

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**Original Application No.180/00049/2017**

Thursday, this the 02<sup>nd</sup> day of August, 2018

**CORAM:**

**Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member  
Hon'ble Mr. Ashish Kalia, Judicial Member**

Akhila Umesh,  
Aged 24 years, W/o. Arun Panicker,  
Sorting Assistant, Head Record Office,  
RMS 'EK' Division, Kochi – 682 011,  
Ernakulam District,  
Residing at Krishna Vihar,  
Cherukulam Road, Palluruthy,  
Kochi – 6, Ernakulam District. .... **Applicant**

**(By Advocate – Mr. Sam Isaac Pothiyil)**

**V e r s u s**

- 1 Union of India represented by the Secretary,  
Ministry of Personnel, PG and Pension,  
Department of Personnel and Training,  
North Block, New Delhi-110 001.
- 2 Chief Post Master General,  
Office of the Chief Post Master General,  
Kerala Circle, Thiruvananthapuram – 695 033.
- 3 The Post Master General,  
Office of the Post Master General, Central Region,  
Kochi – 682 020.
- 4 The Head Record Officer,  
RMS 'EK' Division, Office of the Head Record,  
RMS 'EK' Division, Department of Post,  
Ernakulam, Kochi – 682 011.
- 5 The Superintendent,  
Department of Posts, RMS 'EK' Division,  
Ernakulam, Kochi – 682 011. .... **Respondents**

**(By Advocate – Mrs. Latha P.K., ACGSC)**

This Original Application having been heard on 27.07.2018, the Tribunal on 02.08.2018 delivered the following:

## **O R D E R**

***Per: E.K. Bharat Bhushan, Administrative Member***

1. OA No. 180/49/2017 is filed by Smt. Akhila Umesh, Sorting Assistant working under the Department of Posts against the communication dated 10.01.2017 issued by the 4<sup>th</sup> Respondent to the 5<sup>th</sup> Respondent intimating recovery of Rs. 1,41,332/- from the applicant on account of HRA claimed, for which she was not eligible.

2. The relief sought in the OA are as follows:-

- i) To set aside Annexure A4 as unjust, illegal and unsustainable;
- ii) To direct the respondents to refrain from recovering any amount from the applicant on the basis of Annexure A4 and to refund the amount if any recovered on the basis of Annexure A4;
- iii) To declare that there was no misrepresentation or suppression of fact with respect to the applicant occupying Government quarters from her side therefore she is not liable to be subjected to recovery proceedings as directed in Annexure A4;
- iv) To issue such other appropriate orders or directions that this Hon'ble Tribunal may deem fit, just and proper in the circumstances of the case;
- v) To grant the costs of this Original Application

3. The applicant had joined service as Sorting Assistant under the 1<sup>st</sup> Respondent on 28.03.2011. At the time of joining, she was staying along with her parents and sisters in the Government quarters allotted to her mother, who is a Senior Superintendent under the Ministry of External Affairs. Her address shown in the appointment letter (Annexure A1), identity card (Annexure A2) and Attestation Form (Annexure A3) was the same

address allotted to her mother by her employer Ministry i.e., III/3, Plot-I, Passport Office Quarters, Panampally Nagar P.O., Kochi – 36. Thus, the applicant had been truthfully declaring her correct address throughout.

4. On marriage, she submitted an application for changing her address w.e.f. 31.10.2016. Subsequently, she was surprised to receive a communication dated 10.01.2017 issued by the 4<sup>th</sup> Respondent to the 5<sup>th</sup> Respondent seeking recovery as already mentioned. It appears from Annexure A4 that from verification of the service book of the applicant it has come to the notice of the respondents that she was occupying Government quarters, while at the same time drawing HRA and this was the context in which the recovery had been ordered.

5. She had not suppressed any information at any point in her career and the fact was that she was staying at the Government quarters allotted to her mother. Admittedly, even this information had come to the knowledge of the 4<sup>th</sup> Respondent on scrutiny of her service book and it shows there was no intent on the part of the applicant to defraud the respondents. The entire details relating to the applicant had been furnished to her employers in the form of several declarations made as already mentioned and she had no knowledge whatsoever that the HRA being paid to her was in excess of what she is actually entitled to and her mother's occupation of Government quarters would be a ground to deny her HRA.

6. As grounds, the applicant submits that there had been no

intention or mistake on her part and that she had declared all facts relating to her place of residence to the Authorities. She further contends that being a Group 'C' employee, the orders of the Hon'ble Supreme Court of India in ***State of Punjab & Ors. vs. Rafiq Masih (White Washer)*** 2015 (4) SCC 334 would prohibit any recovery from her. In compliance with the orders in ***Rafiq Masih's*** case, the Department of Personnel and Training had issued an Office Memorandum dated 02.03.2016 (Annexure A5) on the same lines. Besides, the Hon'ble High Court of Gauhati in W.P. (C) No. 70 of 2012 had held as follows:

*"In that view of the matter I hold that the petitioners shall not be entitled to continue getting benefit of HRA henceforward if they share the Government quarter allotted to his/her/parents/brothers/sisters. But the respondents shall not make any recovery from their salaries of the amounts already paid to them by way of HRA in view of the fact that there is nothing on record to come to finding that the petitioners availed this benefit by making misrepresentation or by playing fraud and rather the benefit was given to them as routine course since long time."*

7. Per contra, the Respondents have filed a reply statement wherein, it is submitted that the applicant had been staying in Government staff quarters allotted to her mother since she had joined the Department and till her marriage during October 2016. At the same time she was also in receipt of HRA, which is not admissible as per Rules as she was staying in Government staff quarters, albeit, allotted to her mother. As a responsible employee, the applicant ought to have known that she was not entitled for HRA when she stayed in Government quarters allotted to her mother. On receipt of the orders at Annexure A4 also she did not approach her superiors for ascertaining the reasons for recovery.

8. It is admitted that the address particulars had been correctly given by the applicant in various declarations but she has not specifically informed the Department that she was staying with her mother in Government quarters allotted to her mother. The applicant cannot plead ignorance of Rules while seeking an undeserved benefits. The reply goes on to quote the Judgment of the Hon'ble Supreme Court in ***Chandi Prasad Uniyal & Others vs. State of Uttarakhand & Others*** in Civil Appeal No. 5899 of 2012 @ Special Leave Petition (C) No. 30858/2011, wherein it is stated as follows:-

*"We are concerned with the excess payment of public money which is often described as "tax payer's money" which belongs to neither to the officers who have effected over-payment nor that of recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not, may be due to a bonafide mistake. Possibly, effecting excess payment of public money by Government Officers, due to various reasons like negligence, carelessness, collusion, favoritism etc. because money is such situations does not belong to the payer or the payee. Situations may also arise where the payer and payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority and payments have been received by the recipients also without any authority of law. Any amount paid / received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right. In such situations law implies as obligation on the payee to repay the money otherwise it would amount to unjust enrichment."*

*We are therefore of the considered view that except few instances pointed out in Syed Abdul Qadir case and in Col B.J. Akkar (Retd) case, the excess payment made due to wrong/irregular pay fixation can always be recovered"*

9. The applicant has filed a rejoinder reiterating the contentions raised in the OA. She submits that all information relating to her place of residence had been provided to the Respondents and the service book from which the 4<sup>th</sup> Respondent is said to have made the discovery that she was staying in Government quarters allotted to her mother, was also available to the said respondent for more than 5 years i.e., from the beginning of her

career. Recovery of such a huge amount would cause undue hardship to the applicant and to her family.

10. The respondents have filed an additional reply statement, which more or less repeats the points already mentioned in the original reply statement. While admitting that the applicant had declared the fact that she was staying with her mother in Government staff quarters, the respondents state “furnishing the address may not quickly attract the attention of the authorities concerned about her staying in Government quarters”. It is also difficult to believe that the applicant was ignorant of basic Rules that HRA is not admissible to employees, who are staying in Government quarters. The applicant is a Group 'C' employee, who has been called upon to pay back Rs. 1,41,332/- as ineligible HRA disbursed to her w.e.f. 28.03.2011 onwards.

11. Heard Shri. Sam Issac Pothiyil, learned counsel for the applicant and Smt. P.K. Latha, ACGSC, learned counsel for the respondents. We have examined all pleadings and documents on offer.

12. The case is squarely covered under ***State of Punjab & Ors. v. Rafiq Masih (White Washer)*** spelling out the law, which has become the landmark decision in the matter of recovery from employees. The Hon'ble Supreme Court declares that recovery from the following categories of employees would be impermissible in law. The Judgment held:-

*“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement, Be that as it may,*

*based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*

*(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*

*(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*

*(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*

*(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*

*(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."*

13. The above decision holds the field in so far as the matter under adjudication is concerned here and effectively succeeds ***Chandi Prasad Uniyal & Others (supra)***. O.A succeeds. There shall be no recovery of the stated sum from the applicant. Any amount recovered so far from the applicant on account of excess HRA disbursed will be refunded to the applicant forthwith and in any case within two months of receipt of copy of this order.

14. OA is allowed as above. No costs.

**(ASHISH KALIA)**  
**JUDICIAL MEMBER**

**(E.K.BHARAT BHUSHAN)**  
**ADMINISTRATIVE MEMBER**

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**List of Annexures of the Applicant**

**Annexure A-1** - True copy of the appointment letter dated 23.03.2011.

**Annexure A-2** - True copy of the identity card of the applicant.

**Annexure A-3** - True copy of the Attestation Form.

**Annexure A-4** - True copy of the communication dated 10.01.2017 issued by the 4<sup>th</sup> respondent to the 5<sup>th</sup> respondent

**Annexure A-5** - True copy of the Office Memorandum dated 02.03.2016.

**Annexure A-6** - A copy of the certificate dated 23.01.2017 obtained from the employees.

**Annexure A-7** - A copy of the representation dated 20.01.2017.

**Annexure A-8** - Copy of the representation dated 23.05.2018 submitted by the applicant.

**List of Annexures of the Respondents**

**Annexure R-1** - A true copy of letter No.4/118/09-1FPPC/1146 dated 05.10.2012 of Government of Punjab, Department of Finance.

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