

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 42/95

R.A/C.P No.

E.P/M.A No.

1. Orders Sheet. OA-42/95 Pg. 1 to 2
2. Judgment/Order dtd. 06/9/95 Pg. 1 to 5 allowed
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A. 42/95 Pg. 1 to 26
5. E.P/M.P. NIL Pg. to
6. R.A/C.P. NIL Pg. to
7. W.S. NIL Pg. to
8. Rejoinder. NIL Pg. to
9. Reply..... Pg. to
10. Any other Papers..... Pg. to
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI.5

O.A.No. 42/95

Misc.Petn.

C.P. No.

R.Appl:

..... J.K. Paul frs. APPLICANT'S

..... Union of India RESPONDENT'S

..... Mr. J.L. Sankar, Mr. Mohan FOR THE APPLICANTS

..... Mr. S. Ali, Sr. C.G.S.C. FOR THE RESPONDENTS

OFFICE NOTE

DATE

ORDER

21.3.95

Leave granted to the applicants to join in this single application for the reasons stated in paragraphs 6(i) and 6 (iii). Issue notice to the respondents to show cause as to why the application be not admitted and interim reliefs as prayed for be not granted. Returnable on 31.5.95.

Mr. S. Ali, Sr. C.G.S.C. seeks to appear for the respondents, however notice be directly issued to the respondents. The learned C.G.S.C. is requested to file his Memo of appearance in due course.

Member

Vice-Chairman

trd

28.3.95

Memo of appearance has been filed by Mr. S. Ali, Sr. C.G.S.C.

Pdms

Requisites are met
on 24.4.95 & issued
vide no. 1742-44 D. 26.4.95

30.5.95.

Mr. J.L.Sarkar for the applicant.
Mr. S. Ali, Sr. C.G.S.C. for the
respondents.

No show cause reply has been filed.
The question involved is of a legal
question and of importance, Application
deserves to be heard early. Hence
fresh notice to the respondents in the
O.A. Written statement within 8 weeks.
The hearing of the O.A. is expediated.
To be listed for hearing on 5.9.95.

Notice def filed on
R.no. 1 & 3

Fresh notice issued
vide no. 2616-18 D. 22.6.95

Member

Vice-Chairman

trd

Notice def filed
on R.no. 1 & 3: 6.9.95

Mr M.Chanda for the applicants.
Mr S.Ali, Sr.C.G.S.C for the
respondents.

Arguments of both the counsel
heard and concluded. Judgment delivered
in open Court. The application is
allowed in terms of the aforesaid
order. No order as to costs.

11.12.95
copy of Judg/Order
dtd. 6.9.95 issued
to the counsel of
the parties vide
D/NO. 5301-02
Dtd. 15.12.95.

Member

Vice-Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::: GUWAHATI-5.

O.A. NO. 42 of 1995.
~~*.A. NO.~~

DATE OF DECISION 6-9-1995.

Sri J.K.Paul & Ors.

(PETITIONER(S))

Mr M.Chanda

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India & Ors.

RESPONDENT (S)

Mr S.Ali, Sr.C.G.S.C.

ADVOCATE FOR THE
RESPONDENT (S)

THE HON'BLE JUSTICE SHRI M.G.CHAUDHARI, VICE CHAIRMAN.
THE HON'BLE SHRI G.L.SANGLYINE, MEMBER (ADMN.)

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

yes

no

Judgment delivered by Hon'ble *M.G. Chaudhari* Vice-Chairman.

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.42 of 1995.

Date of Order : This the 6th Day of September, 1995.

Justice Shri M.G.Chaudhari, Vice-Chairman.

Shri G.L.Sanglyine, Member (Administrative).

4. Sri Jiten Krishna Paul,
Superintendent.
2. Sri Nandeswar Basumatary, Inspector.
3. Sri Bidhu Bhushan Karmakar, Inspector.
4. Sri M. Paswan, Sepoy.
5. Sri Jatin Choudhury, Sepoy.
6. Sri Subinoy Bhowmick, Superintendent.
7. Sri Dulal Kr. Das, Inspector.
8. Subhamoy Chakraborty, Inspector.
9. Sri Probodh Kr. Bhattacharjee, Inspector.
10. Sri Sudip Deb, Inspector.
11. Sri Swapan Kr, Seal, Sepoy. . . . Applicants.

All the applicants are working under Customs & Central Excise, Shillong posted at BRPL-I & BRPL-II Ranges, BRPL Complex, Dhaligaon, Dist. Bongaigaon.

By Advocate Sri M.Chanda.

- Versus -

1. Union of India,
through the Secretary to the Govt.of India,
Customs and Central Excise,
Department of Revenue,
Ministry of Finance,
New Delhi.
2. The Collector,
Customs & Central Excise,
Shillong,
3. The Assistant Collector,
Customs & Central Excise Deptt.,
Dhubri (Assam). . . . Respondents.

By Advocate Sri S.Ali, Sr.C.G.S.C.

O R D E R

CHAUDHARI J.(V.C)

Although the relief sought is in respect of House Rent Allowances since the question of interpretation of Rule 229 has been raised the matter is placed before the Division Bench.

contd.. 2....

huc

2. The applicants are employees of Customs and Central Excise, Department, Government of India. They are posted at BRPL-I and II Ranges located at Bongaigaon Refinery and Petrochemicals Limited (BRPL Complex), Dhaligaon in the district of Bongaigaon under the control of Assistant Collector, Customs and Central Excise, Dhubri. Thus the applicants are working under the aforesaid agencies. Admittedly the applicants have been provided residential accommodation by the said agency at the place where they are posted.

3. According to the applicants they were being paid House Rent Allowance at the rate prescribed by the Central Government for unclassified cities till May 1992 but the payment has been stopped thereafter by the respondents. Relying upon letter No.F.No.A-27014710/91-AD.II A dated 10.2.92 issued by the Government of India, Department of Revenue, Ministry of Finance. The said action of the respondents is challenged in the O.A. The applicants pray that the said letter may be quashed and the respondents may be directed to pay to them HRA as before together with the arrears thereof. Although no written statement has been filed by the respondents Mr S. Ali, the learned Sr.C.G.S.C appearing for the respondents submitted that having regard to the provisions of Rule 229 of the Central Excise Rules 1944 the applicants not being entitled to the payment of House Rent Allowance the action of the respondents is fully justified and legal and therefore the application is liable to be dismissed.

4. Identical question felt for consideration before the Patna Bench of the Central Administrative Tribunal in O.A.88/92 decided on 9.8.93. A copy of that order is at Annexure-D. In that case also the applicants were employees of such Customs and Central Excise Department. They ^{were} are posted

at Bokaro Steel Plant. They were allotted residential accommodation by the said authority. The applicants started paying the rent individually for such accommodation directly to the Bokaro Steel Authority. However, in purported exercise of powers under Rule 229 the respondents stopped payment of HRA to the said employees on the ground that they had been allotted accommodation by a Government agency at concessional rent. That action was challenged. It was contended on behalf of the applicants that it could not be said that the Government had provided official accommodation to the applicants and thus they were entitled to get House Rent Allowance. On behalf of the Government of India (Customs and Central Excise department) it was contended that the Government was entitled to stop payment of House Rent Allowance to the applicants under the provisions of Rule 229 of the Central Excise Rules. The contention of the respondents however, was rejected by the Patna Bench. It was held as follows :

"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 Government agency like the Steel Authority of India etc. Although it has been stated. that under the existing rules, the Government officials who are allotted accommodation by Government agencies on scheduled rent are not eligible for payment of house rent allowance, any such rule has not been shown except Rule 229 quoted above in such cases rule 229 does not authorise that house rent allowance will be stopped."

Order impugned in this case dated 7.5.92 Annexure-C clearly shows that the orders have been issued acting on the provisions of rule 229 aforesaid. No other rule has been mentioned and therefore it will have to be presumed that the respondents have acted solely on the basis of rule 229. We are in respectful agreement with the interpretation of the said rules placed by the Patna Bench and therefore the impugned order cannot be sustained. In our opinion the position of the

agency under which the applicants are posted is similar to that of Bokaro Steel Authority concerned in the case before the Patna Bench. Although the applicants have sought that the letter of Government of India dated 10.2.92 may be quashed we do not think that we are called upon to do so as that was only the basis and what ^{needs to be} ~~can~~ be set aside ^{is} the action of the respondents and not that letter. Since the applicants were not given any notice nor informed ~~of~~ the basis on which the payment of HRA was stopped the applicants have filed this O.A. From Annexure-A which was a representation filed by some of the applicants on 2.7.92 to the Administrative Officer of Customs and Central Excise at Dhubri it is gathered that the amount paid towards house rent allowance in the month of June 1992 was deducted from the pay of June 1992. Similarly from representation of one of the applicants at Annexure-B dated 30.11.93 it appears that the payment of HRA was stopped. In that representation it has been stated that it was presumed that it was stopped on the basis of the letter of the Government of India dated 10.2.92. Reference was also made to the decision of the Patna Bench. In paragraph 6.8 of the O.A. particulars have been given about the arrears which imply that the payment of house rent allowance in respect of applicants 2, 3, 4 and 5 was stopped from June 1992. It was stopped from August 1992 in respect of applicant No.1, from November 1992 in respect of applicant No.6 and from December 1992 in respect of applicants No.8 and 9. The payment was stopped in respect of applicant No.7 from January 1993, in respect of applicant No.11 from April 1994 and in respect of applicant No.10 from May 1994. The representations of the applicants were not replied. It is therefore apparent that the payment of HRA was stopped in view of rule 229 of the Central Excise rules.

contd. 5....



5. The applicants claim ~~for~~ payment of HRA at the rate payable to the Central Government employees prescribed for unclassified cities. In our view they ^{are} will be entitled ^{to} ~~only~~ to get the allowance, ~~equivalent to the concessional rent in which the accommodation is made available to them by the Agency under which they are working upto the limit of 10% per month. That will be in conformity with the rule 229 of the Central Excise Rules.~~

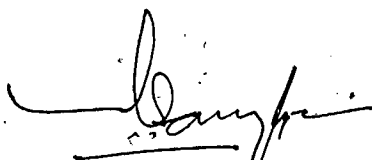
6. In the result following order is passed :


a) It is declared that the applicants are entitled to be paid house rent allowance at the rate prescribed for Central Government employees in unclassified cities/towns.

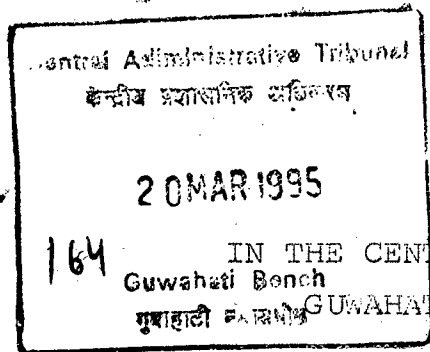
b) The respondents are directed to pay the arrear amount ~~calculating~~ on the aforesaid basis from the month from which the payment of house rent allowance was stopped to each of the applicants respectively within a period of two months from the date of receipt ^{of} copy of this order.

c) The respondents are directed to continue to pay the house rent allowance in terms of clause(a) above.

O.A. is allowed in terms of the aforesaid order. No order as to costs.


(G.L.SANGLYINE)
MEMBER (A)


(M.G.CHAUDHARI)
VICE-CHAIRMAN



10

Filed by the applicant's
through M. Chandra
20.3.95 Advocate.

An application under section 19 of the Central Administrative Tribunals Act, 1985.

O. A. No. 42 /95

Sri J K Paul & Ors. Applicants.

-vs-

Union of India & Ors. Respondents.

I N D E X

Sl.No.	Annexure	Particulars	Page No.
1	-	Application	1-16
2	-	Verification	17
3	A	Letter dtd. 2.7.92	18
4	B	Representation dtd. 30.11.93	19
5	C	Office Order dtd. 7.5.92	20-21
6	D	Judgement & order in O.A. No. 88/92 dt. 9.8.93	22-26

Filed by :

Advocate

Received Copy.
for Sr. C/S
20/3/95

1. Particulars of the applicants.

- i. Sri Jiten Krishna Paul,
Superintendent,
- ii. Sri Nandeswar Basumatary,
Inspector,
- iii. Sri Bidhu Bhushan Karmakar,
Inspector,
- iv. Sri M. Paswan,
Sepoy,
- v. Sri Jatin Choudhury,
Sepoy
- vi. Sri Subinoy Bhowmick,
Superintendent,
- vii. Sri Dulal Kr. Das,
Inspector,
- viii. Sri Subhamoy Chakraborty,
Inspector,
- ix. Sri Probodh Kumar Bhattacharjee,
Inspector,
- x. Sri Sudip Deb,
Inspector,
- xi. Sri Swapan Kr. Seal,
Sepoy,

All the applicants are working under the collector, Customs and Central Excise, Shillong, Govt. of India, Department of Revenue, Ministry of Finance and all are now posted at BRPL-I and BRPL-II Ranges, located at Bongaigaon Reginery, BRPL Complex, Dhaligaon, Dist. Bongaigaon.

2. Particulars of the Respondents

- i. Union of India
Through the Secretary the Secretary, Govt. of India,
Customs and Central Excise,
Department of Revenue,
Ministry of Finance,
New Delhi.
- ii. The Collector, Customs and Central Excise,
Shillong.
- iii. The Assistant Collector,
Customs & Central Excise Deptt.
Dhubri,
P.O. Dhubri
Dist. Dhubri
Assam

3. Particulars for which this application is made.

This application is made for non-payment of House Rent Allowance admissible to the applicants as per existing provision of the Central Govt. by the Respondents in terms of letter No. F.No. A-27014710/91-AD.II A dtd. 10.2.92 issued by the Govt. of India, Ministry of Finance, Department of Revenue, New Delhi and also praying for a direction for payment of Arrear House Rent Allowance and also for current House Rent Allowance due and admissible to the applicants and for quashing the letter dated 10.2.92.

4. Jurisdiction :

The applicants states that the cause of action of this case is arisen within the jurisdiction of this Hon'ble Tribunal.

5. Limitation :

The applicants state that the case is filed within the prescribed time period of the Central Administrative Tribunals Act, 1985.

6. Facts of the Case :

i. That all the applicants are citizens of India as such they are entitled to all the rights and privileges guaranteed by the Constituion of India. All the applicants are working under Shillong Collectorate, Customs and Central Excise, Govt. of India and now posted on different dates in the BRPL-I & II Ranges, located

at Bongaigaon Refinery and Petrochemicals Ltd. (BRPL Complex), Dhaligaon, in the district of Bongaigaon. They are directly under the control of Assistant Collector Customs and Central Excise, Dhubri. All the applicants are working in different capacities such as Superintendent, Inspector, Sepoy etc. on regular basis.

May 92
June 92

ii. That all the applicants had been drawing House Rent Allowance (in short HRA) from their employer's Department as per usual Central Govt. Rate for unclassified cities till May 1992, thereafter the payment of HRA was stopped by the respondents arbitrarily without showing any reason to the applicants. Against this illegal action of the Respondents some officers namely, S/Shri B B Karmakar, Inspector, M. Basumatary, Inspector, M. Paswan, Sepoy, and S.A. Ahmed, Sepoy submitted their representations dated 2.7.92 addressed to the Administrative Officer, Customs and Central Excise vide letter dated 2.7.92 requesting him to intimate the reason for stoppage of payment of HRA. But unfortunately no reply yet been received from the respondents.

A copy of the letter dated 2.7.92 is annexed as Annexure -A.

iii. That the applicants finding no response from the respondents as regard their representation dated 2.7.92 (Annexure A) submitted another representation by

the applicants namely S/Sri S. Bhowmick, Superintendent, S.Chakraborty, Inspector, D.K.Das, Inspector, P.K. Bhattacharjee, Inspector, and S.K.Paul, Superintendent, J.Choudhury, Sepoy vide representation dt. 30.11.93 addressed to the Assistant Collector, Customs and Central Excise, Dhubri, for payment of HRA alongwith arrear as per admisibility for unclassified cities but to no result. Be it stated that representation of all the applicants containing the similar statements of facts as mentioned in Annexure-B. Therefore representation of Sri D.K.Das, applicant No. 7 is enclosed as an example for perusal of the Hon'ble Tribunal. However, the 11 applicants begs to prefer this application jointly before this Hon'ble Tribunal for grant of House Rent Allowance and the Hon'ble Tribunal be pleased to grant permission for moving this application jointly before the Hon'ble Tribunal as the issues are involved here are common.

A copy of the representation dtd. 30.11.93 is enclosed as Annexure-B.

iv. That the applicants came to know that the Central Excise Authorities had acted upon letter No. F. No. A-27014/10/91-AD.II A dtd. 10.2.92 issued by the Govt. of India, Department of Revenue, Ministry of Finance, for stoppage of HRA wherein it is stated

in the said letter that under the Existing Rules where accommodation provided by the Management to the Central Excise officers in the Factory premises at subsidised rents attracts the provision of Rule 229 of the Central Excise Rules 1944 and HRA is not admissible to those officers who are allotted accommodation by the Management of factories on concessional rates not exceeding 10% of their basic pay and hence it is directed to stop HRA in all such cases. It is further directed to effect recoveries where HRA has already been paid.

Be it stated that all the applicants are provided with residential accommodation at scheduled rate by the BRPL Management and the applicants are paying rents directly to the BRPL authorities. This decision for stoppage of HRA for the officers who are provided with residential accommodation by the factory Management on concession rent is highly illegal, arbitrary and unfair. Therefore letter dt. 10.2.92 issued by the Govt. of India, Ministry of Finance, Deptt. of Revenue is liable to be set aside and quashed. In this connection it may be stated that this decision of stoppage of House Rent Allowance issued vide letter dtd. 10.2.92 has been communicated by the Customs and Central Excise, Shillong/Guwahati under letter dated 7.5.92.

A copy of the letter dated 10.2.92 communicated vide letter dated 7.5.92 is annexed as Annexure-C.

v. That the applicant in their representation dated 30.11.93 addressed to the Assistant Collector, Customs and Central Excise, Dhubri vide (Annexure-B) also brought to the notice of the Central Excise Authorities as regard decision of the Central Administrative Tribunal, Patna Bench, Patna in a similar facts and circumstances where HRA had been stopped by the Govt. of India, Deptt. of Revenue in terms of Rule 229 of the Central Excise Rule 1944 and where Customs and Central Excise officers are provided with residential accommodation on concessional rate. In that case also the Hon'ble Central Administrative Tribunal, Patna Bench, Patna told that there is nothing in the rules to permit the authorities to stop payment of HRA in cases where accommodation have been provided not by the Govt. ~~of~~ but by any other Govt. Agency like the Steel Authority of India and it is clearly held in such case Rule 229 does not authorise that H.R.A. would be stopped.

The relevant portion of Rule 229, Central Excise Rules 1944 is quoted below :

"Rule 229 Provision of accommodation in factory of Warehouse-(1) Every person manufacturing or storing goods on which excise duty is to be levied shall provide and maintain to the satisfaction of the Collector, for the use of the officers in attendance at the factory or warehouse furniture and sufficient and

proper accommodation and sanitary accommodation within the factory or warehouse premises; and every manufacturer of excisable goods shall, where so required by the Collector, provide suitable lodging conveniently situated to the factory premises at a rent not exceeding ten percent of the pay of each officer so accommodated :

(Provided that where the limit of rent specified above for such lodging falls short of the rent prevailing in the area, the rent payable may be increased by an amount not exceeding Rs. 20 in each case).

2. A breach of this shall be punishable with a penalty which may to one thousand rupees".

It is quite clear that Rule 229 requires a manufacturer to provide, inter alia, suitable lodging of the Central Excise officers and also fixed a ceiling of the rents that may collected from the officers so posted. There is nothin in that Rule that can even-namely suggest that officers availing of accommodation under that rule will not be entitled to H.R.A.

Therefore the order of Govt. of India (MF DR) F. No. A-27014/10/91-Ad II dtd. 10.2.92 has no legal basis and deserves to be quashed and the action of the Central Excise Authorities of Dhubri Division in denying HRA to the applicants on the strength of that order is arbitrary,

illegal, and not tenable ~~xxxx~~ at law as such the same is liable to be quashed.

Under the existing Rules, Central Excise Employees, like all Govt. employees are not entitled to HRA if they are provided with accommodation by Govt. But accommodation provided by M/S PRPL cannot be said to a Govt. Accommodation and the authorities acted wrongly in stopping payment of HRA to the applicants.

vi. That the Central Administrative Tribunal Patna Bench, in the Case of Shri P N Prasad & Others versus Union of India & Ors, decided on 9.8.93 was pleased to hold as follows in paragraph 4 of the Judgement :-

"I find and hold that there is nothing in the rules to permit the authorities to stop the payment of house rent allowance in cases where accommodation have been provided not by the Government but by any other Government agency like the Steel Authority of India etc. Although it has been stated in Annexure-3 that under the existing rules, the Government officials who are allotted accommodation by Government agencies on scheduled rent are not eligible for payment of house rent allowance, any such rule has not been shown to me by learned counsel appearing for respondents except rule 229 quoted above. I have already held that in such cases rule 229 does not authorise that house rent allowance will be stopped. In the facts and circumstances,

~~therefore~~

therefore, this application has to be allowed and the orders passed in Annexure A/4 and A/5 are quashed. The respondents belonging to the Central Excise Department, are therefore directed not to deduct the house rent allowance from the salaries of the applicants and if any deduction has already been made such amount must be paid back to them!

In the above case, accommodation was provided to the Central Excise officers by the Authorities, of the Bokaro Steel Plant an Unit of Steel Authority of India Limited. The status of the BRPL is the same as that of Steel Authority of India, therefore, the applicants also entitled to house rent allowance, as per existing rates of unclassified cities admissible to the applicants and they are also entitled to refund of the arrear, house rent allowance deducted by the respondents illegally and arbitrarily. The respondents ought to have make the payment of HRA, as the matter was already settled by the Judgement and Order dated 9.8.93 by the Hon'ble Patna Bench of the Central Administrative Tribunal.

vii. That the non-payment of HRA to the applicants is a continuous wrong and cause of action as such arise every day. The applicants submitted representation to the Authorities but the respondents is silent as regard payment

of HRA to the applicants, therefore finding no other alternative, the applicants approached this Hon'ble Tribunal for immediate payment of current house rent allowance as well as arrears house rent allowance..

viii. That the applicants beg to furnish the following detail particulars as regard arrear House Rent Allowance

Name of the applicants	Month from which HRA not paid
1. Sri J.K.Paul, Supdt.	August, 1992 ✓
2. Sri N.Basumatary, Inspector	June, 1992 ✓
3. Sri D.B.Karmakar, Inspector	June, 1992
4. Sri M Paswan, Sepoy,	June, 1992
5. Sri M.Choudhury, Sepoy	June, 1992 ✓
6. Sri S.Bhowmick, Supdt.,	November, 1992 ✓
7. Sri D.K.Das, Inspector	January, 1993 ✓
8. Mr. S.Chakraborty, Inspector	December, 1992 ✓
9. Sri P.K.Bhattacharjee, Inspector,	December, 1992 ✓
10. Sri S.Deb, Inspector	May, 1994 ✓
11. Sri B.K.Seal, Sepoy	April, 1994 ✓

The non-payment of HRA to the applicants on the ground that they were allotted residential accommodation by the BRPL Authority and in terms of Rule 229 of Central Excise Rules, 1944 is highly arbitrary, illegal and unfair.

Therefore the Hon'ble Tribunal be pleased to direct the respondents to pay arrears and current H.R.A. to the applicants as the residential accommodation not provided by the employer.

ix. That this application is made bonafide for the cause of justice.

7. Reliefs prayed for :

Under the facts and circumstances stated above the applicants pray the following reliefs :

- i. That the respondents be directed to pay current House Rent Allowance to all the applicants as per existing rates for unclassified cities due and admissible to the applicants.
- ii. That the respondents be directed to pay arrear House Rent Allowance which was deducted in terms of Revenue Deptt. Letter F.No. A-27014/10/91-Ad II A dtd 10.2.92 from the pay and allowance of each applicants with immediate effect.
- iii. That the impugned letter No. A-27014/10/91-Ad. II A dtd. 10.2.92 of Govt. of India, Ministry of Finance, Deptt of Revenue and letter dated 7.5.92 issued by the Custom & Central Excise be set aside and quashed.

- iv. Costs of the case.

The above reliefs prayed on the following amongst other :

G R O U N D S

- i. For that the HRA was stopped by the respondents without following the principle of natural justice.
- ii. For that Rule 229 of the Central Excise Rule 1944 nowhere permitted the authorities to stop HRA in cases where accommodation have not been provided by the Govt./employers Deptt.
- iii. For~~x~~ that the residential accommodation provided by the BRPL Management is a different Govt. Agency.
- iv. For that the accommodation provided by the BRPL authority cannot be treated as official accommodation.
- v. For that the aforesaid Rule 229 cannot be applied in the case of the applicants for stoppage of HRA.
- vi. For that stoppage of HRA which is contrary to the provisions of Rule mentioned in letter dtd. 10.2.92 threrfore HRA cannot be stopped.

- vii. For that the decision of the Revenue Deptt. issued letter dated 10.2.92, which is communicated vide letter dtd. 7.5.92 is highly arbitrary, illegal and contrary to the rules and therefore the same are liable to be quashed.

8. Interim reliefs prayed for :

During the pendency of the case the applicants prays for the following reliefs :-

- i. That the respondents be directed to pay current HRA w.e.f. March/1995.

This interim relief is prayed on the grounds mentioned in paragraph 7 above.

9. Whether the matter is pending in any other Court/Tribunal.

The applicants have not filed any other application in any other court/Tribunal save and except this one.

10. That the applicant has exhausted all the remedies.

11. Particulars of Postal Order.

Postal Order No.	: 883844
Date of Issue	: 20-3-95.
Issued from	: G.P.O., Guwahati
Payable at	: G.P.O., Guwahati

12. An Index of documents is enclosed.

13. Documents enclosed

As per index.

o

V E R I F I C A T I O N

I, Sri J.K. Paul, S/o of
an employee of Customs and Central Excise, posted
at BRPL Complex do hereby solemnly verify that the
statements made in this application are true to
my knowledge and belief and I have not suppressed
any material fact. I am empowered and competent
to verify this application on behalf of the other
applicants.

Jiten Krishna Paul
2.3.95

ANNEXURE-A

To

The Administrative Officer
Customs and Central Excise
Dhubri

Sub : Monthly pay for the month of June '92

Sir,

Kindly refer to the Pay Bills of the undersigned officers posted at BRPL Range, Dhaligaon for the month of June '92. It appears from the referred bills that the amount of Pay paid to each undersigned officers for June '92 was lesser by Rs. 100/- for the Inspectors and Rs. 30/- for the sepoy's from the amounts paid to them for May '92.

The deductions were made quite unexpectedly and no notice to that effect was given to the officers. Hence the reasons and factors leading to such deductions were unknown to the officers.

Therefore we the undersigned officers very humbly and earnestly request your honour to look into the matter and enlighten us.

Yours faithfully,

C.No.II/29/10/ET/
BRPL/91 (1)
dt. 2.7.92.

Sd/- B.B.Kumar, Inspector E & EX.
BRPL Range, Dhaligaon

Sd/- N Basumatary, Inspector,

Sd/- M.Pasowan, Sepoy,

Sd/- S.A.Ahmed, Sepoy

Attested
By
[Signature]

ANNEXURE-B

The Asstt. Collector,
Customs and Central Excise,
Dhubri

Sir,

Sub : Non/-receipt of House Rent Allowance.

Sir,

Kindly refer to my letter dt. 8.7.93 on the above subject. In this connection I am to inform you that a pretty long time has already ~~been~~ passed but no reply whatsoever has been received from your end.

It is presumed that the payment of H R A has been stopped in the light of Ministry of Finance F. No. A-270 14/10/91 - Ad II A dt. 10.2.92 wherein it is stated that the accommodation provided by the Management at subsidised rents, attracts the Provisions of Rule 229 of the Central Excise Rules, 1944, & H R A is not admissible to those officers who are allotted accommodation by the Management of factories on concessional rent not exceeding 10 % of their pay.

Moreover in a similar case Central Administrative Tribunal, Patna Bench had delivered vide their order dt. 9.8.93 that if such accommodation provided by the Management at subsidised rent, which attracts the Rule 229 of Central Excise Rule 1944 are also entitled to get House Rent Allowance, as the above Rule does not empowered the competent authority to stop payment of H R A.

From the above, it is clear that I am entitled to get House Rent Allowance at the prescribed rate. You are therefore requested to kindly make necessary arrangement for early payment of H R A alongwith arrears.

Yours faithfully,

Sd/- D.K.Das, Inspector,
Central Excise, BRPL-II Range,
Dhaligaon

Dated 30-11-93.

Attested
By
Adv.

ANNEXURE-C

CUSTOMS AND CENTRAL EXCISE : SHILLONG

C No. II(2)3/Accts.I/90/177112-7111

Dated 7.5.92

A copy of the undermentioned letter received from the Government of India, Ministry of Finance, Department of Revenue, New Delhi's letter F. No. A 27014/10/91-Ad.IIA dated 10.2.92, is forwarded for information and necessary action to :

1. The Asstt. Collector, Customs & Central Excise _____ (All)
2. Gazetter Officers of Hqrs. Office, Shillong ((((((_____ (All)
3. Branch in-charges of Hqrs Office, Shillong _____ (All)
4. Pay and Accounts Officer, Cumstoms & Central Excise, Shillong
5. Branch in Charge of Accounts II
6. Genl. Secy., Gr. 'B', Gr. 'C' (Ministerial)/(Executive), Gr. D Officers Association, Cumstoms & Central Excise, Shillong.

Sd/- D. CHOUDHURY 18.3.92
Asstt. Chief Accounts Officer
Customs & Central Excise, Shillong

F.No. A-27014/10/91-Ad.IIA
Government of India
Ministry of Finance
Department of Revenue

New Delhi, the 10th Feb., 1992

Subject : Payment of House Rent Allowance to the officers when the lodging is provided by the manufacturer of exercisable goods as per Rule 229 of Central Excise Rules, 1944.

Sir,

I am directed to say that it has come to the notice of the Board that in some Central Excise Collectorates House Rent Allowance is being paid to the officers who are posted to work in factories (such as Bokaro Steel Plant and Bharat Heavy Electricals) and are provided ~~xxxxxxx~~ accommodation in the factory premises by the Management concerned at subsidised rents not exceeding 10% of their pay.

The matter has been considered in consultation with the Department of Expenditure and it has been held that under the existing rules, such accommodation provided by the Management in the factory premises at subsidised rents, attracts the provisions of Rule 229 of the Central Excise Rules, 1944, and HRA is not admissible to those officers who are allotted accommodation by the Management of factories on concessional ~~xxxxx~~ rent not exceeding 10% of their pay. You are therefore, requested

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to stop payment of House-rent Allowance in any such cases, if it is still being paid and also effect recoveries in cases where H.R.A. has already been paid.

Yours faithfully,

Sd/- B.M.Suri

Under Secretary to the Govt. of India

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ANNEXURE - D

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH : PATNA

Registration No. OA-88 of 1992

(Date of order 9.8.93)

P.N.Prasad & Others ----- Applicants

-versus-

Union of India & Others ----- Respondents

Coram : Hon'ble Mr. Justice B.P.Sinha, V.C. (S.M)

Advocate for the applicants ----- Mr. Gautam Bose

Advocate for the respondents ----- Mr. Lalit Kishore

O R D E R

Hon'ble Mr. Justice B.P.Sinha, V.C.

There are fifteen applicants in this case who are all employees of Customs and Central Excise Department of Government of India. All of them are now posted at Bokaro Steel City. On requests made by them through proper channel, these applicants were allotted residential accommodation by the Steel Authority of India at Bokaro. These applicants started paying the rent individually in respect of such accommodation directly to the Bokaro Steel Authority of India Ltd. Rule 229 of the Central Excise Rules, 1944 makes some provisions regarding accommodation in factories and Warehouses which are as follows :

*Attested
by
Adv.*

"Rule 229 Provision of accommodation in factory of Warehouse-(1) every person manufacturing or storing goods on which excise duty is to be levied shall provide and maintain to the satisfaction of the Collector, for the use of the officers in attendance at the factory or warehouse premises; and every manufacture of exciseable goods shall, where so required by the Collector, provide suitably lodging conveniently situated to the factory premises at a rent not exceeding ten percent of the pay of each officer so accommodated".

It appears that in purported exercise of the rules 229 quoted above, all these applicants were allotted accommodation by the Steel Authority of India. It also appears that on 6.12.1991, the Under Secretary, Government of India, Ministry of Finance wrote to the Collector of Central Excise, Patna, directing him to stop the house rent allowance to such employees who had been allotted accommodation by any Government agency on concessional rent. That order dated 6th December, 1991 is contained in Annexure A/4. On receipt of the order dated 6th December, 1991, the Assistant Collector, Central Excise, Bokaro stopped vide Annexure A/5, the payment of house rent allowance to these applicants and started deducting from their salaries the house rent allowance from January, 1991. The applicants have come to this Tribunal with a prayer to quash these two orders contained in Annexure A/4 and Annexure A/5.

Attested
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2. Mr. Gautam Bose, appearing on behalf of the applicants has submitted that the Government has not provided any official accommodation to these applicants and therefore, under the rules, the applicants are entitled to house rent allowance. His submission is that the accommodation given by the Steel Authority of India Ltd., in terms of rule 229 cannot be said to be official accommodation and there is no rule which authorises that in cases where an accommodation is provided by the Government agency, the house rent allowance shall be stopped. In this connection; Mr. Bose relied upon a decision of This Tribunal in ~~OA-393~~ of 1987 decided on 22.8.89. In that case also the accommodation had been provided to the applicant by the Steel Authority of India Ltd. at Bokaro and certain deductions were being made on the ground that he had got house rent allowance although he had been given accommodation by the Steel Authority of India. It was held that such an accommodation cannot be said to be Government accommodation and that any attempt to equate such accommodation with a Government accommodation cannot be accepted. He also relied on another decision of this Tribunal in OA-321 of 1989 - Mahabir Singh Vs. Union of India, decided on 10.8.1990. In this case an accommodation seems to have been provided by TELCO, Jamshedpur and attempts had been made to deduct the house rent allowance from his salary. A similar view was taken in this case also and it was held that any accommodation provided by the TATAs could not be equated with any Government accommodation.

Assessed
Chakr
Adv.

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3. Learned Addl. Standing Counsel has placed his reliance on rule 229 quoted above and has submitted that under the provisions of rule 229 itself, the Government is entitled to stop payment of house rent allowance in such cases. It is not possible to accept this argument.

~~xxxxxxmxxxxxxx~~ Rule 229 only provides that where there is no Government accommodation, the factory or the warehouse where the officers of the Central Excise Department are posted the person owning factory or warehouse should provide accommodation to them on a rent which will not exceed 10% of the pay in such a case. This does not provide that in case the rent is less than 10% then the house rent allowance will not be paid to such an employee. In fact, realising this situation, in the written statement filed on behalf of the respondents, they themselves stated in paragraph 8 that rule 229 of the Central Excise Rules do not apply in the present case.

4. After hearing the learned counsels appearing for the parties and going through the various documents placed before me, I find and hold 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 Government agency like the Steel Authority of India etc. Although it has been stated in Annexure-4 that under the existing rules, the Government officials who are allotted accommodation by Government agencies on scheduled rent are not eligible for payment of house rent allowance, any such rule has not been shown to me by learned counsel appearing for respondents except rule 229 quoted above. I have already held that in such cases rule 229 does not authorise that house rent allowance

Attested
Counsel
Adv.

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will be stopped. In the facts and circumstances, therefore, this application has to be allowed and the orders passed in Annexure A/4 and A/5 are quashed. The respondents belonging to the Central Excise Department, are therefore directed not to deduct the house rent Allowance from the salaries of the applicants and if any deduction has already been made such amount must be paid back to them.

5. There shall be no order as to costs.

Sd/- B.P.Sinha
Vice-Chairman

AP-estd
@inb
Adv.