

UNION OF INDIA AND ORS.

v.

M. LEPDON AO AND ORS.

OCTOBER 1, 2001

[S. RAJENDRA BABU AND DORAISWAMY RAJU, JJ.]

Service Law :

Fundamental Rule 45-A.

Rent-Free Accommodation—Compensation in lieu of—Tribunal ordered payment of compensation to Government employees since no accommodation was provided to them—Correctness of—Held : Only those employee who are within the eligibility criteria prescribed in OM dated 2-8-1960 entitled to rent-free accommodation—Since the said Government employees are not entitled to rent-free accommodation they are not eligible for compensation in lieu thereof—However, any compensation that may have already been paid shall not be recovered—O.M. 12-11/60-ACC-1 dated 2-8-1960—Tribunal's decision set aside.

The respondents filed applications before the Central Administrative Tribunal claiming that they were eligible for free furnished accommodation but no such accommodation had been provided to them and, therefore, they were entitled to be paid compensation in lieu of the rent-free accommodation consisting of licence fee and House Rent Allowance. The Tribunal felt bound by the decision of this Court in *Union of India & Ors. v. S.K. Ghosh & Ors.* C.A. No. 2705 of 1991 and allowed the application. Hence this appeal.

Allowing the appeal, the Court

HELD : 1. In the order of the President of India the expression 'who are not provided with rent-free accommodation' would only mean those employees who were within the eligibility criteria prescribed in the O.M. 12-11/60-ACC-1 dated 2-8-1960. The respondents are not in a position to controvert this factual background. If that is the position, in fact, the decision of this Court in *Union of India & Ors. v. S.K. Ghosh & Ors.*, CA No. 2705 of 1991 will not come in the way of deciding whether the respondents are not entitled to compensation in lieu of rent-free accommodation and

A the view taken by the Tribunal in this regard cannot be sustained.

[458-B; H; 459-A]

Union of India & Ors. v. S.K. Ghosh & Ors., C.A. 2705 of 1991,
referred to.

B 2. If any compensation in lieu of rent-free accommodation that may
have already been paid shall not be recovered. [459-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1309-1310 of
1998.

C From the Judgment and Order dated 22.8.95 of the Central Administrative
Tribunal, Guwahati in O.A. Nos. 48/91 and 105 of 1995.

WITH

C.A. No. 2087 of 1998.

D Ranjit Kumar and N.N. Goswami, Hemant Sharma, D.S. Mahra, Arvind
Kumar Sharma, K.R. Nagaraja, H.K. Puri, S.K. Puri, Rajesh Srivastava, Ujjwal
Banerjee and Ms. Anidita Gupta for the appearing parties.

The Judgment of the Court was delivered by

E **RAJENDRA BABU, J.** Five applications were filed before the Central
Administrative Tribunal, Guwahati Bench [hereinafter referred to as 'the
Tribunal'] by Group 'B', 'C' and 'D' employees of different departments of
F the Government of India posted in the State of Nagaland wherein they claimed
that they are eligible for free furnished accommodation but no such
accommodation had been provided to them and, therefore, they are entitled
to be paid compensation in lieu of the rent free accommodation consisting of
licence fee and House Rent Allowance. Since that has been denied to them,
they approached the Tribunal for redressal.

G The appellants before us contended that the respondents are not entitled
to such benefits in terms of different notifications issued by the Government
from time to time. The Tribunal examined the matter and held that the respondents
are entitled to House Rent Allowance at the rate prescribed for 'B' class cities
to the Central Government employees which would be payable at the rate of
15% from 1.1.1986 to 30.9.1986 and from 1.10.1986 at flat rate prescribed
H under O.M. dated 7.8.1987 read with another O.M. dated 13.11.1987 and the

notification GSR No. 623(E) amending the Fundamental Rule 45A with effect from 1.7.1987 as held by this Court in Civil Appeal No. 2705 of 1991 [*Union of India & Ors. v. S.K. Ghosh & Ors.*]. This part of the order made by the Tribunal is not in challenge before us.

On the question of payment of compensation in lieu of rent free accommodation, the Tribunal felt bound by the decision of this Court in *S.K. Ghosh's* case though O.M. dated 2.8.1960 is not superseded and ordinarily the compensation would be payable only to those who fall within the eligibility criteria thereunder. That in view of the ratio of the decision in *S.K. Ghosh's* case wherein this Court approved the view taken by the Tribunal in its order which was the subject matter of consideration before them in appeal that the House Rent Allowance should be paid at a particular rate and the manner in which the same could be reduced subsequently by efflux of time was also indicated.

Though five applications were filed before the Tribunal, only two sets of appeals have been preferred to this Court pertaining to employees working in Geological Survey of India and Telecommunications Department.

The Tribunal in the order under appeal had proceeded to analyse the pleadings raised in the original application No. 42 of 1989 out of which the decision in *S.K. Ghosh's* case was rendered. In that application, it appears, the claim was that all the employees when posted in Nagaland are entitled to rent-free accommodation and if the same is not provided for by the Government be allowed to draw the House Rent Allowance as is admissible to the employees posted in 'B' class cities as categorised in the Government of India letter No. 11013/2/86-E.II(B) dated 23.9.1986. Before this Court in Civil Appeal No. 2705 of 1991 the question whether the employees were entitled to rent free accommodation or not was not put in issue.

The only issue posed before this Court and answered is whether employees working in the State of Nagaland were entitled to be allowed to draw House Rent Allowance as is admissible to employees posted in 'B' class cities and, therefore, it was not necessary for the Tribunal in the present case to read the pleadings raised in that case into the judgment of this Court to come to a conclusion that there was an assumption that all the employees posted in Nagaland were entitled to rent free accommodation or compensation in lieu thereof since the rate of House Rent Accommodation was one of the components of compensation in lieu of rent free accommodation.

A Therefore, we think that the decision of this Court in Civil Appeal No. 2705 of 1991 will not be an impediment to decide the second question as to whether the employees posted in the State of Nagaland are entitled to rent free accommodation or compensation in lieu thereof. It is a separate and distinct question to be decided unhindered by the decision of this Court in Civil Appeal B 2705 of 1991 [*Union of India & Ors. v. S.K. Ghosh & Ors*]. In the order of the President of India the expression 'who are not provided with rent free accommodation' would only mean those employees who were within the eligibility criteria prescribed in the O.M. dated 2.8.1960.

The factual position is as follows :-

C (1) O.M. 12-11/60-ACC-I dated 2.8.1960 is still operative. That order clearly sets out that 'it had been decided with the concurrence of the Ministry of Finance, that where for the efficient discharge of duties, it is necessary that an employee should live in or near D the premises where he works, it would be desirable that he should be rent-free or rent recovered at reduced rates only if the nature of his duties or conditions under which they have to be performed are such that a higher scale of pay or special pay etc. would be granted but for the concession of rent-free or recovery of rent at reduced rates. It has been decided that this concession should, E in future, be allowed only with the concurrence of the Ministry of Finance in each case'.

F (2) O.M. 12-11/60-ACC-I dated 2.8.1960 is also applicable to O.Ms. dated 23.3.1986 and 22.5.1987 and also to O.M. dated 13.11.1987 which makes it clear that the concession of compensation in lieu of rent free accommodation to be available only to those employees who fulfil the criteria of eligibility as prescribed by O.M. 12-11/60-ACC-I dated 2.8.1960.

G After advertng to certain aspects it is made clear that other terms and conditions for admissibility of compensation in lieu of rent free accommodation would be as indicated in the O.Ms. dated 19.2.1987 and 22.5.1987 and 22.5.1987 remains the same. O.M. 12-11/60-ACC-I dated 2.8.1960 would be applicable in turn to this notification as well.

H The respondents are not in a position to controvert this factual background. If that is the position, in fact, the decision of this Court in Civil Appeal No.

2705 of 1991 [*Union of India & Ors. v. S.K. Ghosh & Ors.*] will not come in the way of deciding whether the respondents are not entitled to compensation in lieu of rent free accommodation and the view taken by the Tribunal in this regard cannot be sustained. A

Thus, the conclusion is irresistible that there is no decision of the Government of India entitling the Central government employees posted in Nagaland, except who are eligible for the concession of rent free accommodation or compensation in lieu thereof under O.M. 12-11/60-ACC-I dated 2.8.1960 and, therefore, the view taken by the Tribunal in this regard has got to be set aside. B

However, we must make it clear that if any compensation in lieu of rent free accommodation that may have already been paid shall not be recovered. C

The appeals are allowed accordingly. No costs.

V.S.S.

Appeals allowed.