

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No.364 of 1998

Jabalpur, this the 12th day of March, 2003.

(Hon'ble Mr. Justice N.N. Singh- Vice Chairman
Hon'ble Mr. R.K. Upadhyaya- Member (Admnv.)

1. S.L. Dewangan,
General Secretary, Central Excise
Executive Officer's, Group 'C'
(Inspectors) Association Central
Revenue Building, Raipur (MP)
2. S.V. Chitnis S/o late Shri V.A.
Chitnis, age 45 years, working as
Inspector Central Excise in the
Office of Assistant Commissioner
Customs & Central Excise, Bhilai (MP)

-APPLICANTS

(By Advocate- Mr. B.L. Nag)

Versus

1. Union of India represented
by the Secretary, Govt. of India,
Ministry of Finance, Department
of Revenue, North Block, New Delhi.
2. The Commissioner,
Customs & Central Excise
Civil Lines, Raipur (MP)
3. The Assistant Commissioner
Customs & Central Excise Bhilai-I
M.P.
4. The Assistant Commissioner
Customs & Central Excise
Bhilai-II (MP)

-RESPONDENTS

(By Advocate- Mr. P. Shankaran)

O R D E R

By R.K. Upadhyaya, Member (Admnv.):

The applicants in this O.A. have sought direction to extend the benefit of judgement dated 20.9.1995 of Mumbai Bench of this Tribunal in OA No.1254/1994. They have also asked for refund of recovered amount of penal rent alongwith interest thereof.

Consent

2. It is claimed that applicant No.1 is the General Secretary of the Central Excise Executive Officers Group 'C' (Inspectors) Association, Raipur. The applicant No.2 is stated to be an Inspector of Central Excise in the office of Assistant Commissioner Customs and Central Excise, Bhilai at the time of filing of this Original Application in May 1998. It is stated by the applicants that they were posted on duty at Bhilai under respondents No.3 and 4. They were allotted residential quarters owned by Bhilai Steel Plant of Steel Authority of India Limited (SAIL for short). The learned counsel for the applicants stated that the decision of Mumbai Bench of this Tribunal in OA No.1254/1994 has been implemented by the respondents as per their order dated 4.1.1996 (Annexure A-1). Therefore, similar benefits should be given to the applicants and this Tribunal should hold that the applicants are entitled to house rent allowance.

3. In the reply, the respondents have stated that the residential quarters belonging to M/s Bhilai Steel Plant of SAIL, a Government of India undertaking are placed at the disposal of the Central Excise Department at Bhilai. This residential accommodation is allotted to the applicants at fixed rent below 10% of their pay during their tenure of posting at Bhilai. According to the respondents, the residential accommodation for the Central Excise Officers posted at Bhilai is obtained from two channels, namely, C.P.W.D. quarters as well as quarters owned by the Bhilai Steel Plant, Bhilai, a unit of SAIL, a Government of India undertaking. Bhilai Steel Plant quarters are placed at the disposal of the Central Excise Department, as can be seen from such sample letter dated 13.4.1989 (Annexure R-1). This letter

Concluded

addressed to Assistant Collector, Central Excise, Bhilai states "As per your request the following quarters are hereby allotted to Assistant Collector, Central Excise Bhilai, for residential purpose of your employees." As per terms and conditions of allotment (Annexure R-2), the department will arrange payment of monthly bills on account of rent/electricity and other charges. The respondents have submitted a list as Annexure R-3 showing the names of the employees, who have been allotted these quarters of Bhilai Steel Plant indicating their basic pay and the amount of lease rent recovered from them. This indicates that the standard lease rent recovered is less than 10% of the basic pay, which is much less than the market rent for similar accommodation. It is further stated by the respondents that any officer seeking a quarter is required to approach the respondent department and not Bhilai Steel Plant. In view of these facts, it has been stated by the respondents that the facts before Mumbai Bench of this Tribunal in OA No.1254/94 were entirely different. In the case before Mumbai Bench, an Inspector of Central Excise Department was posted as Factory Officer and was allotted residential quarter by M/s Ballarpur Industries Limited, Ballarpur under Rule 229 of Central Excise Rules, 1941. The residential quarter was never placed at the disposal of the respondent department nor was the officer required to approach the Assistant Commissioner, Central Excise, Incharge of the Factory for allotment of the quarter. Therefore, that decision is clearly distinguishable. The respondents have further invited attention to the Rule 5(c) of House Rent Allowance/CCA Rules, which provide as under:-

"(c) A Government servant shall not be entitled

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to house rent allowance if-

- (i) he shares Government accommodation allotted rent-free to another Government servant; or
- (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 Corporation of India, etc.,

The respondents have placed reliance on the order of Hyderabad Bench of this Tribunal dated 5.7.1996 in OA No.945/1994 in the case of D.Yerrayya & others Vs. The Telecom District Manager & others, 1996 (2) ATJ 365 wherein it has been held that where the accommodation is either provided by the Government or through their active assistance, co-operation and help, the accommodation is to be treated as the one provided by the Government and such allottees are not entitled for House Rent Allowance. The respondents have further stated that if the claim is entirely based on the judgement of Mumbai Bench of this Tribunal dated 20.9.1995, even this Original Application filed in May 1998 is beyond the period of limitation and deserves to be dismissed as barred by limitation, besides being misconceived and devoid of any merits.

4. After hearing the learned counsel of both the parties and after perusal of the records, we are of the opinion that the decision in the case of Mumbai Bench of this Tribunal in OA No.1254/94 dated 20.9.95 is clearly distinguishable as the facts indicate that the officer in that case was allotted residential accommodation by a private party (not Government undertaking) as per requirements of Rule 229 of Central

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Excise Rules in view of the fact that the employee in that case was posted to look after the work of the said Company. The respondents in this case have stated that the quarters given by the Bhilai Steel Plant to the respondent department are pooled alongwith the CPWD quarters. The allotment of quarters is made to the officers posted at Bhilai. It has also been explained by the respondents that the applicant No.2 was posted in the Central Excise, Division-II, Bhilai, which has jurisdiction over Units other than Bhilai Steel Plant. Therefore, on facts the case of the applicants is entirely different than those of the employees before the Mumbai Bench of this Tribunal. A perusal of the order of Mumbai Bench in OA No.1254/94 indicates that the Bench at Mumbai has placed reliance on the decision of Patna Bench of this Tribunal in OA No.83/1992 decided on 09.08.1993. In the case before Patna Bench in OA No.83/92, it was submitted by the applicant that the Government had not provided any official accommodation to the applicants. His submission was that the accommodation given by the SAIL in terms of Rule 229 cannot be said to be an official accommodation. It was on those facts that the Patna Bench of this Tribunal had held that "there is nothing in the rules to permit the authorities to stop payment of house rent allowance in cases where accommodation have been provided not by the Government, but by any other Govt. agency like SAIL etc." We are, therefore, of the view that the view taken by the Patna Bench as well as Mumbai Bench of this Tribunal are based on the facts of those cases, which are not at par with the case of these applicants.

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4.1 We are in agreement with the view taken by the Hyderabad Bench of this Tribunal in the case of D. Yerrayya & others (supra) wherein this Tribunal has held as follows:-

"14. From the study of the above citations, it is clear that law laid down in this connection is that accommodation provided to the Govt. servants directly by the autonomous corporation undertakings by the direct effort of the allottees cannot be construed as accommodation provided by the Govt. Department and also cannot be treated as accommodation procured through the active assistance and help of the concerned Govt. Department. Under the above circumstances, the Govt. servants are entitled for HRA. The converse of that if the accommodation is either provided by the Govt. or through their active assistance, co-operation and help, the accommodation is to be treated as the one provided by the Govt. and such allottees are disentitled for HRA.

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21. From the above discussion, there can be no doubt in the mind of anybody that the quarters were allotted to the Dept. first and later the re-allotment was done to individual employee. Even if the re-allotment is made by the VSP, it is to be treated as an allotment made through the Department in view of what is stated as above. Hence, it was to be held that the applicants were provided with quarters by the Govt. through their active assistance and help and in that view, the applicants cannot claim HRA."

The decision of Hyderabad Bench of this Tribunal squarely covers the issue before us. Respectfully following the said decision of ^{co-}ordinate Bench of this Tribunal we hold that the applicants are not entitled to House Rent Allowance in this case. Therefore, they are not entitled to any refund of any amount already recovered. The respondents will be at liberty to recover any amount, which is recoverable from the employees.

4.2 Before parting, he may also take note of the provisions contained in Rule 45-B of Fundamental Rules, wherein Clause III provisions relating to determination of standard licence fee of a residence are given. The

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The standard licence fee has been indicated not for Government accommodation, but also lease residences or "residence gifted or leased on a nominal licence fee or a licence fee-free basis to Government, the standard licence fee for the residence shall be calculated as in the case of residence owned by the Government." This indicates that requisitioned residence or leased residence acquired by the respondents are at par with Govt. accommodation so far as the employees are concerned.

5. For the reasons mentioned in the preceding paragraphs, this Original Application is dismissed without any order as to costs.

(Signature)

(R.K. Upadhyaya)
Member (Admv.)

(Signature)

(N.N. Singh)
Vice Chairman

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पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....
पतिलिपि अंगोक्षित:-

- (1) सचिव, उच्च न्यायालय, नगर पुरोसिस्थान, जबलपुर
- (2) उच्च न्यायालय, जबलपुर के कार्यालय B.L. Nayak, Adm
- (3) प्रमुख, न्यायालय, जबलपुर के कार्यालय P. Shankaran, Adm
- (4) न्यायालय, जबलपुर न्यायाधीश सूचना एवं आवश्यक कार्यवाही हेतु

(Signature)
उप निदेशक 20/8/03

Issued
on 21.3.03
PS