

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI**

O.A.210/00483/2017

Dated this 10th the Tuesday of April, 2018.

Coram: Hon'ble Shri R. Vijaykumar, Member (A).

1. Smt. Nanda Ashok Sonkusle,
W/o. Ashok Sonkusle
Age 47 years, Occupation: Sr. Technical
Officer, working at ICAR-Central Institute
for Research on Cotton Technology (CIRCOT),
Adenwala Road, Near Five Garden,
Matunga (East), Mumbai 400 019.
and residing at Flat No.13,
Karanja House, Dumayne Rd, MbPT colony,
Colaba, Mumbai 400 005.

...Applicant.

(By Advocate Ms. Manda Loke).

Versus

1. Union of India through,
The Secretary, Department of Agriculture,
Research and Education (DARE) &
Director General of Indian Council for
Agriculture Research (ICAR),
Krishi Bhavan, Dr. Rajendra Prasad Road,
New Delhi-110 001.
2. The Senior Administrative Officer,
ICAR-Central Institute for Research on
Cotton Technology (Indian Council of
Agricultural Research), Adenwala Road,
Matunga, Mumbai-400 019.
3. The Head of Office,
ICAR-Central Institute for Research on
Cotton Technology (Indian Council of
Agricultural Research), Adenwala Road,
Matunga, Mumbai-400 019.
4. The Under Secretary (Vig.II),
ICAR-(Indian Council of
Agricultural Research), Krishi Bhavan,
New Delhi-110 001.
5. Dr. P. G. Patil,
Working as Director,
Indian Council of Agricultural Research

(ICAR), Central Institute for Research on Cotton Technology (CIRCOT), Adenwala Road, Matunga, Mumbai-400 019.

... Respondents.

(By Advocate Shri M. S. Topkar) .

Reserved on : 03.04.2018

Pronounced on : 10.04.2018

O R D E R

Per : R. Vijaykumar, Member (Administrative)

The applicant was serving as Senior Technical Officer with the ICAR-CIRCOT, Mumbai where she joined initially as Technical Assistant (T-II-3) on 15th July, 1993. She has been receiving House Rent Allowance (HRA) from the date of joining and was married to a person who was serving in the Mumbai Port Trust prior to the date of her appointment in CIRCOT. After discovering the fact that she was ineligible to receive HRA, as per Central Government Rules applicable to her and her husband because her husband, was granted accommodation by the Central Government owned Port Trust where she resides with her family, it was decided and communicated to her in the note dated 27th July, 2016 that HRA will be discontinued from June, 2016. The applicant replied to their notice on 28.06.2016 (**Annexure A-10**) asserting that from the beginning of her employment, she had been advising her residential address as B.P.T. Quarters and despite this, the CIRCOT authorities

considered her eligible for HRA. She had changed address thrice and all four addresses had been intimated, she claimed. She refers to a staff quarter allotment order issued to her on 07.03.2009 without any request from her and which she had refused. This action suggested that respondents considered her residence as private and held her to be eligible for HRA. Therefore, she questioned the sudden change of stance of the authorities. Thereafter, charge-sheet was issued to her in reference no. 5-9/2016-Vig.II dated 14th October, 2016 charging her with misconduct by drawal of HRA from June, 1993 to May, 2016 as this was inadmissible and had to be recovered immediately. The applicant replied to the Show Cause Notice on 28th June, 2016 asking for details of rules. The applicant responded to the charge-sheet in her letter dated 26th October, 2016 denying the allegations of misconduct on her part. Since the applicant had alleged bias against the Director (CIRCOT), the respondents appointed another Officer of the same rank as ad-hoc Disciplinary Authority by order F. no.5(9)/2016-Vig.II dated 31st January, 2017. The duly appointed Disciplinary Authority issued orders in file no. DIR/PA/Vig/2017/1375 dated 20th July, 2017 comprising a charge-memorandum imputing misconduct

against the applicant. Meanwhile, instructions were received from the ICAR in office order no. Adm.III/HRA/NAS/2017-18/112 dated 31st July, 2017 directing the recovery of Rs.9,37,815/- towards inadmissible HRA paid from 15th June, 1993 to 31st May, 2016 from the salary of the month of July, 2017 in 36 monthly installments. The Orders conveyed also mention that interest would have to be collected and this would be added to the recoveries after receipt of full details from respondent no.1.

2. The applicant filed this OA on 2nd August, 2017 seeking the following reliefs:-

"8.1 That this Hon'ble Tribunal be pleased to call for the record and proceedings from the Respondents in respect of the Applicant's case in further after examining the same be pleased to direct he Respondents to quash and set aside the impugned Office Order No.112 bearing NO. Adm.III/HRA/NAS/2017-18 dated 31st July, 2017 arising out of show cause notice dated 14.10.2016 regarding recovery of HRA from the Applicant as the same is null and void;

8.2 That this Hon'ble Tribunal be pleased to order and further directions to the respondents to refund the amount as HRA recovered from the Applicants salary from the month of July, 2017;

8.3 Cost of the application;

8.4 Any other relief as nature and circumstances this Hon'ble Tribunal may deem fit and proper."

3. The applicant sought interim relief by way of stay on the recovery of the HRA dues from her salary and in the absence of response of the respondents, on the 3rd hearing, a stay was issued in regard to the months of August and September, 2017 and this continued to October, 2017 pending reply by respondents. During the hearing on 21st December, 2017, the learned counsel for the respondents informed the court that the applicant had been dismissed from service w.e.f. 31st October, 2017 and was not receiving salary or pension thereafter, from which any dues could be recovered. The interim relief orders were, accordingly considered infructuous and were withdrawn.

4. During the final hearing on 3rd April, 2018 the learned counsels for the applicant and the respondents were heard. The respondents filed a copy of their orders dated 30th October, 2017 by which it was held that the applicant had obtained her appointment by falsely claiming that she belonged to a Scheduled Tribe and when she was asked to produce Caste Verification Certificate, she refused to conform to the requirements. Thereafter, in accordance with the orders of the Hon'ble Apex Court, she was dismissed for the reason that she had fraudulently obtained the

appointment. The orders also direct in accordance with the law as settled by the Hon'ble Apex Court that all the benefits enjoyed or derived by the applicant by virtue of her aforesaid appointment on 15th June, 1993 need to be recovered. The learned counsel for the respondents argued that the present proceedings have become infructuous because of these later orders which covered a wider ambit including HRA and also precluded the possibility of any recoveries from the salary of the applicant. It is also noticed that the applicant has not amended nor sought to amend her application by impugning this order to the extent of its application to her HRA. However, it transpired from the discussion with the learned counsels that the applicant has mounted a challenge to the dismissal orders before the Hon'ble High Court. The learned counsel for the respondents mentioned that the issue of jurisdiction had also been observed during the proceedings before the Hon'ble High Court. In any event, when the dismissal order is under challenge and when it is possible for recoveries of undue earnings that are under challenge in this Original Application to be recovered as arrears of land revenue from the applicant, the decision on this application may be appropriate and on this basis,

this application is taken up for judicial consideration.

5. The learned counsel for the applicant has urged in defence that at the time of appointment, she had furnished a bio-data form which contained her permanent home address on 18th October, 1993 as 2, Colaba House, Dumayne Road, B.P.T. Colony, Mumbai-400005. This document also records a change of address, without authentication, to B.P.T. Quarter No.22/386, Reynold's Road, Wadala (E), Mumbai-400037 (**Annexure A-4**). This bio-data form has also been attested by the then Administrative Officer of CIRCOT. In **Annexure A-5**, she has also furnished a certificate of the employer dated 27th November, 1995 signed by the Acting Director (CIRCOT) which shows her residence as B.P.T. Quarter, Parikrama I/12, Reynold's Road, Wadala (E), Bombay-400037. She also relies on her list of family members (**Annexure A-6**) that she has furnished to CIRCOT on 18th December, 2004 which shows her husband as employed with Mumbai Port Trust. In (**Annexure A-7 Colly.**), she relies on a copy of the letter sent by her to the Director (CIRCOT) on 24th March, 1994 showing her original address as B.P.T. Quarters and changed to the new address at B.P.T. Colony. She also relies on a letter dated 12th June, 2003 addressed to the

Director (CIRCOT) informing him of her new address.

6. The respondents had issued allotment orders to the applicant in ref. no. Admin IV/Allotment/2007-08/3008 dated 7th March, 2009 allotting staff quarters to the applicant that were earlier lying vacant in their colony at Ghatkopar and directing for immediate occupation. She replied on 20.03.2009 declining the allotment since she was unable to shift residence due to domestic compulsions and desired to be given the relevant Rules. She also made suggestions to allot the quarters to the other staff members.

7. The applicant has alleged in her application that she was being sexually harassed by the Director (CIRCOT), Dr. P.G. Patil and that her complaint was pending for decision. She alleges that the issue of payment of HRA to her had been intentionally raked up by the respondent Director (CIRCOT) to further harass her. She has again urged that she had never demanded or asked for HRA payment but this amount was paid to her routinely by the concerned Drawing and Disbursing Officer of ICAR. She again reiterating that she has never hidden any information about her residential address and that as a technical person, she is not involved with the

administrative matters including the rules governing the entitlement to HRA. Therefore, she insists that there is no fraud on her part by which she can be blamed for payment of HRA. She also refers to the DoPT's OM No.F.No.18/03/2015-Estt.(Pay-I) dated 2nd March, 2016 which was issued on the basis of the order of the Hon'ble Apex Court in Rafiq Masih (White Washer) case and refers to the relaxation for Grade C and D employees and also refers to bar on any recoveries where the payment has been made more than five years before the order of recovery was issued. She, therefore argues, that it is the concerned authority who should have verified her entitlement for HRA before making payments and who should be proceeded against for making recoveries and relevant disciplinary action.

8. The learned counsel for the respondents denies the relevance of the allegation of the sexual harassment and the linkage that the applicant has drawn with this issue of her dis-entitlement for HRA. They state in their reply on the information given at the time of appointment, that the applicant had given her residential address as "B.P.T. Quarters" however they argue that this does not amount to a disclosure that she stays in staff quarters allotted by B.P.T. to her

husband. Merely, by stating that her address was "B.P.T. Quarters", the applicant actually misled, by inadequate information and half truth, the respondents into granting her HRA to which she was not entitled by virtue of Rule 5(c-III) of the Service Rules. They also mentioned that the respondents were having several vacant staff quarters which were built specifically for employees and based on instructions from the ICAR Head Quarters, and since the applicant had never positively stated that she was staying in her husband's quarter, she was allotted a flat in Ghatkopar in the CIRCOT Staff Quarters. They pointed out that the applicant declined to accept this allotment in her letter dated 20th March, 2009 **(Annexure R-2)** but in this letter she failed to make any reference to her present occupation of staff quarter allotted to her husband. Instead, she made gratuitous suggestions that divert attention from the fact that she was already occupying Government Staff Quarters and therefore, she was not eligible for HRA nor to another allotment of staff quarters. According to the respondents, this response made clear and transparent, the dishonest intentions of the applicant. Therefore, according to the respondents she was not entitled to HRA right from the day of

joining upto June, 2016 when the payment was stopped and orders of recovery were passed. They also urged that the Original Application is premature with response to the charge-sheet where misconduct has been alleged against her and which is pending for enquiry.

9. In her rejoinder, the applicant has reiterated her arguments and has pointed out that it was for the authorities to infer from the fact that a female employee was staying with her husband and the address mentioned was B.P.T. Quarters or B.P.T. Colony which should have led to a conclusion by them that she was not entitled to HRA. Therefore, there was no lack of information provision on her part but it was only the error of the respondents which led to the payment which is now sought to be recovered along with the potential claim of interest.

10. During arguments, the learned counsels for the applicant and respondents reiterated the issues raised in the application, reply and rejoinder and the status of the dismissal orders issued by the respondents.

11. We have considered the facts and circumstances, law points and rival contentions in the case. We have gone through the O.A. Along with **Annexures A-1 to A-15**, Rejoinder to Respondents,

reply filed on behalf of the applicant.

12. We have also gone through the reply along with **Annexure R-1 and R-2** and also have examined the files and correspondence related to the disciplinary proceedings and cognized all relevant facts of the case.

13. The applicant has contended that she had provided information to the respondents at various occasions and under various circumstances indicating her residential address as lying within the B.P.T. Quarters. However, as pointed out by the respondents, there is no explicit statement that she is residing in this quarters with her husband. When an employee takes up a new job, it is common knowledge and as gained from experience, that they first ascertain the elements of their pay packages and the various facilities and allowances that they are potentially entitled to. Therefore, it cannot be argued that the employee was not aware of the fact that she was getting HRA to enable her to secure rented or private accommodation within the city. The HRA is specifically intended to reduce the impact of high rental payment by employees especially those who live in cities like Mumbai. Any reasonable employee would have considered whether she was entitled to any allowances when she was not paying

any rent to anybody and was actually staying with her husband in staff quarters allotted to him. An employee cannot deny knowledge of the Service Rules and can perhaps feign ignorance at the time of employment but within a few months, she should have gained adequate knowledge of the relevant rules by which she was entitled to certain amounts and equally the dis-entitlement for HRA. The duty was cast upon her as well as her family and residential situation so that they could take appropriate steps. As pointed out by the respondents above, in the year 2009 when staff quarters were allotted to her and she refused them, she made no reference in the fact that she was staying in the staff quarters allotted to her husband. It is also noted that she could have simply refused the allotment stating that she was staying in Government quarters allotted to her husband but she failed to do so and instead, gave a devious reply. If, at that stage, she has conveyed truthfully, the authorities would have been alerted and would have not only canceled her allotment at Ghatkopar but would have also denied her HRA including for recovery of the much smaller amount of HRA paid to her in the past. Therefore, it is quite apparent that the applicant is solely responsible for not having communicated her

situation of Government residential accommodation to the respondents so that they could stop payment of HRA and this responsibility fell upon her immediately after her appointment with the respondents and deepened after the allotment of staff quarters by respondents in 2009.

14. The learned counsel for the applicant has mentioned in the application and argued during the final hearing that recoveries for such a long period are barred by virtue of the decision of the **Hon'ble Apex Court in Rafiq Masih (White Washer) case (2015) 4 SCC 334.** The referred decision of the Hon'ble Apex Court, details at the outset the two factual elements essential to the consideration of the matter: the first, that some excess payments including allowances had been made by the employer to which the employee was not due and was now sought to be recovered. The second essential factual component is that: "the respondent employees were not guilty of furnishing any incorrect information, which had led the competent authority concerned, to commit the mistake of making a higher payment to the employees. The payment of higher dues to the private respondents, in all these cases, was not on account of any misrepresentation made by them, nor was it on account of any fraud committed by

them. Any participation of the private respondents, in the mistake committed by the employer, in extending the undeserved monetary benefits to the respondent employees, is totally ruled out. It would, therefore, not be incorrect to record, that the private respondents, were as innocent as their employers, in the wrongful determination of their inflated emoluments." (extract from original). In examining the behavior of the applicant in this regard, we have noted earlier how the applicant carefully described her residential address without any suggestion that could alert the authorities to her dis-entitlement. Even when she was allotted quarters by the respondents in the mistaken belief that she needed one for her family for her to survive and work comfortably in a costly city like Mumbai, she avoid a positive declaration to this effect by not furnishing relevant information and which "led the competent authority concerned, to commit the mistake". Therefore, the present applicant, a Group-A category employee, cannot seek to invoke the application of the principles set out by the Hon'ble Apex Court in this case. Therefore, recovery of the entire overpaid amount is certainly permissible and the manner of recovery at this juncture, is left to the respondents to

decide. On the aspect of interest recovery, this is a matter which could not be only based on accounting computation but would be a decision that should emerge from the disciplinary proceedings along with whatever punishment may lie in the discretion of the disciplinary authorities. Since those disciplinary proceedings are pending and, in the context of the dismissal orders may well become infructuous once the dismissal orders are final after testing before the appropriate forum, those orders would also apply to the applicant. In such an event, since the appointment itself would have been determined as fraudulently obtained, interest on HRA overpayments would be chargeable and collected in the same manner as HRA dues. In the event that the applicant succeeds in regaining employment, the disciplinary proceedings should proceed to determine the mala fides on this issue and thereafter, decide her liability for interest on HRA overpayments.

15. In these circumstances there are no merits in this original application and it is accordingly dismissed without any order as to costs.

(R. Vijaykumar)
Member (A)

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