

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
ORIGINAL APPLICATION NO.060/00579/2017
Chandigarh, this the 14th day of May, 2018

...
CORAM:HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)

...

1. Dr. Rajiv Dosajh s/o Sh. N.L. Dosajh, age 57 years, Senior Medical Officer, General Multi Speciality Hospital, Sector 16, Chandigarh, Group A.
2. Dr. Monika Dhir W/o Dr. Rajesh Dhir, age 49 years, House No. 1055, Sector 15-B, Chandigarh.
3. Dr. Deepak Bakshi, s/o Late Sh. M.K. Bakshi, age 56 years, H. No. 1473, Phase 3B-2, Mohali.
4. Dr. Sabhayata Sharma, W/o Dr. Sanjiv Sharma, age 45 years, H. No. 157, Sector 15-A, Chandigarh.
5. Dr. Sanjiv Sharma, S/o Dr. K.K. Sharma, age 50 years, H. No. 157, Sector 15-A, Chandigarh.
6. Dr. Rana Singh S/o Sh. Maghi Ram, age 52 years, H. No. 5615, Sector 38 West Chandigarh.
7. Dr. Harleen W/o Pritpal Singh Tiwana, age 45 years, 148, Sector 8, Chandigarh.
8. Dr. Gopal Bhardwaj, S/o Dr. P.R. Bhardwaj, age 55 years, H. No. 435, Sector 7, Panchkula.
9. Dr. Neeraj Dhawan, S/o Sh. O.P. Dhawan, age 49 years, 6144, MHC, Manimajra.
10. Dr. Ranjana Mehta W/o Dr. Neeraj Dhawan, 6144, age 45 years, MHC, Manimajra.
11. Dr. Rajiv Khaneja, S/o Mr. K.L. Khaneja, age 53 years, 408, Sector 7, Panchkula.
12. Dr. S.S. Dabar S/o, Sh. R.S. Dabar, age 56 years, H. No. 1935, Sector 21, Panchkula.
13. Dr. Raman Gupta, S/o Dr. Yudhister Gupta, age 58 years, H. NO. 3196, Sector 21-B, Chandigarh.
14. Dr. Supriya Gupta, w/o Dr. Raman Gupta, age 54 years, H. No. 3196, Sector 21-B, Chandigarh.
15. Dr. Vijay Girdhar s/o Sh. Ram Nath Girdhar, age 42 years, Flat No. 206, Group Housing Society No. 2, Sector 24, Panchkula.
16. Dr. Pradeep Vasesi S/o Sh. Ratan Lal Vasesi, age 53 years, R/o 1040, Sector 39-B, Chandigarh.
17. Dr. S. Satija S/o late Sh. D.R. Satija, age 59 years, 3608, Sector 32-D, Chandigarh.
18. Dr. Anshu Vasesi W/o Dr. Pradeep Vasesi, age 51 years, S/o Sh. Ratan Lal Vasesi R/o 1040, Sector 39-B, Chandigarh.
19. Dr. Anil Garg S/o Baij Nath Garg, age 57 years, R/o 1106, Sector 12, Panchkula.
20. Dr. Sanjay Singla S/o R.K. Singla, age 54 years, 3367, Sector 32-D, Chandigarh.
21. Dr. Jaya Jately, W/o Rajiv Batish, age 44 years, R/o 131, Sector 8, Panchkula.

....Applicants

(Argued by: Ms. Sangita Dhanda, Advocate)

Versus

1. Union Territory through Home Secretary, Sector 9, Chandigarh Administration.
2. Director Health Services, Sector 16, Chandigarh Administration.

..... **Respondents**

(Argued by: Mr. Gagandeep Singh Chhina, Advocate)

ORDER (Oral)
JUSTICE M.S. SULLAR, MEMBER (J)

1. The challenge in the instant Original Application (O.A.), instituted by applicants Dr. Rajiv Dosajh and other doctors, is to the impugned order dated 21.05.2015 (Annexure A-6), delivered to them, vide letter dated 10.06.2016 (Annexure A-7), whereby the benefit of payment of House Rent Allowance (for brevity HRA) on Non-Practicing Allowance (in short, NPA) for the period 01.03.2011 to 30.11.2011, was denied, and recovery of the impugned amount has been ordered from them, by the Competent Authority.
2. The matrix of the facts and material, which needs a necessary mention, for the limited purpose of deciding the core controversy, involved in the present case, and emanating from the record, is that the applicants are the Doctors (Medical Officers) of Health Service Department of State of Haryana. They are presently working, on deputation in various hospitals and dispensaries with the Chandigarh Administration, and the amount of recoveries being effected from them, is as per the details given herein below:-

Sr. No.	Name	Father/Husband's name and residential address	Date of joining U.T. Administration on deputation	Present place of posting	Amount of house Rent recovered (Rupees)
1.	Dr. Rajiv Dosajh	S/o Late Sh. Nand Lal Dosajh, H. No. 1121, Sector 15-B, Chandigarh	March, 1998	GMSH, Sector 16, Chandigarh	24466/-
2.	Dr. Monika Dhir	W/o Dr. Rajesh Dhir, House No.	01.08.2004	Medical Officer,	22384/-

		1055, Sector 15-B, Chandigarh		Punjab and Haryana High Court, Chandigarh	
3.	Dr. Deepak Bakshi	S/o Late Sh. M.K. Bakshi, H. No. 1473, Phase 3B-2, Mohali	Sept 1990	GMSH, Sector 16, Chandigarh	24466/-
4.	Dr. Sabhayata Sharma	W/o Dr. Sanjiv Sharma, H. No. 157, Sector 15-A, Chandigarh	June, 2006	GMSH, Sector 16, Chandigarh	15830/-
5.	Dr. Sanjiv Sharma	S/o Dr. K.K. Sharma, H. No. 157, Sector 15-A, Chandigarh	March, 2007	GMSH, Sector 16, Chandigarh	23060/-
6.	Dr. Rana Singh	S/o Sh. Maghi Ram, 5615, Sector 38 West Chandigarh	Dec, 2008	GMSH, Sector 16, Chandigarh	22384/-
7.	Dr. Harleen	W/o Pritpal Singh Tiwana, # 748 Sector 8, CHD	Aug 2007	Civil Dispensary, Kambwala	14807/-
8.	Dr. Gopal Bhardwaj	S/o Dr. P.R. Bhardwaj, H. No. 435, Sector 7, Panchkula	April, 2004	GMSH, Sector 16, Chandigarh	24466/-
9.	Dr. Neeraj Dhawan	S/o Sh. O.P. Dhawan, 6144, MHC, Manimajra	June, 2004	GMSH, Sector 16, Chandigarh	15510/-
10.	Dr. Ranjana Mehta	W/o Dr. Neeraj Dhawan, 6144, MHC, Manimajra.	Nov 2008	GMSH, Sector 16, Chandigarh	10583/-
11.	Dr. Rajiv Khaneja	S/o Mr. K.L. Khaneja, R/o 408, Sector 7, Panchkula.	Jan, 1997	Civil Dispensary, Sector 1, Chandigarh	24466/-
12.	Dr. S.S. Dabar	S/o Sh. R.S. Dabar, H. No. 1935, Sector 21, Panchkula	May 2002	GMSH, Sector 16, Chandigarh	24466/-
13.	Dr. Raman Gupta	S/o Dr. Yudhister Gupta, 3196, Sector 21-B, Chandigarh	March, 2008	Civil Hospital, Manimajra	24466/-
14.	Dr. Supriya Gupta	W/o Dr. Raman Gupta H. No. 3196, Sector 21-B, Chandigarh	March, 2003	GMSH Sector 16, Chandigarh	21730/-
15.	Dr. Girdhar Vijay	S/o Sh. Ram Nath Girdhar, 206, Group Housing Society No. 2, Sector 24, Panchkula.	March 2008	Civil Hospital Manimajra	12152/-
16.	Dr. Pradeep Vasesi	S/o Sh. Ratan Lal Vasesi R/o 1040, Sector 39-B, Chandigarh	Oct, 2005	Civil Dispensary, Sector 40, Chandigarh	24466/-
17.	Dr. S. Sajita	S/o Lt. Sh. D. R. Satija, 3608, Sec 32-D, Chandigarh	May, 1999	Civil Dispensary, Sector 8, Chandigarh	19161/-
18.	Dr. Anshu Vasesi	W/o Dr. Pradeep Vasesi, R/o 1040, Sector 39-B, Chandigarh	Oct, 2003	Civil Dispensary, Sector 23, Chandigarh	23060/-
19.	Dr. Anil Garg	S/o Sh. Baij Nath Garg, R/o 1106, Sector 12, Panchkula	Jan, 1997	ESI, Dispensary, Sector 29, Chandigarh	24466/-

20.	Dr. Jaya Jately	W/o Rajiv Batish Batish, R/o 131, Sector 8, Panchkula	April, 2008	Police Hospital, Sector 26, Chandigarh	10275/-
21.	Dr. Sanjay Singla	S/o R.K. Singla, 3367, Sector 32- D, Chanigarh	May, 1990	Civil Secretariat, Chandigarh	24466/-

3. The case set up by the applicants, in brief, insofar as relevant, is that as per the relevant rules/instructions, issued by the Govt. of Haryana, the NPA is not a separate allowance, rather it is a part and parcel of their basic pay. The amount of NPA has nothing to do with the amount of HRA because the NPA is to be calculated on the basic pay being paid to them. As such, all the applicants were getting HRA, as was admissible to all the Haryana Govt. employees up to February, 2011. Though they were working on deputation in Chandigarh, but getting the same till date. The Govt. of Haryana was stated to have clarified and revised admissible HRA and decided that the eligible employees of Haryana Government will be entitled to get the HRA and that the tri-city of Chandigarh, Panchkula and Mohali would be treated as one single unit. All the applicants are originally Medical Officers of Haryana Government, and were being paid HRA as admissible to them being part of their salary, which constitute basic pay + Grade Pay + NPA.

4. According to the applicants, that earlier the NPA, which was being paid to them on deputation, was much less as compared to their counterparts from State of Punjab. Suddenly, in the month of March, 2011, the UT Administration started effecting recovery of the impugned amount, in the garb of letter dated 30.12.2009 (Annexure A-2), to implement the recommendations of the 5th Punjab Pay Commission, as depicted in the chart reproduced herein above. The action of the respondents was earlier challenged by the applicants in O.A. No. 675/HR/2011. The impugned order

of recovery was quashed and the Competent Authority was granted liberty to proceed afresh, in the matter, in its own discretion, in view of the law laid down by the Hon'ble Apex Court in the case of **Sahib Ram Vs. State of Haryana**, 1994 (5) SLR 753 and Full Bench judgment of the Hon'ble Punjab and Haryana High Court in **CWP No. 2799 of 2008, vide order dated 27.09.2011** (Annexure A-3), by this Tribunal.

5. As a consequence thereof, the Competent Authority issued the impugned Show Cause Notice (in short SCN) dated 03.11.2011 (Annexure A-4). In pursuance thereof, the reply filed by the applicants to SCN, was held to be unsatisfactory, and the impugned recovery has been ordered, vide order dated 21.05.2015 (Annexure A-6).

6. Aggrieved thereby, the applicants preferred the instant O.A., challenging the validity of the impugned order and action of the respondents, in effecting the recovery of the impugned amount, on the following grounds:-

“1. That the impugned order affecting recovery is illegal, arbitrary, violative of principles of equity and fair play enshrined in the Constitution of India and as such is liable to be condemned and the direction is required to be issued to the respondents restraining them from affecting recovery because the case of the applicants is covered by the Haryana Government Rules and letter dated 29.07.2009 issued in this regard by Haryana Government.

2. That undisputedly, the applicants are Haryana Government employees and they are to be paid salaries as per the Haryana Government Rules regarding House Rent Allowance as it is being paid to them till date. In this way the applicants have got their rightful benefit and it was no bounty which had been paid to them. The respondents are not entitled to recover any amount from the salaries of the applicants.

3. That the respondents are acting illegally, arbitrarily and unlawfully especially because the case of the applicants is covered under letter dated 30.12.2009 which is issued by Punjab Government.

4. That the applicants have neither concealed anything from the respondents nor misled them thus the respondents are required to be stopped from being unfair and inequitable and as such applicants deserve indulgence of this Hon'ble Tribunal at this point of time to get the action of respondents quashed by this Hon'ble Tribunal.

5. That there is no reason with the authorities for effecting recovery in view of Haryana Government Rules and letter dated

29.07.2009 issued by Haryana Government in this regard. Action of the respondents is liable to be deprecated by refunding the recovered amounts, especially because the law is well settled to the effect that any legal and well deserved benefit once given cannot be withdrawn especially when the persons taking the benefit have not played any fraud or mischief with authorities while taking said benefit. Due to this reason as well the authorities are required to be restrained from paying lesser salary to the applicants every month. Present case also warrants interference by this Hon'ble Tribunal in order to protect the claim of the applicant.

6. That the respondents have further violated order 27.09.2011 by not considering the judgments referred to by the applicants wherein it has been stated that well deserved benefits once paid cannot be recovered.

7. That the impugned recovery by respondent no. 2 being null and void, illegal, arbitrary and unsustainable in the eyes of law deserves to be quashed.”

7. Levelling a variety of allegations, and narrating the sequence of events, in detail, in all, the applicants claim that as they were duly entitled to the amount of HRA on NPA, so the impugned recovery of HRA from 01.03.2011 to 30.11.2011, effected by the respondents, is arbitrary and illegal. On the strength of the aforesaid grounds, the applicants seek to quash the impugned order and action of the respondents, in the manner, indicated herein above.

8. On the contrary, the respondents have refuted the claim of the applicants, and filed reply, wherein it was pleaded that the allowances like CCA and HRA are to be calculated and paid under the relevant Rules of the borrowing Govt. i.e. Punjab Govt. Rules, as applicable to the Chandigarh Administration. It was pleaded that the Punjab Govt. issued notification dated 14.09.2009, regarding grant of NPA to the doctors and the same was adopted by the Chandigarh Administration, vide letter dated 30.12.2009 (Annexure A-2), in which it has been clearly mentioned that NPA shall continue to be treated as pay, for the grant of Dearness allowance, entitlement of Travelling allowance/daily allowance as well as calculation of retirement benefits, but not for the purpose of

grant of HRA. But, inadvertently, HRA on NPA was continued to be drawn by the applicants with their salary in the year 2011 and as soon as the mistake came to the notice, the recovery of excess amount, paid for the period 01.03.2011 to 30.11.2011, was rightly ordered by the Competent Authority. Instead of reproducing the entire contents of reply and in order to avoid the possibility of repetition of facts, suffice it to say that while virtually acknowledging the factual matrix, the respondents have stoutly denied all other allegations and grounds, contained in the O.A., and prayed for its dismissal.

9. Having heard learned counsel for the parties, having gone through the record, with their valuable assistance and after considering the entire matter, we are of the firm view that the instant O.A. deserves to be accepted, in the manner, and for the reasons, mentioned herein below.

10. As depicted herein above, the facts of the case are neither intricate nor much disputed, and fall within a very narrow compass, to decide the real controversy, between the parties, involved in the instant case.

11. Such being the position on record, now the short and significant question, that arises for our consideration, is that, as to whether the doctors of Haryana State, working on deputation in Chandigarh Administration, are entitled to the impugned amount of HRA, in the given peculiar facts and special circumstances of the case, or not?

12. Having regard to the rival contentions of the learned counsel for the parties, to our mind, the answer must obviously be in the affirmative, in this regard.

13. What cannot possibly be disputed here is that all the eligible employees of Haryana Govt. are entitled to HRA on NPA. The amount of HRA was revised and the following formula was re-introduced to assess the rate of HRA, as per letter dated 29.07.2009 (Annexure A-1).

Revision criteria for classification of cities and towns based on population on the basis of Census 2001	Revision classification cities/towns	Rates of HRA as % of Pay Band + Grade Pay + NPA
50 Lakhs and above	X	30
50 to 5 Lakhs	Y	20
Below 5 lakhs	Z	10

14. Meaning thereby, the rate of HRA is the % age of pay band+ Grade Pay+ NPA. In other words, the NPA is not an allowance but it is a part and parcel of the basic pay of the applicants, who originally are the employees of Govt. of Haryana. Therefore, once it is apparent on record that the amount of HRA is fixed on the basis of Pay Band + Grade Pay + NPA, so NPA is part of basic pay, as claimed by the applicants, and not a separate allowance over and above their basic pay, as urged on behalf of the respondents. In that eventuality, the applicants are also entitled to HRA on NPA, like any other employee of Haryana Govt. Thus, the impugned recovery is arbitrary, illegal and cannot legally be permissible.

15. An identical question came to be decided by the Hon'ble High Court of Gujarat in Special Civil Application No. 9615 of 2006 titled **Mahesh Kumar Kapadia Vs. State of Gujarat** decided on 21.10.2016, wherein it was observed as under:-

“20. In the result, all the Writ Applications succeed and are hereby allowed. It is hereby declared that for the period between 1st April 2004 and 31st March, 2009, the Non-Private Practicing allowance shall be treated as a Basic Pay and shall be calculated along with the Basic Pay for the purpose of determining the Dearness Pay. The authority concerned shall calculate the difference accordingly in the case of each of the Medical Officers and pay the consequential

benefits within a period of three months from the date of receipt of this order. Rule is made absolute accordingly."

16. Not only that, the Hon'ble Apex Court in the case of **K.C. Bajaj and Other Vs. Union of India**, 2014 (4) SLR 449, held that the Medical Officers in the Armed Forces are entitled to the benefit of NPA to be treated as a part and parcel of their basic pay. Sequelly, the Hon'ble Apex Court, in the case of **Col. B.J. Akkara (Retd.) Vs. Govt. of India & Ors.** (2006) 11 SCC 709, has held that the element of NPA has to be treated as basic pay, for the purpose of fixing pension.

17. There is yet another aspect of the matter, which can be viewed entirely from a different angle. It is not a matter of dispute that the applicants were entitled to and getting HRA on NPA till February, 2011, when it was suddenly withdrawn w.e.f. 01.03.2011 to 30.11.2011, by the respondents. Admittedly, all the applicants joined on deputation in Chandigarh Administration and were getting the HRA on NPA. Therefore, such existing rights cannot legally be withdrawn, in the garb of subsequent letter dated 14.09.2009, of Punjab Govt., adopted vide letter dated 30.12.2009 (Annexure A-2), by the UT Administration. Moreover, in the letter of Punjab Govt., it is clearly mentioned that NPA shall continue to be treated as part of pay, for the purpose of grant of Dearness allowance, entitlement of travelling allowance/daily allowance as well as calculating the retirement benefits. Once NPA was held to be treated as part of the pay for the purpose of grant of Dearness allowance, entitlement of travelling allowance/daily allowance as well as calculating the retirement benefits, then it cannot possibly be saith that NPA is not part of the pay, for the purpose of HRA, as alleged on behalf of the respondents.

18. This is not the end of the matter. Even, the question of treating NPA as part of pay, for the purpose of HRA, is not alien or foreign, and many examples are available. In this regard, it is added here that the Ministry of Finance, Department of Expenditure of Central Govt. has notified the CCS (Revised Pay) Rules, 2016, vide notification dated 25.07.2016 wherein the case of Medical Officers in respect of whom NPA is admissible, the amount of NPA is to be added as part of the pay, as contemplated in clause 7 (A) and (b) thereof. Even these Rules with regard to fixation of pay were made applicable to the employees of Quasi Govt. organizations, Autonomous Organizations, Statutory Bodies etc. as per O.M. No. 1/1/2016-E.III(A) dated 13.01.2017.

19. Therefore, it is held that the applicants are also entitled to HRA on NPA. The action of the respondents in recovering the impugned amount paid and denial of this benefit to them, vide impugned order dated 21.05.2015 (Annexure A-6) is not only arbitrary but illegal as well, which deserves to be quashed, in the obtaining circumstance of the case.

20. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

21. In the light of the indicated prismatic reasons, the instant O.A. is hereby accepted. As a consequence thereof, the recovery of the impugned amount from the applicants, and the impugned order (Annexure A-6) are set aside. At the same time, the Competent Authority is directed to refund the recovered amount (if any), to the applicants, within a period of two months, from the date of receipt of

a copy of this order. However, the parties are left to bear their own costs.

(P. GOPINATH)
MEMBER (A)

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(JUSTICE M.S. SULLAR)
MEMBER (J)
Dated: 14.05.2018

