

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/021/00398/2016

Date of CAV : 31.08.2018
Date of Order : 05-09-2018

Between :

Dr. Vimal Kumar S/o late B. N. Srivastava,
Director (Retired) G.S.I from the Office of the Deputy
Director General, G.S.I. Southern Region, Bandlaguda
and now resident of Flat No.401, Laxmi Residency,
Vidvat Nagar, Road No.3 (Near Hari Priya Kshetra),
Dilsukh Nagar-500060.

....Applicant

AND

1. Union of India, represented by the
Ministry of Mines, Shastri Bhawan-2,
Dr. Rajendra Prasad Marg, New Delhi – 110 011.
2. The Director General, Geological Survey of India,
27 Jawaharlal Nehru Road, Kolkatta-700016.
3. The Deputy Director General, (Operation), U.P
And Uttarakhand, Geological Survey of India,
Sector-E, Aliganj Scheme, Lucknow-226024.
4. The Deputy Director General, Geological Survey
Of India, N.E.Region, Zorem, Nogrim Hills,
Shillong – 793003.
5. The Deputy Director General, G.S.I. Southern
Region, Bandlaguda, Hyderabad-500 068.Respondents

Counsel for the Applicant: Mr. K. Venkateswara Rao
Counsel for the Respondents : Mr. T. Hanumantha Reddy, CGSC

CORAM :

THE HON'BLE MR.SWARUP KUMAR MISHRA, JUDICIAL MEMBER

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

This application is filed under section 19 of the Administrative Tribunals Act, 1985 seeking to call for the records relating to Lr.No.3/1(2524)/LAW-59/2010, dated 22.6.2015 issued by the Deputy Director General, GSI, Central Head Quarters, Kolkata i.e the Office of the Second respondent namely the Director General, GSI, Kolkatta but communicate by the Deputy Director General (P) G.S.I.Central Hq.Kolkata-16 vide his Lr.No.1389/SP-3/1(2524)/LAW-59/2010,dated 24.6.2015 and quash and setaside the same as illegal, unjust, arbitrary and in contravention of the rules on the subject besides being violative of Articles 14, 16 and 21 of the Constitution and consequently be pleased to direct the respondents to refund Rs.76,703/- of old Station HRA at Jaipur, deposited under protest and also refund Rs.1,85,587/- recovered from his gratuity with interest on both at the rate of 12% per annum from the date of deposit and recovery as the case may be till the date of actual payment and pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2. The case of the applicant is that, he was posted at Devpur for about 11 years. Thereafter, on transfer he was posted at Shillong and joined on 05.08.1986 and he continued to serve there till the year 1997. Due to his said transfer from Devpur to Shillong, the applicant kept his personal articles in one rented house. In the Last Pay Certificate issued on 21.11.2007 it was mentioned that a sum of Rs.181250/- was to be

recovered from him towards HRA. The applicant while furnishing his undertaking dated 07.06.1989 is filed at page-13 of the OA he has mentioned that he had got his house hold goods in the house in question at Devpur and nobody was staying there. Admittedly the applicant the applicant was entitled to double house rent being posted in the North East Region. Since steps were taken up by the Department for recovery of the HRA with interest and penal interest. Applicant had filed OA No.189 of 2010 before the Lucknow Bench of CAT challenging the action of the Respondents to recover the house rent with interest and penal interest. The application filed by the applicant was disposed of with the following direction :-

“13. In terms of the observations of the Hon’ble Apex Court and submissions of the parties, O.A is disposed of with direction to the respondents to provide an opportunity of hearing to the applicant and thereafter pass an order within a period of three months from the date the certified copy of order is produced and also consider and dispose of his representation as directed by the Tribunal vide order dated 30.4.2010 in accordance with law and decision so taken, be communicated to the applicant.”

Therefore the Department passed the orders dated 01.09.2008 and 17/19.03.2008 (pages 28, 29 and 30 of the OA).

3. In the decision passed by the Hon’ble Supreme Court in the case of State of Punjab & others etc., Vs. Rafiq Masih [Civil Appeal No.11527 of 2014 (arising out of SLP(C) No.11684 of 2012)] disposed of on 18.12.2014, the Hon’ble Apex Court decided certain situations wherein recoveries from the employees are impermissible in law, which are as follows :-

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

(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.”

4. The Dy. Director (Fin.), G.S.I., Calcutta, had sought for clarification regarding permissibility of grant of HRA to the employees in respect of the rented house taken by them at their old station when luggage’s are kept at old station and no family members were residing there, as per letter dated 02.05.1990 (Annexure-II, page-14 of the OA), it was communicated to the said officer by the concerned department that in that case no double HRA can be granted in favour of the employees. Therefore it is apparent that the concerned authority were awarded about the circumstances under which double HRA can be claimed while using the rented house at old station solely for the purpose of keeping luggage’s by the staff. In this context, it is to be stated that the applicant had acted bona fide and had in fact mentioned in his undertaking dated 07.06.1989 that ‘nobody is residing in the house and only house hold things are kept in the said house’, which is at the previous station of the employee. The Respondents started taking

action for recovery of the HRA along with interest and penal interest as it reveals from the material on record at the time of issuing the LPC on 21.11.2007. The applicant has retired after attaining the age of Superannuation on 30.11.2008. In the meantime the applicant has refunded a sum of Rs.76,703/- (Rupees seventy six thousand seven hundred and three only) towards the HRA of old station for the period from 1986 to 1997 as seen from his letter dated 28.05.2008. He has remitted the said amount on protest as seen from the minutes of the personal hearing dated 05.05.2015 sanctioned to the applicant as per the orders of the CAT Lucknow Bench in OA No.189/2010 decided on 24.02.2014.

5. Thus, from the totality of the circumstances, it is clear that the applicant had never suppressed the fact that he was using the rented house in his previous station solely for the purpose of keeping his personal affects. Therefore he was neither misrepresented any facts nor has practised any fraud. The period of HRA relates from 1986 to 1997 and spanning about 11 years. The applicant retired in the year 2008. Action for recovery of HRA along with interest was taken by the Respondents only in the year 2007. In the absence of justifiable ground shown by the Respondents as to why they did not make the recovery in question much before the retirement of the applicant. This Tribunal find that there was nodoubt delay and negligence in the part of the concerned officers of the Department to takes steps for recovery of the HRA from the applicant. Therefore this present case squarely comes under Clause (iii) and (iv) of para-12 of the order of the Hon'ble Supreme Court in the case of state of Punjab and others etc. Vs. Rafiq Maish (White Washer) etc.,

6. Taking into consideration the fact that the applicant, at the time of his retirement had held the post of Dy. General Manager, GSI, it cannot be said that he was not fully aware of the scope of drawing HRA. The fact that he had already refunded a sum of Rs.76,703/- towards old station HRA drawn by him at Shillong for the period in question has also to be taken into consideration. Therefore, in the circumstances, if any direction is given for the Respondents to return the said amount to the applicant, the same may amount to undue enrichment by the applicant.

7. In the circumstances, it would be just and proper to direct the Respondents not to take any steps for recovery of interest and penal interest towards the HRA in question from the applicant as he is not liable to pay the same.

8. Accordingly the OA is partly allowed. The Respondents cannot take any steps for recovery of interest or penal interest towards HRA in question from the applicant. No order as to costs.

(SWARUP KUMAR MISHRA)
JUDICIAL MEMBER

Date : 05th September, 2018.

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