Central Administrative Tribunal
Principal Bench, New Delhi.

OA-2591/2014

Reserved on : 26.04.2016.

Pronounced on : 29.04.2016.

Hon'ble Mr. Shekhar Agarwal, Member (A)

Smt. Sunita Jain, Aged 47 years,
W/o Sh. T.C. Mangla,
Working as TGT (English),
GGSSS No.2, Railway Colony,
Tuglakabad, New Delhi.
R/o H.No. 171, Gali No.Q-54,
Molarband Extn.
Badarpur Board, New Delhi. .... Applicant

(through Sh. Yogesh Sharma, Advocate)

Versus

1. Govt. of NCT of Delhi through
The Chief Secretary,
New Sectt., Near ITO, New Delhi.

2. The Director of Education,
Govt. of NCT of Delhi,
Old Sectt., New Delhi.

3. The Deputy Director of Education,
Govt. of NCT of Delhi,
Distt. South Defence Colony,
New Delhi.

4. The Vice-Principal/HQS,
Govt. Girl's Senior Secondary School No.2,
Railway Colony, Tughalakabad,
New Delhi-44. .... Respondents

(through Mrs. P.K. Gupta, Advocate)

O R D E R

The applicant is a physically handicapped female employee working as Trained Graduate Teacher (TGT) (English) in Directorate of Education, Govt. of NCT of Delhi. She is presently posted to Government Girls, Senior Secondary School No.2, Railway Colony, Tugalakabad, New Delhi. Her husband, who is also physically handicapped, is working as Head Draftsman in Public Health Department in Government of Haryana. According to the applicant, her

husband was allotted government accommodation in Faridabad in 2001 and information to this effect was given by her to the respondents. She also informed the respondents that she was residing in a rented house in Moladband Extension, since it was not possible for her to travel to Tuglakabad daily from Faridabad, the distance being more than 25 Kms. and she being physically handicapped. She was getting HRA till November, 2011. However, they stopped paying her HRA from December, 2011. Vide their order dated 16.10.2012 the respondents decided to make recovery of HRA paid to the applicant w.e.f. 01.01.2001, the total amount of recovery being Rs. 4,78,807/-. It was ordered that recovery from the applicant be made in 100 instalments. The applicant submitted a representation on 07.01.2013 but till date the same remains undecided. Meanwhile, husband of the applicant has also been transferred from Faridabad to Palwal where he has joined on 12.06.2014. The applicant has approached this Tribunal seeking the following relief:-

> "(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 16.10.2012 (Annex.A/1) and consequently, pass an order directing the respondents to restore and to grant the HRA of the applicant w.e.f. 1.1.2001 with all the consequential benefits including the arrears of HRA and refund of recovered amount with interest.
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> (ii) That the Hon'ble Tribunal may graciously be pleased to pass an order declaring to the effect that the applicant is entitled for grant of HRA as per rules and was rightly granted her HRA since 1.1.2001, and consequently, pass an order directing the respondents to restore and to grant the HRA of the applicant w.e.f. 1.1.2001 with all the consequential benefits including the arrears of HRA and refund of recovered amount with interest.
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> (iii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant along with the costs of litigation."

2. In their reply, the respondents have stated that when they realized that even though her husband was allotted government accommodation the applicant was claiming HRA, they called for her explanation on 25.08.2011. Thereafter, the HOS of the school stopped HRA w.e.f. December, 2011 on the

ground that Faridabad is a contiguous city of Delhi and the rates of HRA and CCA in Delhi and Faridabad were the same. Faridabad complex is, therefore, included in the term "same station" as occurring in Para-5(c)(iii) of HRA Rules. It was also decided to recover the excess payment made to her w.e.f. 01.01.2001.

3. Learned counsel for the applicant argued that the respondents had erred in treating Faridabad and Delhi as "same stations". He stated that even the transport allowance rates in the two cities were different. He further relied on the judgment of Hon'ble High Court of Gauhati in the case of **Kausik Ranjan Dutta** Vs. **State of Tripura and Ors.,** (2006)2GLR 403 in which the following has been laid down:-

> "3. I have heard Mr. S.M. Chakraborty, learned senior counsel for the petitioner and Mr. P.K. Pal, learned Counsel for the State respondents.
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> 4. The main controversy is whether when posted in different stations, the husband and wife are both entitled to draw house rent allowance even though they are found living in same station. The respondents could not produce any rule or instruction about the distance between two places of posting, which would disentitle the couple from drawing the house rent allowance. The relevant provision relied on by the respondents is contained in regulation 22 regarding HRA and CCA in Swamy's Manual. This provision reads : -
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> > 22. HRA is not admissible if 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.

A plain reading of the above provision makes it clear that only when the husband and the wife have been allotted accommodation at the 'same station', they would not be entitled to draw house rent allowance. Admittedly the petitioner and his wife were posted in different stations, distance of which is stated to be 22 km. by the petitioner, but not admitted by the respondents. But the respondents could not state what is the exact distance between the two stations. They relied on a statement of another employee Anal Nag in Civil Rule No. 65 of 1995, who stated there that the distance between Khowai and Bagabil is 16 km. But the petitioner stated that his wife was staying at Lalcherra and he was staying at Bagabil and distance between the two places is 22 km. So, it cannot be said that the distance between Khowai - Bagabil and Lalcherra - Bagabil are same. Whatever may be the position, even if the distance is 16 km between the two stations, the husband and the wife both are entitled to draw house rent allowance, as the regulation quoted above cannot be treated as a bar. It does not fall within the administrative functions of the department as to whether the husband and wife posted in two different stations are actually living

together in same station or in different stations. In my considered view, the distance between the two stations is the only factor to determine the entitlement of house rent allowance, not whether after performing duties in a distant station, the husband or the wife, as the case may be, is coming back to any one station to stay the night together. An inquiry by the department as to where the couple are moving after the duty hours for living together is unwarranted and unethical and any instruction issued to that effect is illegal and arbitrary. In the case in hand, it has come in evidence the husband has a rented house in Bagabil, the place of his posting."

4. I have heard both sides and have perused the material on record as well as the relevant Rules. The respondents have relied on Para-5(c)(iii) of HRA Rules, which states that if any spouse has been allotted government accommodation at the "same station" then the other spouse would not be entitled to claim HRA. Same station below this Rule has been defined as follows:-

> "**Same Station defined."**- The phrase, "same station" occurring in Para. *5(c) (iii)* includes all places which are treated as contiguous to the qualified city/town in terms of Para. 3*(a) (i)* and those dependent on the qualified city/town in terms of Paras. *3 (b) (ii)* and 3 *(b) (iii)* and also those places which are included in the Urban Agglomeration of a qualified city."

4.1 Further, I have perused Para-3(a)(i), which the respondents appear to have invoked in this case. The aforesaid Rule is extracted below:-

> "The limits of the locality which within these orders apply shall be those of the named Municipality, or Corporation and shall include such of the suburban Municipalities, notified areas or cantonments as are contiguous to the named Municipality or Corporation or other areas as the Central Government may, from time to time, notify."

4.2 A reading of this Rule would make it clear that suburban Municipalities notified areas and cantonments, which were contiguous to the named Municipality or Corporation, were to be treated as same station.

4.3 In the instant case, the application is posted in Delhi whereas the husband of the applicant has been allotted accommodation in Faridabad. Faridabad is not a suburban Municipality contiguous to Delhi. It is a separate Urban Municipality even though it is contiguous to Delhi. It would not be correct

to treat Faridabad as a suburb of Delhi as it is a separate District falling in a different State, namely, State of Haryana. Hence, in my opinion, it cannot be treated as "same station" in terms of the above para. The respondents have, therefore, erred in invoking the aforesaid para and withholding the HRA that was being granted to the applicant.

5. Learned counsel for the applicant has also argued that even if this Court comes to a conclusion that there was justification in stoppage of HRA being paid to the applicant, no recovery of excess HRA being paid to her w.e.f. 01.01.2001 could be made from the applicant as that would be contrary to the law laid down by Hon'ble Supreme Court in the case of **State of Punjab and Others etc.** Vs. **Rafiq Masih (White Washer) etc.**, (Civil Appeal No. 11527/2014, decided on 18.12.2014). However, in view of my finding that stoppage of HRA itself was not justified, there is no necessity to invoke this judgment of Hon'ble Supreme Court.

6. I, therefore, allow this O.A. and quash the order dated 16.10.2012 of the respondents. The respondents are directed to restore payment of HRA to the applicant w.e.f. 01.01.2001 and also pay the consequential arrears. They shall also refund within a period of eight weeks any recovery that has been made from the applicant pursuant to their order dated 16.10.2012. Considering the facts and circumstances of the case, I am not inclined to allow any interest on the amount to be refunded as well as the arrears of HRA. No costs.

(Shekhar Agarwal)
Member (A)

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