regard. A Member is entitled to House Rent Allowance at the rate of 15% of his pay only when no Government accommodation has been provided to him. The Circuit House in which the applicant was residing, was highly subsidised Government accommodation and, therefore, the applicant was not entitled to any House Rent Allowance. The order of the respondents is neither arbitrary nor against the provisions of law. Hence, the same cannot be questioned. The O.A. bears no merit and deserves to be rejected.

5. In the rejoinder the applicant has stated that

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there was no Central Pool Accommodation at Cuttack for being provided to the applicant. Moreover, the applicant was paying ~~rent~~ for the accommodation which he was occupying in the Circuit House. In these circumstances, he was entitled to get House Rent Allowance in terms of Rule 12 of the Central Administrative Tribunal (Salaries and Allowances and Condition of Service of Chairman, Vice Chairman and Members), Rules, 1965, (for short 'the Rules') and has rightfully been paid the allowance.

6. We have heard the learned counsel for the parties and have gone through the records. The controversy is very limited in the instant case, however, few bare facts are to be reproduced for purposes of clarity.

7. The applicant on being appointed as Judicial Member, Central Administrative Tribunal (for short 'CAT'), Bench at Cuttack and resumed the charge on the post of Judicial Member on 17.11.1997 and had remained there as a Member up to 4.5.1998 whereafter he was transferred to Allahabad Bench. During the period of his stay, the applicant stayed in the Circuit House. As per the allegations in the O.A. the applicant was paying 3% of his pay in addition to the normal charges which are paid by the occupant of the Circuit House, to the Circuit House authorities. However, the internal audit, raised an objection of wrong payment of House Rent Allowance to the applicant on the ground that applicant was provided Government accommodation in the Circuit House. Hence,

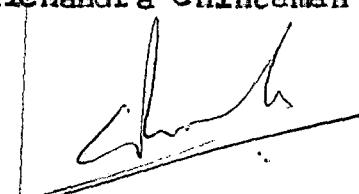
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the amount is recoverable. The action of the respondents has been challenged by the applicant on the ground that no show cause notice was given to him before initiating the proposed action, as per rules, a Member is entitled to House Rent Allowance at the rate of 15% of his pay when general pool accommodation admissible to an officer of the rank of a Secretary to the Government of India stationed at Delhi, is not provided to him and since the applicant was not provided any central pool accommodation of his status, therefore, the accommodation of the Circuit House cannot be termed as Government accommodation in terms of Rule 12 of the said Rules. The action of the respondents is discriminatory in nature because in the past many learned ~~Vice~~ ^{and} Chairman, Members had stayed in the Circuit House during their tenure and were granted and paid House Rent Allowance in terms of the Rules and the action of the respondents is arbitrary and against the provisions of Rules. Hence, the Original Application.

8. First of all, it would be useful to examine whether this Tribunal has jurisdiction to entertain the present Original Application filed by a Member of the Tribunal. In our opinion, the Tribunal has jurisdiction. The claim of the applicant cannot be thrown out on the ground that Jaipur Bench has only two Members and applicant is one of them. The basic question remains whether the grievance of the Member of the Tribunal can be entertained and decided by the Tribunal itself. In (1997) 35 ATC 222) a Full Bench case rendered by CAT, Mumbai Bench in Bhalchandra Chintaman Goadgil Vs. UOI & Others

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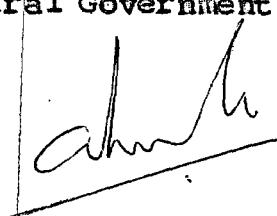


it was held that the Tribunal has jurisdiction to entertain the application filed by a retired Vice Chairman of the CAT, therefore, the Tribunal has jurisdiction to entertain the Original Application of a Member relating to his grievance with service conditions and actions thereunder. The only safeguard which is required to be taken is that he may not associate himself in hearing ^{of} the said matter. Obviously, in such cases no Member would be hearing his own cause but when his cause is heard by any other properly constituted Bench then it does not lie in the mouth of the respondents to argue that the Tribunal has no jurisdiction. Even in L.Chandra Kumar's case (reported in 1997 SCC (L&S) 577), Hon'ble the Supreme Court has held that the Tribunal is the Court relating to service matters. of first instance. Therefore, keeping this principle in view we are of the opinion that when the grievance of a Member is raised by ^{him} before the Tribunal in the shape of O.A. the same is entertainable and is to be heard as per law. In view of this, the objection raised by the respondents is hereby rejected.

9. For consideration of the ~~same~~ facts/it would be useful to reproduce Rule 12 of the said Rules which reads as follows :-

"12. Accommodation (1) Every person appointed to the Tribunal as a Chairman, a Vice-Chairman or a Member shall be entitled to the use of an official residence from the general pool accommodation of the type admissible to an officer of the rank of a Secretary to the Government of India stationed at Delhi on the payment of the licence fee at the rates prescribed by the Central Government from time to time.

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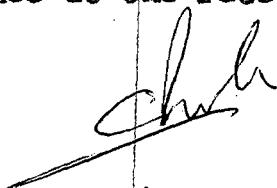


(2). When a Chairman, a Vice-Chairman or a Member is not provided with or does not avail himself of the general pool accommodation referred to in sub-rule (1) he may be paid every month an allowance of an amount equal to fifteen percent of his pay.

(3). Where the Chairman, a Vice Chairman or a Member occupies an official residence beyond the permissible period he shall be liable to pay additional licence fee or penal rent, as the case may be, and liable to eviction in accordance with the rules applicable to Secretary to the Government of India belonging to the Indian Administrative Service.

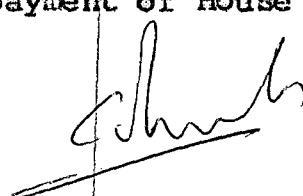
10. From the foregoing rules, it would appear that when a Member is not provided general pool accommodation as per his entitlement or does not avail himself of such accommodation he may be paid an allowance at the rate of 15% of his pay per month. Admittedly, the applicant was not provided with any General Pool Accommodation at Cuttack, what to talk of General Pool Accommodation of his own entitlement. Circuit House is meant for the officers for staying therein if they are not in a position to immediately shift into any other accommodation. They are expected to pay at the fixed rate for the initial occupation for limited number of days as per the orders of the Government. Exceeding that period, they are subjected to additional charges. In this case, applicant was paying 3% of his pay in addition to the normal charges of the room paid by him to the Circuit House authorities. This allegation has not been controverted by the respondents. Simply saying that the accommodation in the Circuit House is highly subsidised accommodation is not enough to deprive a Member of his entitlement of allowance at the rate of 15% as mentioned in the said rule.

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If the applicant had not at all been paying any charges for his accommodation in the Circuit House to the State Government, it would have been absolutely a different case but the applicant was paying to the Circuit House authorities charges for the accommodation in Circuit House as per ~~then~~ ^{then} ~~invogue~~ rules and ~~Government~~ Orders, therefore, it cannot be said that the applicant was not entitled to any allowance under the rules. As per the entitlement the applicant was to be allotted a Bunglow of VII category in the minimum which contains three bed rooms and many other accommodations. Could one room in the Circuit House be compared as an accommodation of this magnitude. If not then how the Member can be said to be in occupation of a Government accommodation of his entitlement. If the answer of this question is in negative then certainly applicant's living in Circuit House could not deprive him of his entitlement of 15% allowance as per rules. The Government as per rules is giving allowance even to those employees who are living in their own house as per the percentage indicated in the rules. Therefore, it is not appealing to reasons that when a Member is paying for his accommodation in Circuit House to the concerned authorities in the shape of charges, he is not to be paid any allowance as per the rules; can his case be worse than the official who is living in his own house and is being paid the House Rent Allowance. It appears that while raising an objection the Auditors had lost sight of the relevant rule 12 of the Rules which governs the case of payment of House Rent Allowance to a Member who

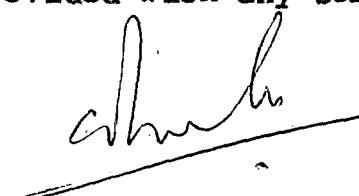
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has not been provided with general pool accommodation.

11. It is also ~~not~~ alleged by the applicant that he had disclosed the fact of his staying in the Circuit House and paying for the same when a declaration was sought from him to this effect, as mentioned by him in Para 4.3 of his O.A. If inspite of this declaration the applicant has been sanctioned House Rent Allowance in terms of Rule 12 of the Rules then no fault can be found with the applicant. ~~Auditors~~ may have raised the objection regarding wrong payment of rent but the matter was required to be examined by the respondent No. 1 in its real perspective which, in our opinion, has not been done. If staying in the Circuit House was enough to deprive a Member of his entitlement then at the very first instance no sanction should have been issued relating to the said allowance but when the sanction has been issued it will be presumed that it was issued after examining the facts as mentioned in the declaration and subsequent audit objection in this respect, cannot enable the respondents to initiate action for recovery of the money without providing an opportunity to the applicant to show cause and to defend himself in this regard. Assuming that making a representation by the applicant against such proposed action, was a sufficient notice to the applicant even then the respondents have to justify their action in this regard. Had it been the intention of the legislation that the Member would not be entitled to any allowance if he has been provided with any sort of Government

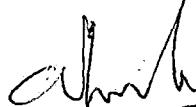
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accommodation including the accommodation in the Circuit House then the Member's entitlement as regards ^{to} residential accommodation, would not have found place in the said rules. But, Rule 12 specifically mentions that a Member is required to be provided a general pool accommodation equal to the entitlement of a Secretary posted at Delhi, clearly goes to show that any other accommodation less than the one indicated would be no accommodation in terms of the Rules. Therefore, the applicant's staying in the Circuit House and paying for the same in terms of the Government order, does not disentitle him from getting allowance in terms of the Rule 12. In our opinion, the applicant has rightly been paid House Rent Allowance and the same cannot be ordered to be recovered from him on the ground that he was staying in the Circuit House. The action of the respondents in this regard is in our opinion, arbitrary and against the rules and deserves to be quashed. The Original Application deserves to be accepted.

12. The Original Application is, therefore, accepted and the impugned orders dated 16.7.1999, Annexure A-1, 20.7.1999, Annexure A-2 and the Audit Objection Annexure A-3, are hereby quashed and set aside. Each party, however, is left to bear its own costs.


(N.P. HAWANI)
Adm. Member


(A.K. MISRA)
Judl. Member

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