

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00010/2018
With
Original Application No.040/00186/2018

THE HON'BLE MRS. MANJULA DAS, JUDICIAL MEMBER

1. Smt. Synjukta Lyndem
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10. Sri Champak Sarma
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15. Sri Tarun Ch. Kumar
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16. Ramani Kanta Deka
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Adabari, Guwahati – 781014.
17. Upen Chandra Medhi
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Adabari, Guwahati – 781014.

.. Applicants in OA.10/2018

-VS-

1. Union of India
Through Secretary Govt. of India
Ministry of Water Resources
Shram Shakti Bhawan, Rafi Marg

New Delhi – 110001.

2. The Director, River Data Compilation
Directorate CWC, West Block – 1
Second Floor, Wing – 4, R. K. Puram,
New Delhi – 110066.
3. Under Secretary Govt. of India
Central Water Commission
Room No. 310(S)
Sewa Bhawan
R.K. Puram, New Delhi – 110066.
4. Chief Engineer, CWC
Brahmaputra and Barak Basin Organization
Rebekka Ville, Barak Point, Lower Lachumiere
Pin – 793001, Shillong.
5. Superintendent Engineer ©
CWC, Office of the Chief Engineer
Brahmaputra and Barak Basin Organization
Rebekka Ville, Barak Point, Lower Lachumiere
Pin – 793001, Shillong
6. The Executive Engineer
M.B Division, CWC
Adabari, Guwahati – 781014.

... Respondents in OA.10/2018

1. Shri Madhab Chandra Barman
Work-Sarkar , Grade-II
Office of the Executive Engineer
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Middle Brahmaputra Division
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Post Office-Gauhati University
Guwahati, Pin – 781014.
2. Mrs Trishna Banerjee
Upper Division Clerk

Office of the Directorate
Monitoring & Appraisal
Central Water Commission
Government of India, CWC Complex
Behind Adabari Bus Stand
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Guwahati, Pin – 781014.

3. Mrs V. Ilito Zhimo
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4. Miss Purnima Das
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5. Shri Soneswar Deka
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6. Mrs Rupsikha Das
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Central Water Commission

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Behind Adabari Bus Stand
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Guwahati, Pin – 781014.

7. Shri Uddhab Chandra Das
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8. Shri Sarat Chandra Kalita
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Guwahati, Pin – 781014.
9. Shri Kamal Kanta Deka
Work-Sarkar Grade-II
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Central Water Commission
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Behind Adabari Bus Stand
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Guwahati, Pin – 781014.
10. Shri Hemanta Kumar Borah
Multi-Tasking Staff
Office of the Executive Engineer
Central Water Commission
Middle Brahmaputra Division
Government of India, CWC Complex

Behind Adabari Bus Stand
Post Office - Gauhati University
Guwahati, Pin – 781014.

11. Md. Abdul Rahman
Work-Sarkar Grade-II
Office of the Executive Engineer
Central Water Commission
Middle Brahmaputra Division
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Guwahati, Pin – 781014.
12. Shri Dasarath Thakuria
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13. Shri Binod Chandra Das
Work-Sarkar Grade-II
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14. Shri Bimal Chandra Patowary
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15. Shri Ramu Sharma
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Office of the Executive Engineer
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16. Shri Sadequl Haque
Work-Sarkar, Grade-II
Office of the Executive Engineer
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Guwahati, Pin – 781014.

... Applicants in OA.186/2018

-VS-

1. The Union of India
Represented by the Secretary to
the Government of India
Ministry of Water Resources,
Shram Shakti Bhawan,
Rafi Marg, New Delhi, PIN – 110001.

2. The Director
River Data Compilation
Directorate, Central Water
Commission, West Block – 1
Second Floor, Wing – 4, R. K. Puram,
New Delhi – 110066.

3. The Superintending Engineer
Hydrological Observation Circle
Central Water Commission

Government of India
CWC Complex, Behind Adabari Bus
Stand, P.O. – Gauhati University
Pin – 781014.

4. The Executive Engineer
Central Water Commission
Middle Brahmaputra Division
Government of India, CWC Complex
Behind Adabari Bus Stand
Post Office-Gauhati University
Guwahati, Pin – 781014.

... Respondents in OA.186/18

For the Applicants: Sri M Chanda, Smt U Dutta & Ms D Neog in
OA.10/2018

Sri A Ahmed, Smt R.R.Rajkumari, Smt D
Goswami, Sri N Barman and Ms A Theyo in
OA. Nos.186/2108

For the Respondents: Sri S K Ghosh, Addl. C.G.S.C. in
OA.10/2018;

Sri R Hazarika, Addl. C.G.S.C. in
OA.186/2018

Date of hearing: 30.08.2019 Date of Order: 21.11.2019

ORDER

MANJULA DAS, MEMBER (J):

OA.10/2018 and OA.186/2018 were heard together
on 30.08.2019. Since the two OAs involve identical facts and
issues of law, they are being disposed of by this common order.

2. In OA.10/2018 and 186/2018, there are 17 and 16 applicants respectively. In OA.10/2018, the applicants have made the following prayers:-

“8.1 That the Hon'ble Tribunal be pleased to set aside and quash the impugned letter No.8(6) A/2012 dated 20.11.2017 as well as consequential circular bearing No. 5/4/CPWD-HQO/2015/102-06 dated 03.01.2018.

8.2 That the Hon'ble Tribunal be pleased to declare that the applicants are entitled to draw HRA as per Rule 7 of General Rules and Orders of the Govt. of India, on HRA.

8.3 That the Hon'ble Tribunal be pleased to direct the respondent to continue the benefit of HRA to the individual applicant as per their entitlement w.e.f. January 2018 onwards as usual.

8.4 That the applicants pray permission to move this application jointly in a single application under section 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules 1987 as the relief's sought for in this application by the applicants are common, therefore they pray for granting leave to approach the Hon'ble Tribunal by a common application.

8.5 Costs of the application.

8.6 Any other relief(s) which the applicant is entitled to, as the Hon'ble Tribunal may deem fit and proper.”

In OA.186/2018, the applicants have made the following prayers:-

"8.1 To set aside and quashed the impugned Circular No.4/3/L&B/DB/2016-HOC/719-24 dated 20.07.2017, Letter nos. 8(6)A/2012-BBB/3537-39 dated 20.11.2017 as well as consequential Notice No. 5/4/CPWD-HQ/2015-MBD/2238-41 dated 03.05.2018.

8.2 To declare that the Applicants are entitled to draw House Rent Allowance as per Rule-7 of the General Rules and Orders of the Government of India, on House Rent Allowance.

8.3 To direct the Respondents to continue the benefit of House Rent Allowance to the individual applicant as per their entitlement w.e.f. may 2018 onwards as usual.

8.4 Costs of the application.

8.5 Any other relief(s) which the Applicants are entitled to as may deem fit and proper."

3. The brief facts, as narrated in these two OA are that applicants are working in different categories under office of the Executive Engineer, Central Water Commission, CWC Complex, Adabari, Guwahati. They are residing in different places of Guwahati either in rented houses or in their own houses since inception and before shifting of the different offices of Central Water Commission which were situated earlier in different locations at Guwahati in the rented houses/building premises. In the CWC Complex, Adabari certain residential quarters namely type-I, type-II, type-III, type-

IV and type-V quarters have been constructed for residential purpose of the CWC employees. However, the present applicants arranged their own accommodation either on rented house or own house even before and after shifting of the office at CWC Complex at Adabari, Guwahati.

4. The applicants are aggrieved by the impugned letters and circulars as quoted above whereby it has been decided to stop payment of HRA to all the employees including the applicants working in CWC Adabari, Guwahati due to non-exercise of their option/taken possession of the available quarters. According to the applicants, they did not make any application pursuant the circular mentioned above on the bonafide ground that they have already arranged their accommodation long back as per their convenience keeping in mind the educational facilities of their children on hiring accommodation and some of the applicant either purchased flats or constructed their houses in and around Guwahati. However, in cases of some of the applicants, the payment of HRA has already been stopped.

5. According to the applicants, Rule 7(i) of the General Rules and Orders of the Govt. of India stipulates as under:-

“7(i) A Government servant living in a house owned by him, his wife, children, father or mother shall also be eligible for HRA under these orders.

Applicants contended that in view of the aforesaid rules, the applicants are legally entitled to payment of HRA as per their entitlement. In the OAs, applicants stated that similar issue has already been decided by this Tribunal in OA.365/2015 in favour of the applicant therein vide order dated 15.06.2016, and the review application filed by the UOI against the said order was also dismissed. According to the applicants, said decision is clearly applicable in their cases.

6. Applicants contended that compulsory occupation of Govt. Quarter is not a condition of service, therefore, respondents have no jurisdiction to impose compulsory occupation of residential quarter or stoppage of payment of HRA in violation of Rule 7(i) of the aforesaid rules.

7. The respondents filed written statements in all the OAs opposing the OAs. According to the respondents, HRA is

being paid where Govt. could not provide departmental/pool accommodation. The Government cannot bear two way of expenditure by investing huge resources for construction of employees quarters as well as paying HRA to the employees. Respondents have relied the MoUD OM dated 14.11.2017 relevant portion of which is quoted below:-

“ A number of Departmental Pools of residences have been created by different departments for accommodating their employees. However, it has been noticed that such department having surplus Departmental Pool accommodation, are not complying with the requirement of furnishing of No Accommodation Certificate (NAC) before making payment of house rent allowances on the grounds that the cities have been exempted from operation of this rule by the Ministry of UD. It is now clarified that the provision of HRA Rule 4(a) provide that such exemption is not available to the employees of Central Government offices having their own departmental pool or house in surplus but are, at the same time, making payment of HRA to their employees. The Estate Manager responsible for allotment of houses belonging to Departmental Pool are therefore advised to follow the procedure laid down in the HRA Rule 4(a)(ii) before allowing accommodation of HRA to their employees.”

According to the respondents, followed by taken over the staff quarters from the CPWD, time and again the matter was circulated to all the employees to apply for allotment of quarters as per their eligibility. Respondents contended that if

an employee does not apply for allotment of quarters, the payment of HRA is to regulated as per OM No.12034/1/2017-Pol-III dated 14.11.2017 only.

8. Applicants have filed rejoinder and submitted that respondents were not able to provide government accommodation from their dates of initial appointment and accordingly they had no option but arrange their accommodation and they are settled in their accommodation keeping in mind the convenience of education of wards, medical facility of parents, employment of spouse etc. The quarters were offered only from 01.01.2018 and since then HRA was also proposed to be stopped. According to the applicants, the respondents themselves have admitted the unhygienic and unsafe condition of the approach road to the CWC complex.

9. Sri A Ahmed and Sri M Chanda, both the learned counsel for the applicants during the course of their arguments have placed the two OMs dated 05.03.2019 issued by the Ministry of Finance, Department of Expenditure and 08.04.2019 issued by the Ministry of Urban Affairs, Directorate of Estates. Relevant portion of OM dated 05.03.2019 is extracted below:-

"..... The President, in consultation with Ministry of Housing and Urban Affairs and the Staff Side of the National Council (J.C.M), is pleased to decide that the conditions of applying for Government Accommodation and furnishing of No Accommodation Certificate by Central Government employees to become eligible for House Rent Allowance are dispensed with all places, in respect of General Pool Residential Accommodation (GPRA) controlled by Directorate of Estates."

The OM dated 08.04.2019 was issued by Ministry of Urban Affairs on similar lines. According to the learned counsel for the applicants, in view of the aforesaid two OMs that the contention of the respondents that the applicants are not entitled to HRA is not justified.

10. Per contra, Sri S K Ghosh, learned Addl. C.G.S.C. appearing for the respondents in OA.10/2018 and Sri R Hazarika, learned Addl. C.G.S.C. appearing for the respondents in OA.186/2018 submitted that the OMs dated 05.03.2019 and 08.04.2019 as relied on the learned counsel for the applicants are affective from 05.03.2019 and prior to that applicants are not entitled to payment of HRA. In support of the said condition, learned counsel for the respondents has relied on the decision of the Hon'ble Supreme Court in **AIR 1994 SC 2541**,

Director, Central Plantation Crops Research Institute, Kesaragod

and others vs M Purushothaman and Others. In the said case,

Hon'ble Supreme Court held as under:-

"..whenever the accommodation is offered the employees have either to accept it or to forfeit the HRA. The management cannot be saddled with double liability, viz., to construct and maintain the quarters as well as to pay the HRA. Therefore, the distinction, if made between those who have applied and those who have not applied for accommodation would be irrational particularly, taking into consideration the resources spent on constructing the quarters."

11. I have heard the learned counsel for the parties, perused the pleadings and materials placed on record including the decisions relied upon.

12. Admittedly, vide OM dated 05.03.2019, the condition of applying for government accommodation and furnishing of No Accommodation Certificate to become eligible for payment of HRA have been dispensed with for all purposes in respect of General Pool Residential Accommodation (GPRA) controlled by Directorate of Estates. To that effect learned counsel for the respondents also admitted that applicants are entitled to HRA w.e.f. the date those two OMs were made

operational i.e., 05.03.2019. Thus, there is no dispute as regards payment of HRA to the applicants from 05.03.2019.

13. As regards payment of HRA prior to 05.03.2019 i.e., from 01.01.2008 or 01.05.2008, as the case may be, matter is remanded to the authority for taking a final decision in the matter. Accordingly, applicants are directed to make comprehensive representation ventilating their grievances within a period of one month from the date of receipt of this order. On receipt of the same, the respondents are directed to scrutinize the same as per rules and pass appropriate orders after affording them an opportunity of being heard within a period of two months thereafter. Till such time, the interim orders passed in all the cases shall continue to operate.

14. The two OAs are disposed of as above. There shall be no order as to costs.

(MANJULA DAS)
JUDICAIL MEMBER

/BB/