

CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH

Orders pronounced on: 23.05.2019
(Orders reserved on:18.05.2019)

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)**

(I) O.A.NO.060/00688/2018

1. Kamal Sharma, son of Late Sh. Shyam Lal Sharma, aged 56 years, Officer Surveyor, (Group B) Office of Director Punjab, Haryana and Chandigarh, GDC, Survey of India, Sector 32, Chandigarh.
2. Ravinder Kumar son of Sh. Sant Singh, aged 55 years, Officer Surveyor, (Group B), office of Director Himachal Pradesh GDC, Survey of India, Sector 32, Chandigarh.
3. Y.S.Rawat son of Late Sh. G.S. Rawat, aged 50 years, Officer Surveyor (Group B), office of Director Himachal Pradesh GDC, Survey of India, Sector 32, Chandigarh.
4. Joginder Kumar son of Sh. Hoshiar Singh, officer Surveyor, (Group B), office of Director Himachal Pradesh GDC, Survey of India, Sector 32, Chandigarh.

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Applicants

(BY: MR. R.C. SHARMA, ADVOCATE)

Versus

1. Union of India through Secretary to Government of India, Ministry of Science and Technology, New Mehrauli Road, Block-C, Adchini, New Delhi-110016.
2. The surveyor General of India, Hathibarkala Estate, Dehradun, Uttrakhand.
3. The Additional Surveyor General, northern Zone, Survey of India, Sector 32-A, Chandigarh.
4. The Director, J&K Geo-Spatial Data Centre (NZ), Survey of India, Sector 32-A, Chandigarh.

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Respondents

(BY: MR. VINOD K. ARYA, ADVOCATE)

(II) O.A.NO.060/00780/2018

1. Darbara Singh son of Sh. Hari Singh, aged 63 years, Officer Surveyor Group B), Office of Director, Punjab, Haryana and Chandigarh GDC, Survey of India, Sector 32, Chandigarh-160030.
2. Karan Singh Rana son of Late Sh. Gyan Singh, aged 59 years, Officer Surveyor, (Group B), office of Director Map Archive & Dissemination Centre, Survey of India, Dehradun 249001.
3. Shyam Veer Singh, son of Sh. Shital Prashad, aged 52 years, Deputy Director / Director, (Group A), National GDC, Survey of India, Dehradun 249001.
4. Shiv Singh Rawat son of Sh. Murli Singh, aged 56 years, Officer Surveyor, (Group B), Office of Additional S.G. Special Zone, Survey of India, Dehradun 249001.
5. Balvinder Singh son of Late Basawa Singh, aged 56 years, Office Superintendent, (Group B, non Gazetted), office of Director, National GDC, (NZ), Survey of India, Dehradun 249001.
6. Ram Lal, son of Late Assa Ram aged 55 years office Superintendent Establishment and Accounts Officer, (Group B), office of Director Jammu and Kashmir GDC, Survey of India, Nagrota, Jammu 181221.
7. Ram Ratan Meena son of Sh. Birbal Meena aged 53 years, Survey Assistant (Group C), office of Director, Survey (Air), New Delhi, GEO-Spatial Data Centre, Survey of India, New Delhi.
8. Harbir Singh son of Sh. Baljeet Singh, aged 58 years Officer Surveyor, (Group B), Survey of India, New Delhi-110016.

Applicants

(BY: MR. R.C. SHARMA, ADVOCATE)

Versus

1. Union of India through Secretary to Government of India, Ministry of Science and Technology, New Mehrauli Road, Block-C, Adchini, New Delhi-110016.
2. The Surveyor General of India, Hathibarkala Estate, Dehradun, Uttrakhand-249001.
3. The Additional Surveyor General, Northern Zone, Survey of India, Sector 32-A, Chandigarh-160030.
4. The Director, J&K Geo-Spatial Data Centre (NZ), Survey of India, Gold Course Road, Nagrota, Jammu-181221 (J&K).

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Respondents

(BY: MR. K.K.THAKUR, ADVOCATE)

ORDER
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. Both the captioned Original Applications (OAs) involve similar and identical questions of facts and law and as such we propose to dispose of the same, with the consent of learned counsel for the parties, by a common order. For facility of reference, facts are taken from O.A.No.060/00688/2018 **(KAMAL SHARMA ETC. VS. UNION OF INDIA ETC.)**.

2. The applicants have approached this Tribunal under section 19 of the Administrative Tribunals Act, 1985, seeking quashing of the impugned order dated 28.9.2016 (Annexure A-5) and order dated 18.4.2018 (Annexure A-6) vide which recovery of House Rent Allowance (HRA) drawn by applicants during the period 2009 to 2014, while posted at Jammu and retaining accommodation at old station, is sought to be made from them.

3. The facts of the case are largely not in dispute. The applicants were working at Chandigarh and were posted at Jammu during various intervals like 2009 to 2013 etc. They retained Government Accommodation in their occupation at old station and also withdrew HRA at Jammu, to which they claim, they were entitled to. The Government of India, Ministry of Urban Development, Directorate of Estates has been issuing various instructions from time to time including 15.9.1998, 5.6.2008, 3.6.2011 and 24.5.2016 to the effect that Civilian Central Government employees, posted to J&K, are entitled to retain General Pool residential accommodation and these instructions were extended from time to time. The respondents,

however, issued order dated 28.9.2016 (Annexure A-5), stating that as per OM dated 3.6.2011 of competent Ministry, no doubt, officials/employees are entitled to retain government accommodation at last posting station, but there is no mention of grant of House Rent Allowance to them, as drawn by applicants. Secondly, there is no provision of additional HRA except 10 districts of Kashmir Valley, and Jammu District is not covered in the eligible list. On this basis, the Audit Authorities raised an objection that since the applicants wrongly drew HRA to which they were not entitled to, the respondents proceeded to make recovery by passing impugned orders, hence the O.A.

4. The O.A. is resisted by respondents by filing a detailed reply. They submit that while retaining accommodation at last place of posting, the applicants were not entitled to HRA and as such drawal of same is not permissible and, therefore, to rectify the error, the impugned orders have been passed and recovery of such amount is permissible from persons like applicants. They submit that drawal of double HRA is permissible to the employees posted to North-East region only. Moreover, it is audit authorities who have pointed out about irregularity and as such action of respondents is as per rules and law. They submit that as per Department of Personnel & Training O.M dated 11.8.2016, Jammu District is not covered for grant of package of concession, which is available to Anantnag, Baramulla, Budgam, Kupwara, Pulwama, Srinagar, Kulgam, Shopian, Ganderbal and Bandipura. Thus, no right is vested in applicants on the basis of an error which can always be corrected and

recovery is also permissible in view of law laid down in **JAGDISH PRAJAPAT VS. STATE OF RAJASTHAN & OTHERS**, 1998 (2) ATJ, 286 and **HIGH COURT OF PUNJAB AND HARYANA VS. JAGDEV SINGH**, JT 2016 (7) SC 409.

The pleadings in other case on both sides are on similar lines.

5. Heard learned counsel for the parties at length and examined the material on file, with their able assistance.

6. The learned counsel for the applicants argued that the impugned orders are liable to be quashed and set aside for a variety of reasons like in violation of principles of natural justice and that there is no mis-representation on the part of the applicants and as such they cannot be punished with huge recovery and in any case, the applicants have used the accommodation and paid licence fee and the respondents have not suffered any loss. Moreover, such recovery is not permissible in view of latest law laid down by the Hon'ble Apex Court judgment in **STATE OF PUNJAB VS. RAFIQ MASIH (WHITE WASHER)**, (2014) 8 SCC 883. On the other hand, both the learned counsel for the respondents argued that since an error had occurred in payment of HRA, to which applicants were not entitled to as per instructions, so error could be corrected and recovery can be made, as per rules and law.

7. It is apparent from the pleadings that as per OM dated 27.3.2009 (Annexure R-3), with was issued in reference to earlier OM dated 29.10.2007, issued by Ministry of Personnel, P.G & pensions (DoPT), New Delhi, it was decided that the package of concessions / facilities earlier extended to Central

Government employees working in Kashmir Valley upto 30.6.2008, may be continued for a further period upto 31.12.2009. The annexure attached to this letter talks of various facilities / concessions including additional H.R.A. Clause I.(A)(iii) provides "HRA as for Class 'A' city applicable for employees exercising option at (i). Such employees will be eligible for drawing the normal HRA as well at their place of posting provided Departmental arrangement is not made for his/her stay.". In Corrigendum dated 28.12.2010 (Annexure R-4) while extending facilities from 1.1.2010 to 31.12.2010, it was provided in note I that the package of concession shall be applicable in Kashmir Valley comprising of six districts, namely Anantnag, Baramulla, Budgam, Kupwara, Pulwama and Srinagar. The period was extended from 1.1.2011 to 31.12.2011 vide letter/OM dated 27.1.2011, 1.1.2012 to 31.12.2012 vide O.M dated 27.6.2012, but list of districts in Kashmir valley was increased to ten to include Kulgam, Shopian, Ganderbal and Bandipora also. This has been extended from time to time.

8. However, it is equally true that there existed OM dated 5.6.2008 (Annexure A-1), which provides that civilian government employees, are entitled to retention of residential accommodation for bonafide use of the dependent family at the last place of posting. What the respondents say that as per this O.M, there is no provision for grant of additional HRA to the persons like the applicants. However, the question is, whether there is any denial for grant of HRA to such like persons. The

O.M. to say the least is silent on the issue on grant of HRA. It clearly permits for retention of accommodation for family members / dependents of government employees on the last place of posting, but the same does not talk about grant or denial of additional HRA to such persons like applicants. O.M. dated 3.6.2011, Annexure A-2 and 24.5.2016 (Annexure A-3) are also on similar lines. In fact, OM dated 24.5.2016 talks about retention of accommodation by employees posted to NER, Sikkim, Andaman & Nicobar Island, Lakshdweep and to State of J&K.

9. There appears to be some confusion due to issuance of OMs, one by the Government of India, Ministry of Urban Development, Directorate of Estates, Nirman Bhawan, New Delhi and the other set of O.Ms issued by Department of Personnel & Training. It is not clear from the various OMs, issued by the authorities as to whether one is entitled to retain the accommodation at old station and draw HRA also at new place of posting at J&K or not. The first series of OMs, talks about State of J&K as a whole for retention of accommodation, but the other set of package concession talks about certain districts in Kashmir Valley. Persons this vacuum in the policy decision has given rise to the confusion and the applicants were paid the HRA, while retaining accommodation at old place of posting. The term used in OMs issued by DoPT is "Additional H.R.A. and other concessions". In other words, if both the set of OMs are read together, employees who retain accommodation at old Station, are entitled to additional HRA in

only 10 districts of Kashmir Valley. So, it would be advisable if the authorities re-consider the issue and issue a composite OM to clear the cloud hovering around the decision relating to two benefits, as it being a policy decision, we would not like to comment upon the same.

10. The question is, can the respondents be allowed to make the recovery from the applicants of HRA paid by them for posting at Jammu more so in violation of principles of natural justice on the basis of an audit objection. The respondents are under obligation to at least following the principles of natural justice before issuing any order contrary to interest of the applicants.

11. The Apex Court in **K. I. SHEPHARD & ORS. VS. UNION OF INDIA & ORS.** AIR 1988 SC 686, has held that even administrative acts have to be in accordance with natural justice if they have civil consequences. It was also held that natural justice has various facets and acting fairly is one of them. In **KUMAON MANDAL VIKAS NIGAM LTD. VS. GIRJA SHANKAR PANT** AIR 2001 SC 24, the Apex Court held that the doctrine (natural justice) is now termed as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action". In the case of **INDU BHUSHAN DWIVEDI VS. STATE OF JHARKHAND & ORS.**, 2010 (11) SCC 278 it was held that one of the basic canons of justice that no one can be condemned unheard and no order prejudicially affecting any person can be passed by a public authority without affording him reasonable opportunity to

defend himself or represent his cause. As a general rule, an authority entrusted with the task of deciding lis between the parties or empowered to make an order which prejudicially affects the rights of any individual or visits him with civil consequences is duty bound to act in consonance with the basic rules of natural justice including the one that material sought to be used against the concerned person must be disclosed to him and he should be given an opportunity to explain his position. This unwritten right of hearing is fundamental to a just decision, which forms an integral part of the concept of rule of law. This right has its roots in the notion of fair procedure. It draws the attention of the authority concerned to the imperative necessity of not overlooking the cause which may be shown by the other side before coming to its decision. When it comes to taking of disciplinary action against a delinquent employee, the employer is not only required to make the employee aware of the specific imputations of misconduct but also disclose the material sought to be used against him and give him a reasonable opportunity of explaining his position or defending himself. If the employer uses some material adverse to the employee about which the latter is not given notice, the final decision gets vitiated on the ground of the violation of the rule of audi alteram partem. Even if there are no statutory rules which regulate holding of disciplinary enquiry against a delinquent employee, the employer is duty bound to act in consonance with the rules of natural justice. This was so again reiterated by the Lordships recently in the case of **CHAMOLI**

DISTRICT CO-OPERATIVE BANK LTD. VS. RAGHUNATH

SINGH RANA AND OTHERS, AIR 2016 SC 2510 : 2012 (16)

SCC 2014, that even if rule / regulation does not talk of the following the principles of natural justice, even then law requires it to be followed. Thus, the impugned orders cannot be sustained on the touchstone of principles of natural justice.

12. Secondly, in so far as recovery is concerned, it is not in dispute that payment was made by authorities by interpretation of the policy decision in a particular manner by them only. There was no concealment of fact by the applicants nor do they mislead the authorities, in any manner. In the present case, the applicants are getting admissible HRA at Jammu and pay licence fee at the last place of posting for occupying the government accommodation, which has been allotted to them. In such like cases, the applicants cannot be punished with huge recoveries sought to be made from them. This issue is no longer res-integra and stands settled.

13. The Hon'ble Apex Court in a case of **SYED ABDUL QADIR & ORS. VS. STATE OF BIHAR & ORS**, (2009) 3 SCC 475, has settled that in such like cases, the recovery is not permissible. It was held, inter-alia, as under:-

"27. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had

knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram vs. State of Haryana, 1995 Supp. (1) SCC 18, Shyam Babu Verma vs. Union of India, [1994] 2 SCC 521; Union of India vs. M. Bhaskar, [1996] 4 SCC 416; V. Ganga Ram vs. Regional Jt., Director, [1997] 6 SCC 139; Col. B.J. Akkara [Retd.] vs. Government of India & Ors. (2006) 11 SCC 709; Purshottam Lal Das & Ors., vs. State of Bihar, [2006] 11 SCC 492; Punjab National Bank & Ors. Vs. Manjeet Singh & Anr., [2006] 8 SCC 647; and Bihar State Electricity Board & Anr. Vs. Bijay Bahadur & Anr., [2000] 10 SCC 99.

28. Undoubtedly, the excess amount that has been paid to the appellants - teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellants-teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teachers should be made."

14. It is, thus, clear that the Hon'ble Apex Court has settled the issue by holding that if excess payment is made by the employer by applying a wrong principle or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous, then recovery is not permissible. It is settled that the relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within

a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. Not only that, recovery is not permissible in view of principles laid down by Hon'ble Apex Court judgment in **STATE OF PUNJAB VS. RAFIQ MASIH (WHITE WASHER)**, (2014) 8 SCC 883 also.

15. One thing is also very interesting to note that the applicants have retained accommodation on their last place of posting and have paid Licence Fee. They have not drawn any HRA. Thus, to claim that they have drawn additional HRA does not appear to be convincing. In any case, as observed above, it would be in the fitness of things to issue fresh composite guidelines to avoid any confusion in future.

16. In the wake of aforesaid discussion, both the O.As are allowed. The impugned orders relating to recovery are quashed and set aside. If any recovery has already been made from applicants, the same shall be refunded to them. The parties are, however, left to bear their own costs.

(SANJEEV KAUSHIK)
MEMBER (J)

Place: Chandigarh.
Dated: May 23rd, 2019.

HC*

