

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
O.A.NO.3621 OF 2014**

New Delhi, this the 21st day of December, 2015

CORAM:

HON^{BLE} SHRI RAJ VIR SHARMA, JUDICIAL MEMBER
&

HON^{BLE} SHRI K.N.SHRIVASTAVA, ADMINISTRATIVE MEMBER
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Sh. Ashok Kumar Dang,
Aged about 57 years,
s/o Sh. Manohar Lal Dang,
working as Dy. Director General (Engineering),
O/o A.D.G.(R&D) AIR/TV,
I.P.Estate, New Delhi,
R/o G-145, 2nd Floor,
South City-II, Gurgaon, Haryana

(By Advocate: Mr.A.K.Bhakt)

Vs.

Union of India, through

1. The Secretary,
Ministry of Information & Broadcasting,
A-Wing, Shastri Bhawan, New Delhi-01
2. Chief Executive Officer,
Prasar Bharti, 2nd Floor, PTI Building,
Sansad Marg, New Delhi-01
3. Director General, AIR,
Akashvani Bhawan,
Sansad Marg,
New Delhi 01
4. The Pay & Accounts Officer (IRLA),
M/o Information & Broadcasting,
AGCR Building, I.P.Estate,
New Delhi-01

1 1 .. Respondents

(By Advocate: Ms.Eschita Baruah for Mr.Gaurang Kanth)

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ORDER**RAJ VIR SHARMA, MEMBER(J):**

The brief facts of the applicant's case are as follows:

1.1 The applicant initially joined the respondent-Department, as Assistant Director (Engineer). In due course of time, he was promoted as Station Engineer/Deputy Director (Engineering), and as Superintending Engineer/ Deputy Director General. On transfer from Suratgarh, he joined as Superintending Engineer/Deputy Director General (E) at HPT, All India Radio, Kingsway, Delhi, on 18.11.2010.

1.2 After coming to know about some anonymous complaint regarding non-occupation of the earmarked quarters and wrong drawal of House Rent Allowance (HRA) by him, the applicant made a representation dated 7.12.2012 (Annexure A/4) to respondent no.3. In the said representation, the applicant pleaded his ignorance about any order earmarking any accommodation for the Deputy Director General/Superintending Engineer, HPT, AIR, Kingsway, Delhi, and also requested respondent no.3 to supply him a copy of order, if any, earmarking the quarters for the Deputy Director General/Superintending Engineer, HPT, AIR, Kingsway, Delhi, and also to take necessary disciplinary action against the person who made the said false and baseless complaint against him.

1.3 The applicant states that in spite of his making the representation dated 7.12.2012 (Annexure A/4), the payment of HRA to him was stopped from December 2012, and an office order dated 4.3.2013 was

issued by the Senior Accounts Officer, Pay & Accounts Office (respondent no.4) to effect recovery of a total amount of Rs.3,33,492/- from his salary.

1.4 The applicant also states that he was transferred from HPT, AIR, Kingsway, Delhi, with effect from 11.6.2013 and posted to the office of ADG(NZ), New Delhi. While working in the office of the ADG(NZ), AIR, New Delhi, he was served an OM dated 1.9.2013, along with the statement of imputation of misconduct(Annexure A/1 collectively), issued by the Chief Executive Office, Prasar Bharati (respondent no.2), proposing to take action against him under Rule 16 of the Central Civil Services (Classification, Control & Appeal)Rules,1964. In response to the O.M. dated 1.9.2013, *ibid*, the applicant submitted his representations dated 8.10.2013 and 22.11.2013 (Annexure A/1 collectively). There being no response from the respondents, the applicant filed the present O.A. seeking the following reliefs:

- ð(I) To direct the respondents to release the arrears of withheld House Rent Allowance which was withheld from December 2012 to June 2013 (7 months) illegally and arbitrary manner.
- (II) To quash and set aside the Impugned recovery order No.PAO/IRLA/C-II/13407/1200 Dated 4.3.2013 issued by Sr.Account Officer, Pay & Account Office.
- (III) To quash and set aside the Office Memorandum No.F.No.7/6/2012-Vig./732 dated 01.09.2013 proposing to take action against the applicant under Rule 16 of the Central Civil Service (Classification, Control &Appeal) Rules, ,1965.
- (IV) To award exemplary cost on the respondent for causing undue harassment.

(V) To pass any other order (s) which this Hon.Tribunal deem fit and proper in the facts and circumstances of the present case.ö

2. Opposing the O.A., the respondents have filed a counter reply.

It is, *inter alia*, stated by the respondents that All India Radio (AIR) Manual Vol.II Part II (Annexure R/1 collectively), an -EØ type quarter of HPT, AIR, Kingsway, is earmarked for the Controlling Authority (Head of Office), i.e., Superintending Engineer, HPT, AIR, Kingsway Camp, Delhi 110009. The applicant joined at HPT, AIR, Kingsway Camp, Delhi, as the Engineering Head/Superintending Engineer/Deputy Director General/Controlling Authority (Head of Office) on 18.11.2010. The earlier Engineering Head/Superintending Engineer/Deputy Director General Engineering, namely, Shri Satyavir Singh Tyagi had occupied the earmarked quarters (earlier in G-1 and further in E-1/4) and vacated the said quarters on 17.12.2010 for the reason of his transfer. The said accommodation was then made available for the applicant. For reasons known to him, the applicant did not occupy the said accommodation. The DDO/AO, vide his letters dated 23.7.2012 and 22.8.2012 (Annexure R/2 collectively), intimated the office of the Director General, AIR (respondent no.3) that the earmarked quarters Type -EØ1 at HPT, Kingsway Camp, Delhi, earmarked for the post of Superintending Engineer/Deputy Director General was lying vacant since 17.12.2010. In his letter dated 6.4.2011(Annexure R/3), the applicant himself admitted and acknowledged the fact that a quarter was earmarked for him. With reference to the letters dated 3.5.2013 and 6.11.2013

(Annexure R/4 collectively) issued by the Directorate General, AIR, New Delhi, the Additional Director General Engineering (NZ), AIR & Doordarshan, New Delhi (the controlling authority), vide his letter dated 13.6.2013 (Annexure R/5), intimated that there was only one EØ type quarter available, which was earmarked for the Superintending Engineer/Deputy Director General Engineering at HPT, AIR, Kingsway Camp, Delhi, as per AIR Manual Part II, page 233. The applicant willfully ignored the provisions of the AIR Manual and did not occupy the earmarked quarter after it was vacated by his predecessor on 17.12.2010. In view of the facts that the applicant was allotted the earmarked quarter automatically as per the provisions of the AIR Manual, and that he never occupied the same, the HRA erroneously disbursed to him was sought to be recovered vide letter dated 4.3.2013, *ibid*. The Memo dated 1.9.2013 was also issued by the disciplinary authority initiating departmental proceeding against the applicant for imposition of minor penalty on account of his having acted in a manner unbecoming of a Government servant.

3. The applicant has filed a rejoinder reply controverting the stand taken by the respondents. It is stated by the applicant that in the minor penalty proceeding, initiated vide Memo dated 1.9.2013, *ibid*, the disciplinary authority has passed an order dated 9.12.2014 (Annexure RJ/1) imposing on him the minor penalty of withholding of two increments for a period of two years in his scale of pay without cumulative effect. It is also stated by the applicant that being aggrieved by the penalty order dated

9.12.2014, *ibid*, he has made an appeal dated 3.8.2015 (Annexure RJ/2) to the Chairman, Prasar Bharati.

4. We have perused the records, and have heard Mr.A.K.Bhakt, the learned counsel appearing for the applicant, and Ms.Eschita Baruah, the learned counsel appearing for the respondents.

5. It was contended by Mr.A.K.Bhakt, the learned counsel appearing for the applicant that there was no order issued by the respondent-Department requiring him to occupy any earmarked quarters. It was also contended by Mr.A.K.Bhakt that when admittedly the applicant was not provided with any accommodation by the respondent-Department, and when the applicant did not refuse to accept any accommodation allotted to him by the respondent-Department, he was entitled to HRA and, therefore, the impugned recovery and stoppage of payment of HRA are unsustainable and liable to be quashed. It was also contended by Mr.A.K.Bhakt that the purported non-occupation of the earmarked quarters by the applicant cannot be said to be a misconduct, and, therefore, the impugned memo dated 1.9.2013 initiating departmental proceeding for imposition of minor penalty on him is liable to be quashed. In support of his contention, Mr.A.K.Bhakt relied on a judgment dated 13.6.2013 passed by the West Bengal Administrative Tribunal, Kolkata, in O.A.No.956 of 2011 (**Madhusudan Mondal v. State of West Bengal & others**).

5.1 In **Madhusudan Mondal's case** (supra), the applicant was a Pharmacist working under the Directorate of Health Services, Government

of West Bengal. When he was working as Pharmacist at Hariharapara BPHC, Murshidabad, the earmarked Government quarter was not occupied by him. Therefore, a Memo was issued by the competent authority asking him to refund, in instalments, an amount of Rs.37,645/- drawn towards HRA during the period from December 2008 to June 2010, to which he was not entitled. The payment of HRA to him was also stopped from July 2010. It was observed by the Tribunal that the respondents could not produce any order in support of the fact that the applicant was mandatorily required to stay in the Government accommodation at Hariharapara BPHC. In view of this, and also considering other aspects of the matter, the Tribunal set aside the order of recovery and directed the respondents to make payment of HRA to the applicant till the date when he occupied the earmarked Government accommodation.

6. On the other hand, Ms.Eshita Barua, the learned counsel appearing for the respondents, invited our attention to the applicant's letter dated 6.4.2011, *ibid*, and submitted that the applicant was fully aware of the availability of the quarters/accommodation earmarked for the Superintending Engineer/Deputy Director General (Engineering), but he did not occupy the earmarked accommodation on or immediately after 17.12.2010 when his predecessor vacated the same. As the said earmarked accommodation could not be allotted to any other officer, the same was lying vacant. Therefore, there is nothing wrong in ordering recovery of HRA erroneously paid to the applicant and also in stopping payment of HRA to

the applicant from December 2012 till June 2013 when he was transferred from HTP,AIR, Kingsway, Delhi. It was also submitted by Ms. Eshita Barua that as per AIR Manual, the quarters are earmarked at the Stations/Transmitters, keeping in view the functional requirements, and easy availability of the concerned officer during any exigency and disruption in service. The Head of Station is also required to be available in situation like natural disaster, internal disturbances, etc. Therefore, the applicant was mandatorily required to occupy and stay in the earmarked quarters. Having deliberately failed to stay in the earmarked quarters and further having drawn HRA, to which he was not entitled, the applicant acted in a manner unbecoming of a Government servant and, therefore, there was nothing wrong in initiating departmental proceeding against him for imposition of minor penalty, vide memo dated 1.9.2013.

7. We have given our anxious consideration to the facts and circumstances of the case and the rival contentions. In the fitness of things, we would like to quote hereunder the contents of the letter dated 6.4.2011 (Annexure R/3 to the counter reply) addressed by the applicant to the Director General, All India Radio (respondent no.3):

With due respect I beg to say that I joined at HPT AIR Kingsway, Delhi on 18.11.2010 on transfer from AIR Suratgarh, which is a difficult station. I had given my preferences as o/o Chief Engineer (NZ) and P&D unit DG AIR Delhi while my posting at Suratgarh. I joined at this office with assurance by senior officers in Directorate at that time that my request will be considered after 2-3 months. It is once again to intimate you that I have my residence at Gurgaon. HPT Kingsway office is quite away from my residence at Gurgaon and takes a lot of time. It also has an earmarked quarter which

may cause me a hefty financial loss. It is therefore requested that I may please be transferred (change office) from HPT Kingsway Delhi to any of the following offices in Delhi, in order of preference ö

1. O/o Chief Engineer (NZ), New Delhi
2. P&D Unit, DG AIR New Delhi
3. DG AIR New Delhi.ö

From the above letter, it is axiomatic that the applicant was fully aware that HPT, All India Radio, Kingsway Camp, Delhi, is having an earmarked accommodation to be occupied by him as Superintending Engineer/Head of Office of HPT, All India Radio, Kingsway Camp, Delhi. Therefore, the applicant's plea that he was not aware about the earmarked quarters for him is an empty bluster.

7.1 As per the All India Radio (AIR) Manual Vol.II Part II, an EØ type quarter for HPT, AIR, Kingsway, is earmarked/attached to the post for the Controlling Authority (Head of Office), i.e., Superintending Engineer, HPT, AIR, Kingsway Camp, Delhi-110009. As the applicant was the Head of Office/Superintending Engineer, HPT, AIR, Kingsway Camp, Delhi, and was well aware about the earmarked quarters attached to the post held by him, his plea about non-issuance of specific order requiring him to stay in the earmarked quarters or allotting the earmarked quarters in his favour is out of place.

7.2 It has been emphatically asserted by the respondents that the quarters are earmarked at the Stations/Transmitters, keeping in view the functional requirements, and easy availability of the concerned officer during any exigency and disruption in service. This statement of the

respondents has not been rebutted by the applicant in his rejoinder. Therefore, the applicant, on his own volition, having not occupied the earmarked quarters, to which only he was only entitled, and, on the contrary, having allowed the same to remain vacant, the action of the respondents in effecting recovery of the amount of HRA erroneously drawn by him and consequently, stopping the payment of HRA in his favour from December 2012 to June 2013, by no stretch of imagination, could be said arbitrary or unreasonable.

7.3 As on examination of the materials in the instant case, it is well established that while working as Superintending Engineer/Head of Office, HPT, AIR, Kingsway, Delhi, the applicant was mandatorily required to stay in the quarters attached to the post of Superintending Engineer/Head of Office, HPT, AIR, Kingsway, Delhi, the decision of the Tribunal in **Madhusudan Mondal's case** (supra), being out of context, is of no help to his case.

8. As regards the applicant's challenge to the Memo dated 1.9.2013, *ibid*, issued by the disciplinary authority initiating departmental proceedings for imposition of minor penalty, it has been admitted by the applicant that the disciplinary authority has already passed the penalty order, and the appeal made by him against the penalty order is still pending with the appellate authority. This being the situation, we are not inclined to entertain and consider the contentions raised by the applicant with regard to

his challenge to the Memo dated 1.9.2013. However, the applicant, if so advised, is free to raise all his points before the appellate authority.

9. In the light of what has been discussed above, we have no hesitation in holding that the O.A., being devoid of merit, is liable to be dismissed. Accordingly, the O.A. is dismissed. No costs.

(K.N.SHRIVASTAVA)
ADMINISTRATIVE MEMBER

(RAJ VIR SHARMA)
JUDICIAL MEMBER

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