

(2010) 10 P&H CK 0130
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 2191-CAT of 2006

Union Territory and Another	Vs	APPELLANT
Tulsi Ram and Another		RESPONDENT

Date of Decision : 11-10-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 161 PLR 470

Hon'ble Judges : Ritu Bahri, J; M.M. Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The instant petition preferred by the Chandigarh Administration and its officers under Article 226 of the Constitution calls in question order dated 9.12.2005, passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for brevity, "the Tribunal"). While disposing of Original Application No. 885/CH/2004, filed by the applicant-Respondent No. 1, the Tribunal has found that he was in wrongful receipt of payment on account of House Rent Allowance (HRA). However, the Tribunal has directed that since there was no fraud played by him, he is liable to pay back 50% of the wrongful receipt of HRA.

2. Facts in brief are that the applicant-Respondent No. 1, who is a visually handicapped (Blind), has been working as a Senior Assistant in the Chandigarh Transport Undertaking-Petitioners. His wife was allowed Government accommodation in the year 1992. There is some controversy whether the applicant-Respondent No. 1 intimated to the Petitioner-department the factum of allotment of Government accommodation to his wife. The applicant-Respondent No. 1 claims that vide letter dated 1.12.1992 (A-1), he has notified the Petitioners the aforesaid fact. The stand taken by him has been substantially supported by the then Station Superintendent (R-1). He stated that the applicant Respondent No. 1 got his application forwarded from him on 1.12.1992, which was given back to him for being sent along with the daily dak. He further stated

that at that time no dispatch register/diary used to be maintained at the Bus Stand. However, the aforesaid factum has been disputed by the Petitioners before the Tribunal.

3. The Tribunal concluded that after allotment of Government accommodation to his wife, the applicant-Respondent continued to draw HRA, which he was not entitled as per the general rules and orders on the subject and, therefore, it would be no answer to the recovery sought to be made by the Petitioners that the applicant-Respondent No. 1 had intimated the factum of allotment to the Petitioners. Therefore, the applicant-Respondent No. 1 would not be absolved of his delinquency and he was under obligation to bring this fact to the notice of the Petitioners. Accordingly, vide order dated 23.9.2004, the Petitioners ordered recovery of wrongful withdrawn HRA amounting to Rs. 79,224/- (A-8). The Tribunal has followed a sympathetic and emotional approach by granting benefit to the applicant-Respondent No. 1 on account of his blindness and has ordered recovery only to the extent of 50% by imputing contributory negligence to the Petitioners. The view of the Tribunal is discernible from the following para:

Holding that the applicant is in wrongful receipt of Rs. 79,224/- on account of HRA, this Court cannot lose sight of contributory negligence on the part of the Respondents, either. It is not palatable that the factum of the allotment of Govt. House to applicant's wife would have remained unknown to his colleagues and seniors, who have facilitated withdrawal of HRA by him. So, while, on one hand, delinquency of the applicant cannot be staved off, on the other, the contributory negligence of the concerned officials is also too stark to be lost sight of. Even plea of the applicant that he had been receiving pay and allowances at the same level at which he had been, prior to allotment of Govt. accommodation to his wife innocently, has not been effectively negated in the written statement or any other manner. Apart from this, the applicant is a physically handicapped person being blind in both eyes, who cannot be expected to perform his obligations as a Govt. servant at a level expected of a fully fit and normal employee. Viewing all the related aspects in a sympathetic manner, it will be too harsh to the applicant if total amount of excess drawal of HRA is recovered from him. In our view, it would be fair and just, if applicant is burdened with not more than half of the excess drawn H.R. allowance, on totality of consideration. The Respondents are accordingly directed not to recover more than 50% of the total recoverable amount from the applicant. The same shall be deducted in easy monthly installments.

4. Having perused the order we find that the Tribunal is persuaded to reduce the recovery to 50% on account of two factors - (a) there is contributory negligence of the concerned official who did not deduct the element of HRA from the salary of the applicant-Respondent No. 1 after the allotment of Government accommodation to his wife; and (b) the applicant Respondent No. 1 is a physically handicapped person being blind and he cannot be expected to perform his obligation as a Government servant at a level expected of a fully fit and

normal employee.

5. The aforesaid two factors are not sustainable in law. Merely because the concerned official working in the department has not stopped payment of HRA, would not confer any extra ordinary right on the applicant/Respondent No. 1. The responsibility cannot be pushed on to the department to start deducting the HRA after the allotment of Government accommodation to the wife of the applicant-Respondent No. 1, especially when the Tribunal has taken the view that it was his responsibility to intimate the factum of allotment of Government accommodation to his wife. Likewise, blindness cannot be regarded as a factor to condone illegal act. If the view taken by the Tribunal is accepted then no handicapped person would be expected to perform at the same level as is expected from him. Such a general proposition in our view is not sustainable. Therefore, we are not impressed with the rationale adopted by the Tribunal.

6. The Petitioners had issued a recovery memo to the applicant/Respondent No. 1 on 23.9.2004, which was subject matter of challenge before the Tribunal. According to the aforesaid memo, a sum of Rs. 79,224/- was to be recovered from his salary in 24 instalments (23 instalments @ Rs. 3,382/- per month and the last one of Rs. 1,438/-). The order of the Tribunal was not stayed by this Court and it appears that in the meanwhile the applicant/Respondent No. 1 has made payment of 50% of the amount sought to be recovered from him. Although we have found that the rationale adopted by the Tribunal is unsustainable in law, yet we are of the view that the applicant/Respondent No. 1 is in litigation for over 7 years and 50% of the amount appears to have been paid by him. Accordingly, we do not wish to order further recovery from the applicant-Respondent No. 1. However, this shall not be cited as a precedent.

7. As a sequel to the above discussion, the instant petition fails and the same is dismissed.