

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**

**JAIPUR BENCH, JAIPUR**

**Jaipur, the 10<sup>th</sup> February, 2006**

**ORIGINAL APPLICATION NO. 345/2005**

**CORAM:**

**HON'BLE MR. M.L. CHAUHAN, MEMBER (JUDICIAL)**

**D. Banerjee son of Shri Late S. Banerjee aged 49 years resident of Ram nagar, Bhawni Mandi posted as Superintendent P. & I Cell, Central Bureau of Narcotics, Bhawani Mandi District Jhalawar. Rajasthan.**

**....Applicant**

**By Advocate: Mrs. Namita Parihar Proxy counsel to  
Mr. R.C. Joshi**

**Versus**

- 1 Union of India through Secretary Revenue, Ministry of Finance, Department of Revenue, New Delhi.**
- 2 The Narcotics Commissioner of India, 19, the Maal Morar, Gwalior, M.P.**
- 3 The Dy. Narcotics Commissioner, Mahaveer Nagar 1, Jhalawar Road, Kota. Rajasthan.**

**....Respondents.**

**By Advocate : Mr. Hemant Mathur.**

**ORDER (ORAL)**

**The present application has been filed against the**

order dated 06.07.2005 (Annexure A/1) read with order dated 30/31.10.2003 (Annexure A/2) passed by the Dy. Narcotics Commissioner vide which recovery of Rs. 63,425/- has been ordered against the applicant in the monthly installments of Rs.2000/- per month. It is these orders which are challenged in this OA and the applicant has prayed that these orders may be declared illegal and the respondents be directed not to recover the aforesaid amount from the applicant.

2 Briefly stated, facts of the case are that the applicant was appointed as Inspector in the year 1979 and thereafter he was promoted as Superintendent in the year 1995 in the Narcotics Department. The applicant while working as Superintendent was posted at Headquarter office at Gwalior w.e.f. 18.05.1998 to 22.11.2002. It is the case of the applicant that during the aforesaid period, he stayed from 18.5.1998 to 31.5.1998 at the resident of his friend, Shri P. Gopinath, who was working as P.A. to Narcotics Commissioner. After that date, the applicant rented a room in the House No. 49 situated at River View Colony, Gwalior, which was owned by Shri Moti Lal son of Shri Ganga Ram @300/- per month. According to the applicant, the said premises was vacated by him on 31.12.2002 and the applicant has also annexed the copy of the certificate from the landlord dated 31.12.2002 (Annexure A/3) thereby certifying that the applicant has

rented the aforesaid premises w.e.f. June, 1998 to December, 2002. It is the case of the applicant that vide letter dated 05.06.2003, the applicant was called upon to submit his comments on a complaint filed against him, copy of which is enclosed for his perusal, and also to explain the reasons for not informing the department for deduction of House Rent Allowance from the salary during the period the applicant occupied the Govt. Accommodation/Guest House facility during his posting at Gwalior. It is further stated that subsequent upon receipt of the said letter, an explanation dated 04.08.2003 (Annexure A/5) was submitted by the applicant alongwith copy of certificate of the landlord. The grievance of the applicant is that without conducting any inquiry, without hearing the complainant and without verifying the facts from the landlord, the Respondent No. 2 has passed the impugned order dated 30/31.10.2003 (Annexure A/2) thereby informing the respondent No. 3 to recover the amount of Rs.63,425/- from the applicant. The said order was conveyed to the applicant vide order dated 11.11.2003 (Annexure A/2). It is further pleaded that the applicant made a oral request to the Narcotics Commissioner to review the matter and to verify the position from the landlord. However, on his request, no recovery was effected but subsequently after a lapse of about two years, the respondents have passed the impugned order dated 06.07.2005 (Annexure A/1) whereby the aforesaid amount of Rs.63,425/- was ordered to be recovered @

Rs.2000/- per month. According to the applicant, the reason for recovering the amount is on the premises that he neither applied for Government Accommodation nor has he submitted any rent agreement from the landlord, is wholly untenable as respondent No. 2 who has passed the said impugned order has neither himself submitted any application for Government Accommodation nor he has also submitted any rent agreement from the landlord. Despite this fact, he himself is also drawing HRA. The applicant has further pleaded that there are number of persons who are similarly situated but in their case, no order regarding recovery of HRA has been passed whereas the applicant is being discriminated arbitrarily and without any authority of law. It is on the basis of these facts, the applicant has filed this OA for the aforesaid reliefs.

3 Notice of this application was given to the respondents. The respondents have filed reply. In the reply, the facts, as stated above, has not been disputed. In nutshell, the respondents have submitted that a Sr. Accounts Officer, CBN, Gwalior vide his letter dated 27.11.2002 forwarded a written complaint received by his office to the Narcotics Commissioner. In the said complaint, amongst other things, it was alleged that applicant was staying in Bungalow No. 21 of the Department and that HRA paid to the applicant should be recovered. It is said that the basis of the said complaint, a

verification was carried out by the then Assistant Narcotics Commissioner, Shri Y.P. Azad, who submitted his report dated 20.06.2003. In the said report, the Assistant Narcotics Commissioner confirmed the following:-

Shri Banerjee, Superintendent was posted at the Hqrs. Office from 18.5.1998 to 22.11.2002.

He resided at Bungalow No. 21, Mall Road, Morar, Gwalior.

An abstract of basic drawn for the relevant period alongwith the details of HRA and transport allowance drawn.

The total HRA drawn for the said period is Rs.63,425/- and transport allowance is Rs.2600/-

4 Shri Y.P. Azad in his report recommended for recovery of a total sum of Rs.66,025/- from the applicant. This recommendation was accepted by Respondent No. 2. Since by the time, the applicant was transferred to Preventive & Intelligence Cell, Bhawani Mandi, Rajasthan under the jurisdiction of Deputy Narcotics Commissioner, Kota, therefore, the office of respondent No. 3 was informed to recover the sum of Rs. 63,425/- and Rs. 2600/- towards transportation allowance from the applicant. The respondents have further stated that vide letter dated 11.07.2003, a clarification was issued to the effect that amount to be recovered from the applicant is Rs. 63,425/- and this amount includes HRA 60,825 and Transportation Allowance Rs.2600/- Regarding the forwarding of the representation of the applicant dated 29.08.2003, pursuant

to the recovery order dated 11.07.2003 and 24.07.2003, the respondents have stated that in the said representation, plea taken by the applicant was that recovery of the said amount is totally unjustified and should be canceled. In the said representation, the applicant submitted that during the period w.e.f. 18.5.1998 to 31.5.1998, he stayed with Shri P. Gopinath, PA to Narcotics Commissioner and that during the period 18.5.1998 to 22.11.2002 his family was residing at Calcutta and he had taken rental accommodation at River View Colony. The applicant further stated that he had never applied for any government accommodation and that as per the directions of the then Narcotics Commissioner, he used to visit Bungalow No. 21 daily in the morning and evening and he had not shifted his luggage to the said Bungalow except about 100 books. The applicant further submitted that he used to sleep in the house at River View Colony and used the Bungalow as a place for exercise in the morning and to play games in the evening and also as a reading room and a place for get together. The applicant further stated that he was not allotted any government quarter and since he had rented a private accommodation, there was no question of any irregular payment of House Rent Allowance and that one of the complainant, Shri Pushpagadan, had been reprimanded by him for gambling and unauthorised use of government vehicle. With this submission, applicant prayed that the recovery of the amount of Rs.66,025/- was not justified and

should therefore be canceled.

5. The respondents have submitted in their reply that the representation of the applicant was examined after quoting the aforesaid version of the applicant in his representation. In para 6 of the reply, the respondents have given the following reasons for rejecting the representation of the applicant:-

"On the basis of the admission of the applicant in his submission that he had never applied for government accommodation and the facts on record, the Head of the Department i.e., the Narcotics Commissioner rejected the representation of the applicant vide letter F. No. 2/14/Vig/2003-252 dated 31.10.2003."

6. The applicant has filed rejoinder. In the rejoinder, the applicant has reiterated the statement made in the OA. In the rejoinder, the applicant has specifically stated that he had never stayed in the Bungalow No. 21. He has stated in the rejoinder that the alleged complaint is a fabricated document where four signatures has been appended by one single person and the complaint has been started after his departure from Gwalior. The applicant has further pleaded that report is biased. It is also stated by the applicant that the respondents were having no material to form an opinion that the applicant lived in Bungalow No. 21. Only they are relying on technically that the applicant did not applied for government accommodation. The

applicant has specifically stated that the Bungalow No. 21 was used as office of the department which was declared unsafe. Therefore, it was vacated and the office was shifted to the present premises. This building is office building and is not constructed for residential accommodation. Since this building was lying vacant and was being occupied by some unsocial elements and people used to come and consume liquor, the then Narcotics Commissioner, Shri R. Bhattacharjee, instructed the applicant to see that unsocial elements do not use it as a hideout and as per his instructions the applicant used to visit in the morning and evening. The applicant stated that Shri Bhattacharjee was never been contacted by the respondents and even if he is contacted today, the clear picture will emerge out. Thus according to the applicant, in absence of verification of the facts from Shri R. Bhattacharjee, the entire action against him is vitiated.

7. The respondents have filed additional affidavit. In the additional affidavit, the contention raised by the applicant that Bungalow No. 21 was being used as a office and it was declared unsafe has not been denied. In the additional affidavit, the respondents have reiterated that HRA was stopped not only because the applicant was staying in Bungalow No. 21 but also due to the fact that he has not applied for Government Accommodation in terms of OM NO. F-2 (37)E-11(B)/64 dated 27.11.1964.



8 I have heard the learned counsel for the parties and have gone through the material placed on record.

9 From the material placed on record, it is evident that Bungalow No. 21 was initially being used as Office of Department of Narcotics Commissioner, Gwalior. It has come on record that the said building was declared unsafe and the office was subsequently shifted to a new place where it is presently functioning. This fact has been categorically stated by the applicant in his rejoinder, which has not been refuted by the respondents in their additional reply. Thus the premises which was declared unsafe for the Department, how the same could have been allotted to the applicant or to any other officer even if the application for allotment of the said premises is being made by the concerned employee of that department. Be that as it may. As can be seen from the impugned order (Annexure A/2), the reasons given for recovering the amount of Rs.63,425/- which prevail with the authority is reproduced hereunder:-

The instant matter has been examined in length. In light of the instructions laid out in FRSR (Part V) HRS & CCA, wherein it has been set out that the grant of House Rent Allowance is subject to the condition that "those Govt. Servants who are eligible for Govt. accommodation, the allowance will be admissible only if they have applied for such accommodation in accordance with the prescribed procedure, if any, but have not been provided with it in places where due to availability of surplus Govt. accommodation, special

orders are issued by the Ministry of Urban Deveopment from time to time making it obligatory for employees concerned to obtain and furnish no accommodation certificate in respect of Govt. residential accommodation at their place of posting.

2.1 No evidence regarding house on rent agreement/payment has been given by Shri Banerjee to adverse presumptions.

3 It is also revealed from the office records that Shri Banerjee had never applied for Govt. Accommodation which were available during his posting at Hqrs office Gwalior nor have any personal hosue at Gwalior, therefore, his plea do not sustain and his representation dated 4.8.2003 has been rejected by the Narcotics Commissioner in light of facts mentioned above. Shri Banerjee may please be intimated accordingly. In this regard a similarly settled matter pertaining to CCF Office is enclosed for reference.

4 The recovery of an amount of Rs.63,425/- as ordered earlier may kindly be effected under intimation to this office."

10 From the perusal of the portion quoted above, it is clear the basis for recovering the amount of HRA from the applicant is that he has not applied for Government accommodation in terms of the Govt. instructions and that no evidence of House rent has been given by the applicant, leading to adverse assumptions. According to me, the course adopted by the respondents to recover the sum of Rs.63,425/- from the applicant is wholly unjustified and not legally sustainable. So far as the first question is concerned that the applicant has not applied for Government accommodation in terms of instructions contained in FRSR of CCS (CCA), suffice to say that the matter is no longer res-integra. The provisions of para 4 of the OM dated

27.11.1965 came for consideration before this Tribunal in the case of Dr. R.K. Das and others vs. Union of India & Others passed in OA No. 8/2005 dated 17.09.2004 and this Tribunal after relying the judgement of the Apex Court in the case Director, Central Plantation Crops Research Institute, Kesaragod and others vs. M. Purushothaman & Others AIR 1994 SC 2541 has held that HRA can be stopped in terms of provisions contained in Para 4(b)(i) of the OM dated 27.11.1965 and not in terms of Para 4(a)(i) which is procedural in nature. It was further held that it was obligatory on the part of the respondents to make allotment at the first instance even if no application in terms of aforesaid instructions is made by the employee(s) and once allotment is made it is only thereafter that authority can proceed to forfeit the HRA. Having not followed such procedure, it was not legally permissible for the respondents to stop the HRA simply on the ground that the applicant has failed to submit an application for HRA.

11 Regarding second ground taken by the respondents that the applicant has not submitted any evidence regarding House rent and as such adverse inference has to be drawn, it may be stated that the said plea taken by the respondents is wholly misconceived and not sustainable. From the material placed on record, it is evident that applicant remained posted as Superintendent in the Office of Respondent No. 2 at Gwalior for a period w.e.f.

69

18.5.1998 to 22.11.2002. It is an admitted case between the parties that during the said period, the applicant has drawn the HRA and no such complaint was received regarding his staying in Bungalow No. 21. Admittedly the complaint was received when the applicant was transferred to the office of Respondent No. 3. According to the applicant, the said complaint was signed by four persons - one Shri Pushpan and three drivers. According to the applicant, the said complaint has been signed by one Shri Pushpan on his behalf and on behalf of three signatories as he is well conversant about the hand-writing of Shri Pushpan and the said complaint was procured at his back. Reasons for this complaint as given by the applicant to the authorities were that during his tenure as Superintendent at Gwalior, he was reprimanded Shri Pushpan for gambling and unauthorised use of Govt. vehicle. The applicant has categorically submitted in reply to the notice that during the period w.e.f. 18.5.1998 to 31.5.1998, he stayed with Shri G. Gopinath, PA to Narcotics Commissioner and thereafter he hired a rented house. The applicant has obtained certificate of the landlord from June, 1998 to December, 2002 and submitted to the authorities. The applicant has specifically pleaded that since the Bungalow No. 21 was declared unsafe and the office was shifted from that place and further that building was lying vacant and being occupied by unsocial elements as such, Narcotics Commissioner, Shri Bhattacharjee instructed the applicant to see that

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unsocial elements do not use the building as a hideout and as per his instructions the applicant used to visit the building in the morning and evening. This part of the averment has not been controverted by the respondents. In case the respondents were not satisfied with the version given by the applicant, it was incumbent upon them to give him further opportunity to submit additional document/evidence in order to substantiate his plea including evidence regarding payment of rent/rent agreement to the landlord. Thus finding recorded by respondent No. 2 that applicant has not submitted any evidence regarding house rent as such adverse presumption has to be drawn especially when such evidence was not called for is not legally sustainable. It was at the first instance for the respondents to establish that the applicant was residing in Bungalow No. 21 and it is only thereafter that the burden was on the applicant to prove to the contrary. Rather from the facts stated above, it is clear that Bungalow No. 21 was not a residential house but it was previously used as office building which was declared unsafe. The applicant has further stated that he was asked by the then Narcotics Commissioner to visit the said premises so that unsocial people do not occupy the said premises and consume liquor there and it was on account of these instructions that he used to visit that place in the morning and evening. Thus the applicant has satisfactorily explained the allegation of respondents regarding his not residing in Bungalow No.


62

21 and rather his residing in a rented house during the period under dispute. On the face of such version and specific stand taken by the applicant in his reply and even before this Tribunal, it was not legally permissible for the respondents to make recovery of House Rent Allowance from the salary of the applicant. It was incumbent upon them to make further inquiry if the respondents were not satisfied by the reasons given by the applicant thereby giving further opportunity to the applicant and also to place his version and then pass the final order. Having not done so, the respondent cannot be heard to say that since the applicant has not produced any evidence regarding House Rent as such, adverse presumption drawn by the respondents is wholly untenable especially when the applicant was not called upon to submit any such evidence. Thus I am of the firm view that this is an after-thought plea. The version of the applicant that the complaint has been procured after his transfer from the office of Respondent No. 2 at the behest of some of the employees who were against him and more particularly at the instance of one Shri Pushpan, Steno who was reprimanded by him for gambling and unauthorised use of Govt. vehicle cannot be out-rightly rejected. From the material placed on record, the applicant in the OA as well as in the rejoinder has categorically stated that even the authorities can verify the fact and held fresh inquiry at this stage also whether he was residing in Bungalow No. 21 by examining the

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relevant persons and whether he was directed by then Narcotics Commissioner to visit the condemn building in the morning and evening so that the same is not being used by unsocial elements. The respondents have not given reply to this part of averment made by the applicant. Admittedly, the applicant is not having any house at Gwalior nor he was allotted govt. accommodation. Bungalow No. 21 was unsafe and therefore, the office was shifted from Bungalow No. 21 to a new premises. Thus the only conclusion which can be drawn from the material placed on record is that the applicant was living in a hired house for which he was paying rent to the landlord and he has also produced certificate to that effect. From these facts, the only conclusion which can be drawn is that applicant was residing in a private house and not in Bungalow No. 21.

12 For the foregoing reasons, the present OA is allowed. The impugned orders 06.07.2005 and 30/31.10.2003 (Annexure A/1 and Annexure A/2 respectively) so far it relates to the recovery of the amount on account of HRA for the period w.e.f. 18.5.1998 to 22.11.2002 when he was posted as Superintendent at Gwalior are hereby quashed and set aside. No costs.

  
(M.L. CHAUHAN)  
MEMBER (J)

AHQ