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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Reserved on: 28.09.2021*
Decided on: 19.01.2022

\+ **W.P.(C) 10992/2021 & CM No. 33854/2021**

JAYABRATA BOSE ..... Petitioner
Through: Mr. A. K. Srivastava, Adv.

versus

UNION OF INDIA & ANR. ..... Respondents
Through: Mr. Subhra Prashar, Advocate for UOI.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE TALWANT SINGH

TALWANT SINGH, J.:

1. The petitioner has challenged the final order dated 03.09.2021, passed in OA No. 862/2019 by the learned Central Administrative Tribunal (hereinafter referred to 'the CAT'), Principal Bench, New Delhi.

2. In brief, the case of the petitioner is that he was a Group 'A' Government officer posted in Delhi and his wife, who is an employee of Indira Gandhi National Open University (IGNOU), also posted at Delhi and she was allotted a residential accommodation since July, 2003. Petitioner was residing with his wife but on 15.05.2007, he informed his department that he had shifted to his own flat at Shipra Sun City, Indirapuram, Ghaziabad but his wife continued to stay at her official accommodation in IGNOU Campus due to her work-related exigencies. The petitioner was granted House Rent Allowance (HRA) w.e.f. May 2007.

3. On 03.03.2016, when petitioner was posted in Delhi Milk Scheme, a

complaint was made regarding HRA being claimed by the petitioner. The authorities then decided that petitioner is not entitled to HRA as per para 5 (c) (iii) of HRA Rules, as his wife was employed in IGNOU. Further, payment of HRA was stopped and recovery of the already disbursed amount of Rs.13,76,697/- for the period from May, 2007 to March, 2017 was ordered to be made.

4. The petitioner, then, challenged the aforesaid order being arbitrary, illegal, discriminatory and against the spirit of Article 14 of the Constitution of India before CAT by filing OA No. 862/2019. Prior thereto, the petitioner had submitted a representation to his department on 11.04.2017; it was rejected on 14.02.2019. During the pendency of the OA filed by the petitioner, recovery was stayed vide order dated 25.03.2019.

5. The petitioner retired from service on 31.01.2021. On 03.02.2021, an amount of Rs.13,76,697/- was withheld by respondents out of his retiral benefits. The OA filed by the petitioner was dismissed on 03.09.2021. Hence, the present petition was filed.

6. We have heard arguments for admission of the writ petition on 28.09.2021 and our considered view is as under.

7. The CAT while dismissing the OA filed by the petitioner observed as under:

> *"9.…The main contention of the applicant has been that the residential accommodation provided to his spouse in IGNOU Campus cannot be considered as Government accommodation as the Universities cannot be considered as Government Department or Government bodies. In support of his claim, he has relied upon the aforesaid judgments of the Hon'ble Karnataka High Court and this Tribunal. The fact, however, remains that IGNOU is an autonomous body under the Central Government, Ministry of Human Resource Development and is fully funded by budgetary support. It is also a fact that this aspect has also been clarified in OM dated 03.04.2017 by*

Department of Expenditure {E.II (B) Division} vide ID No.2/2/2016-E.II (B) dated 15.09.2016 as under:-

> *"It is clarified that as both the officer & his wife are posted at Delhi (UA) and his wife has been allotted residential accommodation at the same station by IGNOU, which is an Autonomous Body under the administrative control of Ministry of Human Resource Development and is funded by the Central Government, it would imply that accommodation provided to spouse of Director (Cost) would qualify as 'Government Accommodation' for the purpose of 5(c)(iii) notwithstanding the judgments of CAT, Mumbai Bench quoted in the reply dated 07.03.2016/30.03.2016 furnished by the officer in response to the clarification sought by DMS/DoAHD&F, since the same were applicable to only the applicants in those OAs. Therefore, HRA to the officer becomes inadmissible from the date his spouse has been provided accommodation by IGNOU, even though the officer may desire to live separately at Ghaziabad"*

10. With this clarification the claim of the applicant that the rules of Central Government accommodation are not applicable to the accommodation provided by IGNOU is not tenable. At the same time, it is also a fact that the applicant was aware that he was staying with his wife who was allotted Government accommodation since 2003. If it is his contention that the accommodation provided by IGNOU is not at par with the Central Government accommodation, then he should have claimed HRA even for the period from 2003 to 2007. The very fact that he did not claim the HRA during this period clearly shows that he was well aware that by staying in accommodation provided to his wife, he is not entitled for HRA. Therefore, as per his own submission by shifting out from Government accommodation allotted to his wife at IGNOU Campus and to stay in his own flat at Indirapuram, Ghaziabad, he cannot claim HRA as both the husband and wife are posted in Delhi and Government accommodation having been allotted to one of them, the same does not entitle the other one to claim the same. The contention that this excess payment of HRA has been made by the Government on

its own accord and, therefore, he is not responsible for the excess payment made to him cannot be sustained as he has himself in the year 2007 advised the department that for logistical and personal reasons he will be staying in his own flat and, therefore, he should be given HRA from 2007. This claim of the applicant is, therefore, self contradictory to each other. It is also not his case that since he has retired, therefore, no recoveries should be made for the excess payment. This was clearly stated to him vide OM dated 03.04.2017, much before his retirement to which he has also made representation to the Competent Authority. The same was rejected vide OM/impugned order dated 14.02.2019. It is also a fact that as far as the judgment of Hon'ble Apex Court in ***Rafiq Masih's*** *case (Supra) is concerned, the same has been dealt with in DoP&T OM dated 02.03.2016 and guidelines have been provided for processing such cases. It is clearly stated that these cases should also be referred to Department of Expenditure. In the applicant's case his representation has been considered by the Department of Expenditure and rejected. It is thus evident that the applicant has knowingly claimed inadmissible HRA for the period May, 2007 to March,2017. This excess payment has been worked out and is to be recovered from the applicant in terms of OM dated 03.04.2017 and impugned order dated 14.02.2019. The applicant being a Senior Group – 'A' Officer was expected to follow the extant rules and regulations and be aware of the wilful inadmissible claim of HRA.*

11. In view of the above, I do not find any infirmity or illegality in the impugned orders dated 03.04.2017 and 14.02.2019 passed by the respondents towards recovery of excess payment of HRA. The OA is, accordingly, dismissed. The interim relief granted vide order dated 25.03.2019 also stands vacated. Pending MA also stands disposed of. There shall be no order as to costs".

8. As noted above, the main contention of the petitioner is that IGNOU is a university and the accommodation provided to his wife is not covered under the definition of government accommodation, as this is neither a government department nor a government body.

9. The petitioner was a member of Indian Costs and Accounts Service. He was well aware about the Government rules and Office Memorandums issued from time to time. The applicable rule in this regard is reproduced hereunder:

> ***"Conditions for Drawl of House Rent Allowance***
>
> *5. ...*
>
> *(c) A Government servant shall not be entitled to House Rent Allowance, If –*
>
> *(i) he shares Government accommodation allotted rent-free to another Government servant; or*
>
> *(ii) he/she resides in accommodation allotted to his/her parents/son/daughter by the Central Government, State Government, an Autonomous Public Undertaking or semi-Government Organization such as a Municipality, Port Trust, Nationalized Banks, Life Insurance Corporation of India etc.*
>
> *(iii) his wife/her husband has been allotted accommodation at the same station by the Central Government, State Government, an Autonomous Public Undertaking or semi-Government Organization such as Municipality, Port Trust, etc. whether he/she resides in that accommodation or he/she resides separately in accommodation rented by him/her."*

10. The case of the petitioner falls under Rule 5 (c) (iii) of HRA Rules. It has been time and again reiterated by the learned counsel for the petitioner that the University, i.e., IGNOU is neither the department of the Central Government nor State Government, nor an autonomous body/undertaking, nor a semi-government organization such as Municipality, Port Trust etc. and as such even if his wife lives in the accommodation provided by IGNOU, he is still entitled to HRA if he lives in his own house.

11. The CAT has rightly noted that if it is believed that the accommodation allotted to the wife of the petitioner is not covered under Rule 5 (c)(iii), and even if the petitioner resides with his wife, he was still entitled to HRA, then, why he had not claimed the HRA for the period

during which he was residing with his wife from July, 2003 to April, 2007 in the official accommodation allotted to her. The act of the petitioner of not claiming the HRA during the said period clearly establishes that he was well aware that if he stays in the accommodation allotted by IGNOU to his wife, he could not have claimed HRA. The petitioner had written a letter, dated 15.05.2007, to the Secretary, Tariff Commission, where he was posted at the relevant time, by which he had informed his decision to live separately from his wife, at his own house at Shipra Sun City, Indirapuram, Ghaziabad. The said letter is reproduced hereunder:

> *"To*
>
> *The Secretary,*
> *Tariff Commission,*
> *Lok Nayak Bhawan,*
> *New Delhi-110003.*
>
> *Sub:* ***Granting of House Rent Allowance-Request for reg.***
>
> *Sir,*
>
> *This is to inform that I have shifted to my own house no.8/12 KAD at Shipra Sun City, Indirapuram, Ghaziabad for which regular deduction is being made from the salary towards HRA.*
>
> *Further, it is informed that my wife is an employee of the IGNOU – a university established under an Act of Parliament. Her service is governed by the rules framed under IGNOU Act. She is in possession of accommodation provided by the IGNOU in the University Campus at Maidan Garhi, New Delhi-110068. She is not drawing HRA from IGNOU. It is needless to mention that being in distant mode of education, her work profile comprises activities such as Tele Conferencing, Phone-in radio sessions etc. Schedule of such activities at times extends beyond normal working hours (9-30AM to 6 PM). Being a woman, performing such duties at odd*

hours is different from a far off place like Indirapuram, Ghaziabad.

Therefore, she will continue to occupy the accommodation provided by the IGNOU at Maidan Garhi, New Delhi-110068, while I shall stay at my own house at Shipra Sun City, Indirapuram, Ghaziabad.

In view of the above perspective, I may kindly be granted House Rent Allowance.

Yours faithfully.

(J. Bose)
Deputy Director (Cost)"

12. Although no one is disputing the contents of the letter written by the petitioner to his employer but the said contents do not inspire any confidence that petitioner had, in fact, started living separately at a distant place in Ghaziabad, away from his wife, who was residing in New Delhi in the official accommodation, without there being any rhyme or reason. The only purpose for writing this letter seems to be able to draw HRA from the employer. The accommodation at Ghaziabad is neither close to the place of employment of the petitioner nor it is more convenient for the petitioner to reach his office from the said accommodation in Ghaziabad than from the official accommodation provided to his wife by IGNOU in New Delhi itself, where the office of the petitioner is also situated. We are conscious of the fact that there may have been some reasons because of which the petitioner might have decided to live separately from his wife but none of the said reasons has been articulated in the letter dated 15.05.2007.

13. The complaint dated 03.03.2016 addressed to the Vigilance Officer of Delhi Milk Scheme, where the petitioner was employed at the relevant time, clearly states that the petitioner was staying in a government accommodation allotted to his wife and further action was initiated on the said complaint. The petitioner had submitted a detailed explanation on 11.04.2017

mentioning therein that the expression "autonomous bodies" has not been explicitly mentioned in Rule 5 (c)(iii) which is the governing condition for granting HRA, in the case of a couple. As per him, the employees working in autonomous organization are not Central Government employees as they are not eligible for Central Government accommodation and in the decision of the Department of Expenditure dated 15.09.2016, the scope of Rule 5 (c)(iii) has been expanded and it smacks of discrimination and arbitrariness towards the petitioner.

14. This is not a case where the petitioner can claim that he was an innocent victim of the circumstances, rather it is a case where the petitioner himself has created the circumstances which led his employer to believe that he was entitled to claim HRA and later on when it was realized that the petitioner was not entitled to claim the same, the employer had no other option but to seek guidance from the Department of Expenditure and as per the advice tendered by Department of Expenditure, further payment of HRA was disallowed w.e.f. April, 2017 and earlier amount was ordered to be recovered.

15. In our view, the Tribunal has rightly held that IGNOU is a Central Government autonomous body under the administrative control of Ministry of Human Resource Development and it is funded through budgetary support and being a Central Government Autonomous Body, it is covered under para 5 (c) (iii) of the conditions for granting HRA. One has to take note of the word *"etc."* used after "Port Trust", which implies that the list of organisations mentioned in para 5 (c) (iii) is not exhaustive and all other Institutions/PSUs and Autonomous Bodies are also covered under the ambit of the Rule.

16. The OM dated 03.04.2017 quotes the earlier advice given by the Department of Expenditure regarding admissibility of the HRA and it was mentioned as under:

> *"It is clarified that as both the officer & his wife are posted at Delhi (UA) and his wife has been allotted residential accommodation at the same station by IGNOU, which is an Autonomous Body under the administrative control of Ministry of Human Resource Development and is funded by the Central Government, it would imply that accommodation provided to spouse of Director (Cost) would qualify as 'Government Accommodation' for the purpose of 5(c)(iii) notwithstanding the judgments of CAT, Mumbai Bench quoted in the reply dated 07.03.2016/30.03.2016 furnished by the officer in response to the clarification sought by DMS/DoAHD&F, since the same were applicable to only the applicants in those OAs. Therefore, HRA to the officer becomes inadmissible from the date his spouse has been provided accommodation by IGNOU, even though the officer may desire to live separately at Ghaziabad".*

17. The petitioner has placed reliance on the judgment of CAT, Mumbai Branch dated 28.10.2010 in OA No. 311/2010 titled ***Dr. Vrinda V. Khole vs. Indian Council of Medical Research.*** In the said judgment, the CAT has held that in earlier case of Registrar of Mumbai University, the department had complied with the judgment of the CAT dated 26.10.1994 passed in OA No. 822/1991 titled ***Sharda Gajanan Rajarshi vs. Union of India & Others.*** Hence, in the case in hand, where husband of the petitioner was appointed Vice Chancellor of Mumbai University, the petitioner was still entitled to HRA. The Department of Expenditure was fully conscious of the said judgments and it was held that the said judgments were applicable only to the applicants in the said OAs. Hence, in the view of the Department of Expenditure, the said judgments were not the judgments *in rem*, rather they

were confined to the cases in hand and were delivered in the facts and circumstances of the respective cases.

18. The petitioner has also relied upon judgment of High Court of Karnataka dated 08.11.2010 in W.P(C)17926/2003, titled ***ESIC & Anr. vs. Sri B.D. Patted.*** In the said judgment, it was held that since HRA was paid for the last eight years and it was not a case of any misrepresentation practiced by government employee on the department, coupled with the fact that he had retired from service, it would be too harsh to take a view to recover the said amount from him.

19. In our view, the said judgment was also passed in the peculiar facts and circumstances of the case. The ratio of the judgment is not applicable to the facts of the case as in the present case, it was decided to recover the amount from the petitioner when he was still in service and his further claim w.e.f. April, 2017 for HRA was duly rejected.

20. In the counter reply filed by the respondent before CAT in the present case, it was mentioned that the petitioner was asked to deposit Rs.13,76,697/- latest by 15.03.2019 when he was still in service after due consideration of the representation submitted by him. The applicant was fully aware of the rule position. It was the applicant/petitioner who represented to the employer at the relevant time *i.e.*, Tariff Commission that he was entitled to HRA although the same was not admissible to him as he was living in an accommodation allotted to his wife by IGNOU.

21. It is further submitted that vide letter dated 03.06.2016, the Tariff Commission had informed that the case of releasing the HRA to the petitioner was neither processed nor examined in the light of para 5 (c)(iii) of HRA Rules and no formal order was issued for releasing the HRA to the petitioner. The petitioner had received undue benefit in the form of HRA till

March, 2017. The matter was examined in detail by Department of Expenditure with regard to the request of the petitioner seeking waiver of recovery of excess amount of Rs.13,76,697/-; however, the competent authority did not allow such waiver of recovery. It is also submitted that IGNOU is a central government autonomous body, which was set up by Ministry of HRD and it is receiving funds through budgetary support. As such it is covered in para 5 (c)(iii) of conditions for grant of HRA.

22. The petitioner/applicant had filed rejoinder before CAT in which he has placed reliance on the judgment of Rajasthan High Court dated 16.05.2017 in W.P.(C) 2656/2001 tilted ***UOI vs. Dr. UB Mathur,*** in which the amount involved was only Rs.55,000/- and there was earlier judgment of CAT of Jaipur Bench, which was not challenged by the Central Government. Hence, on that ground, the Rajasthan High Court refused to entertain the challenge to a decision of CAT Jaipur Bench, where the applicant was residing in accommodation provided by University of Rajasthan. In our view, the said case was also decided in its own peculiar facts and moreover, the status of University of Rajasthan is not known as to whether it was receiving budgetary support from the government or it was established by State Government itself. Reliance is also placed by the petitioner on the judgment dated 15.02.2019 in OA 2916/2016 tilted ***Dr. Vijay Pratap Singh vs. Union of India,*** decided by CAT, Principal Bench, New Delhi. The main controversy in the said case was that when the husband and the wife were posted at different stations, then whether both will be entitled to draw HRA even if living in the same station or not. The ratio of the said judgment is not applicable to the facts of the case as the petitioner lived with his wife and both were posted at the same station and not at different stations as was the case in the matter of ***Dr. Vijay Pratap Singh*** (supra)

23. The petitioner has also relied upon a judgment of this Court dated 27.11.2018 in LPA 246/2018 titled ***T.N. Veeraraghavan vs. Union of India and Anr.*** where the challenge was to an order of learned Single Judge, who had dismissed the writ petition and allowed the government departments to recover the excess amount allegedly paid to the appellants on account of "stagnation increment" when they were in service.

24. In the said case, the Hon'ble Division Bench of this court had relied upon the judgment of Hon'ble Supreme court in the matter of ***State of Punjab & Ors. vs. Rafiq Masih etc.*** in Civil Appeal No. 11527/2014 decided on 18.12.2014. The Hon'ble Supreme Court has summarised its detail judgment in paragraph 12 which is reproduced hereunder:

> *"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 interior 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."

25. With due respect, the case of the petitioner does not fall in any of the classes mentioned in paragraph 12 in the matter of ***Rafiq Masih*** (supra). The petitioner does not belong to Group 'C' or Group 'D' service as admittedly he is part of Group 'A' service of the Government. The recovery was not initiated after the retirement of the petitioner, rather the same was initiated when he was still in service and it was not a case where the department on its own had paid the amount under some misconception. On the other hand, this is a case where petitioner himself had induced the department to make him payments of HRA on the basis of his letter dated 15.05.2007, which resulted in the government department to release him HRA w.e.f. May, 2007. The order passed by the department is neither harsh nor arbitrary and it does not trump the employer's right to recover the money which was not paid under some misconception rather on the basis of an active conduct of the petitioner of writing letter dated 15.05.2007 intentionally to create a situation because of which the department was forced to release HRA to him for the period in question.

26. We do not find any illegality or infirmity in the order passed by learned CAT. The writ petition has no merit and the same is hereby dismissed along with all pending applications.

TALWANT SINGH, J

RAJIV SHAKDHER, J

JANUARY 19, 2022/nk