

Date of Decision : 31-5-2002

O.A No, 77/2002, 85/2002, 86/2002, 87/2002, 88/2002, 95/2002, 115/2002, 116/2002, 117/2002, 121/2002 and 122/2002.

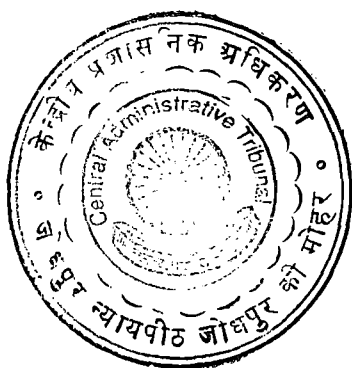
Sh. Mahipal Vishnoi S/o Shri Deva Ram Vishnoi, aged about 30 years, at present working as Technical Assistant, Arid Forest Research Institute, Jodhpur.

... Applicant in OA No. 77/2002.

1. Sh. Aminullha Khan S/o Sh. Hafiz Ullha Khan, Caste Muslim, aged 36 years, at present working as Research Assistant II and Forest Research Institute, Jodhpur, resident of Hakim Sahab ki Haweli, inside Nagori Gate, Jodhpur.
2. Sh. Sadul Ram S/o Sh. Lachhu Ram, by caste-Sasi, aged 31 years at present Technical Assistant Arid Forest Research Institute, Jodhpur, Resident of Banar, Jodhpur.
3. Sh. Jaiprakash Dadhich S/o Sh. Ambalal, aged 30 years, at present working as Research Assistant II, Arid Forest Research Institute, Jodhpur. Resident of Maderna Colony, Jodhpur.
4. Sh. Charan Singh S/o Sh. Bhopal Singh Solanki, aged 27 years, at present working as L.D.C., Arid Forest Research Institute, Jodhpur, resident of 52/3, Gaytri Mandir, Ganesh Pura, Ratanada, Jodhpur.
5. Sh. Radhey Shyam S/o Sh. Devilal, aged 36 years, at present working as L.D.C., Arid Forest Research Institute, Jodhpur, resident of Naya Nagar, Bhadasia Road, Jodhpur.
6. Sh. Lakshman Meghwal S/o Sh. Aidan Meghwal, aged 26 years, at present working as Chowkidar, Arid Forest Research Institute, Jodhpur, resident of Raj Bagh, Soor-Sagar, Jodhpur.

... Applicants in OA No. 85/2002.

1. Sh. Prem Singh Sankhala S/o Sh. Panna Lal, aged 30 years, at present working as Data Feeder, Arid Forest Research Institute, Jodhpur, resident of in front of Shiv Mandir, Ratanada, Jodhpur.
2. Sh. Devendra Singh Sisodiya S/o Sh. Chottu Singh aged 31 years, at present working as L.D.C. Arid Forest Research Institute, Jodhpur, resident of Makrana Mohalla, Pipli-ki-Gali, Girdikot, Jodhpur.
3. Sh. Gourav Gupta, S/o Lt. Dr. G. N. Gupta, by caste Agarwal,



aged about 22 years, at present working as Technical Assistant, Arid Forest Research Institute, Jodhpur, resident of 17-E/778, C.H.B. Jodhpur.

4. Sh. Raju Ram S/o Sh. Prema Ram, by caste Mali, aged about 22 years, at present working as Peon, Arid Forest Research Institute, Jodhpur, resident of Malio Ka Bass, Jhalamand, Jodhpur.
5. Sh. Anil Singh Chouhan S/o Sh. Tej Singh Chouhan, aged 26 years, at present working as Technical Assistant Arid Forest Research Institute, Jodhpur, resident of Chandpole, Jodhpur.

... Applicants in OA No. 86/2002.

Sh. Pratap Ram S/o Sh. Birma Ram, aged 21 years, at present working at Arid Forest Research Institute, Jodhpur, resident of near Somani College, Jodhpur.

... Applicant in OA No. 87/2002.

Sh. Narendra Kumar Sharda, S/o Sh. Sohan Lal Sada, aged 29 years, at present working as Stenographer II, Arid Forest Research Institute, Jodhpur, resident of 7-Ram Bari, Outside Jalori Gate, Jodhpur.

... Applicant in OA No. 88/2002.

Sh. Mahendra Singh S/o Shri Thansingh aged about 35 year at present working as Research Assistant II, Arid Forest Research Institute, Jodhpur, resident of Behind Sainik Motors, Chopasni Road, Jodhpur.

... APPLICANT IN OA No. 95/2002.

Sh. Suresh Chand S/o Bhagwan Dass, aged 37 years, at present working as L.D.C., Arid Forest Research Institute, Jodhpur, resident of Dr. Ambedkar Colony, Juni Bagar, Fort Road, Jodhpur.

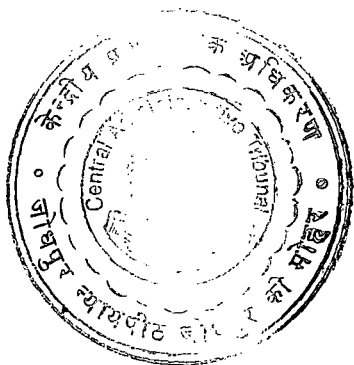
... Applicant in OA No. 115/2002.

Sh. Shivalal Chouhan S/o Shri Nenu Ramji aged 33 years at present working as Research Assistant I, Arid Forest Research Institute, Jodhpur resident of Udai Mandir, near Dhan Mandi, Jodhpur.

... Applicant in OA No. 116/2002.

Rajendra Kumar Sarvate S/o Ghewar Chandji Sarvate, aged 37 years, at present working as Research Assistant II, Arid Forest Research Institute, Jodhpur, resident of C-102 Krishna Nagar, Jodhpur.

... Applicant in OA No. 117/2002.



Shrimati Raj Shree James W/o Shri James Mathew, aged 30 years, at present working as Steno II, Arid Forest Research Institute Jodhpur, resident of Plot No. 25, Vidhya Nagar Behind RTO, Jodhpur.

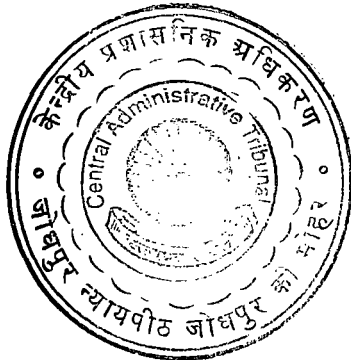
... Applicant in OA No. 121/2002.

Shrimati Anuradha Bhati W/o Shri Dilip Bhati, aged 41 years, at present working as Librarian Grade 1st, Arid Forest Research Institute, Jodhpur, resident of Opposite Gol Nadi, Umed Chowk, Jodhpur.

✓ ... Applicant in OA No. 122/2002.

versus

1. Union of India through Secretary Government of India, Ministry of Environment & Forest, CGO Complex, Lodi Road, New Delhi.
2. Director, Arid Forest Research Institute, Jodhpur.
3. Coordinator (F)/Estate Officer, Arid Forest Research Institute, Jodhpur.



... Respondents in all the OAs.

Shri Sumeet Mehta, counsel for the applicants in all the OAs.
Shri N. M. Lodha, counsel for the respondents in all the OAs.

CORAM

Hon'ble Mr. Justice O. P. Garg, Vice Chairman.
Hon'ble Mr. H. O. Gupta, Administrative Member.

: O R D E R :
(per Hon'ble Mr. H. O. Gupta, Adminve. Member)

In all the above referred OAs, common question of law is involved. Therefore, we take up all these OAs simultaneously.

2. In OA No. 77/2002, the applicant is aggrieved of the order dated 08.02.2002, whereby it is ordered that the grant of House Rent Allowance (H.R.A., for short), shall be stopped, if he does not accept the allotted quarter.

3. The case of the applicant as made out, in brief, is that:-

3.1 He is working on the post of Technical Assistant in Arid Forest Research Institute (A.F.R.I., for short), Jodhpur. He, alongwith his family, is living in his own house at Jodhpur situated within a radius of 15 km. of the respondents department. On 21.01.2002 (Annexure A-1), the respondent No. 4 allotted staff Qtr. No. 18 to him on the conditions mentioned in the allotment letter. It is stated in the said order that in the event of refusal of allotment/not occupying the quarter, he shall not be eligible for allotment for a period of one year and the concerned officer should give consent within five days of the order and should occupy the residence within eight days of the receipt of the order. It was also stated in the said order that in the event of refusal to accept the quarters the House Rent Allowance (H.R.A.) shall be stopped. He submitted a representation dated 05.02.2002 (Annexure A-3), ventilating all his grievances with regard to allotment of quarter. However, his representation was rejected by a non speaking impugned order dated 08.02.2002 (Annexure A-2).

3.2 It is pertinent to mention that he sought permission for obtaining the loan for construction of house through his application dated 18.02.2001 and the respondent authority provided him the salary certificate addressed to the concerned Bank Manager for obtaining loan for construction of his house. The copy of the letter dated 23.02.2001 (Annexure A-4), enclosing the salary certificate addressed to the Bank Manager was handed over to the applicant. After the issue of impugned



order dated 18.02.2002 (Annexure A-2), the respondents stopped the payment of H.R.A to the applicant. Being aggrieved, he has filed this OA.

4. The main ground taken by the applicant are that :

4.1 The respondent authorities have constructed the quarters in an unplanned manner. The present strength of the respondent department is 112. Even if all the quarters are allotted and occupied, then also 70 quarters will remain excess resulting in loss of revenue to the Government. It is most cruel on the part of AFRI authorities to waste the public fund and, therefore, they cannot take the plea of loss of revenue on account of his refusal to accept the quarters as they have constructed more than the number required. The respondents have also rented out a number of quarters to other departments.

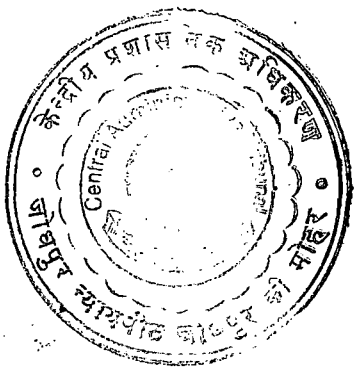


4.2 When the quarters were allotted, it was pointed out to the authorities that water requirement may outstrip the supply resulting in water scarcity. But the authority did not take the cognizance of the fact and went ahead to allot the quarters without remedying the situation. It would be against the interest of the applicant if he is coerced to occupy the house under the prevalent conditions. The respondents cannot make a person live in unfavourable conditions against his will. The insistence of the authorities to occupy the house without improving the condition ^{has} ~~have~~ lent a ring of illegitimacy to the whole issue.

4.3 He has taken the loan to construct his house and built it after informing the respondent authorities. The sudden call of

authorities to occupy the constructed quarters has made things difficult for him as he had spend^t the huge money for which he is paying the monthly installments. it is not only inhuman but unreasonable to force the employees^u to live in the Government quarters when they have constructed their own houses. It will create extreme financial hardship to him since he has to pay installments towards loan for construction of house and simultaneously he is deprived of the HRA. Being a low paid employee, he is not in a position to accept this double burden.

4.4 That Clause 8 of the allotment letter dated 21.01.2002 (Annexure A-1) stipulates that the quarters are allotted to the officers on the condition that they do not possess own house at Jodhpur. Unfortunately, the respondent authorities are not adhering to this stipulated condition. The order of the allotment is without application of mind and against the principal of natural justice.



4.5 His case is squarely covered by the decision of this Tribunal in the case of Smt. Kirti Varshney vs. The Commissioner, Kendriya Vidyalay Sangathan, decided on 20.04.2001 in OA No. 17/2000, whereby the allotment made in violation of Rules, was quashed.

5. The respondents have contested this application. Briefly stated, they have submitted that :

5.1 The Indian Council of Forestry Research and Education (I.C.F..R.E.) is an autonomous body under the control of Union of India. It is registered as a Society under the Societies

Registration Act, 1860. Arid Forest Research Institute (AFRI) is one of the constituent unit of I.C.F.R.E. and as such AFRI is controlled by the rules of I.C.F.R.E. rules of allotment of accommodation to the persons working in ICFRE and governed by the Clause 55 (a) of the Bylaws of the ICFRE. There are no rules for HRA in I.C.F.R.E. and the allotment of accommodation is done under the rules/OMs and instructions issued by the Government of India. Accordingly for the purpose of allotment of residential accommodation and HRA the rules/OMs and instructions issued by Government of India are applicable in the AFRI. For the purpose of general guidelines and modality for the convenience of the staff members, at local level, certain conditions were prepared from time to time but they are not statutory conditions.

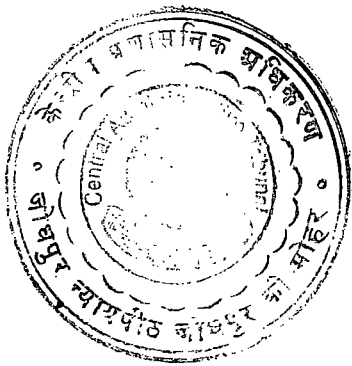


5.2 In the main campus of AFRI, there are 99 houses ranging from Type I to Type VI. Out of this, 76 quarters have been allotted to the persons working in AFRI and balance 23 quarters are lying vacant. In the year 1999-2000, a second colony was constructed for the persons working in AFRI near Basni Industria Area. But at that time complete facilities were not there and specially, there was a problem of water supply but even then some allotments of quarters were made to certain employees but subsequently due to the grievances of employees, the allotment was cancelled and for that period HRA was paid to the concerned employee. After the facilities were made available, allotments were made. In this colony out of total 80 quarters ranging from Type I to Type VI, 54 quarters are allotted and balance 26 quarters are vacant. Out of these 54 quarters, five were allotted to the AFRI employees and balance 49 to the persons working in other Central Government

Department. Therefore, it is clear that in the residential colony of AFRI situated in main Campus, 23 quarters are lying vacant and in the new colony, 26 quarters are lying vacant. There is no employee of AFRI who is resident of Jodhpur and has been offered residential accommodation but on refusal, he is being given house rent allowance.

5.3 The applicant has stated that he has a residential house in village Fitkasani, This house at the distance of more than 20 Kms from the department. Decision in the case of Smt. Kirti Varshney rendered by the Tribunal is not applicable in the present case, since the applicant therein was an employee of Kendriya Vidyalaya Sangthan who have separate and different rules for HRA than the rules applicable to the applicant. When sufficient residential accommodation was not available for providing to the employees working in the office of the respondent No. 3, then a modality was worked out that the persons who are coming from the outside may be given priority for allotment while keeping in view the order of seniority. The so-called clause 8, relied upon by the applicant, is not a statutory condition. It is, further submitted that the applicant was not allotted the quarters earlier since the first allotment was made to the persons who were senior to him. Although the applicant has taken loan from the Bank but the house has been got constructed in the Village Fitkasani, which is not a part of the Jodhpur Municipal Area.

5.4 As per the rules, when an employee fails to get the government accommodation, then only the reimbursement ^{as} ~~of~~ HRA ^{is} ~~was~~ paid. It is not correct to say that the principles of natural justice have not been followed. It is also incorrect that the houses built by the department were more than 80% of



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the required houses. The strength of the employees in the department is 179. It is submitted that these are not the considerations which are required to be taken by the department for the entitlement to the payment of HRA.

5.5 It is also incorrect to say that punishment has been imposed on the applicant or his representation has been decided without application of mind. When it is not possible to allot residential accommodation then only, in the form of reimbursement, HRA is given. Based on the interim order of this Tribunal, the respondents have paid HRA for the month of April, 2002 to the applicant notwithstanding the fact that since February 2002, HRA was not paid to the applicant.



6. We have heard the learned counsel for the parties and perused the record of the case.

6.1 During the course of argument, learned counsel for the applicant submitted that the respondents have constructed 179 quarters as against the physical strength of about 112 employees. Therefore, they have constructed, excess quarters than required. The employees are forced to occupy the constructed quarters and when ~~where~~ they are not in a position to occupy the quarters, they are denied the payment of HRA. He further submitted that particular quarters allotted to a particular person on his refusal, the same quarters is allotted to another employee, one after another, denying each

one of them, the payment of HRA. He also submitted that as per clause 8 of the condition of allotment letter dated 21.01.2002, the applicant could not be allotted quarters as he has his own house in Jodhpur. He further submitted that the applicant cannot be penalised for the wrong done by the department in constructing excess quarters & wasting the government revenue. Many quarters are still vacant for the fault of the respondents. For the fault of respondents, the applicant cannot be made to suffer. In support of his case, he also relied on the judgement dated 23.03.2001 passed in OA No. 563/2000 by the Jaipur Bench and also the judgement dated 05.04.1995 in OA No. 407/93 passed by this Bench.



6.2 The submission of the learned counsel for the respondents is that they follow the Government of India rules contained in FR/SR and their instructions and according to those orders/rules/instructions, once a quarters is allotted to a person, he is not entitled for HRA. He further submitted that certificate with regard to the non availability of accommodations is required to be given before making a person entitled for HRA and since accommodation is available and is offered to the applicant and he refused to occupy, he is not entitled to HRA. He also repeated the various submissions made by the respondents in the reply. To support his contention, he has relied on the judgement of the Hon'ble Apex Court in Director

General Central Plantation Crops Research Institute
Kesaragod & Others decided on 26.07.1994 in CA No.
885/93 [(1994) supplementary (3) SCC 282]

6.3 We have given considerable thought to the contentions made by the parties. We find from the record produced before us that no specific rules for allotment of the quarters and other terms and conditions with regard to the payment of HRA have been framed by the respondent department. As per their bye laws/Rules, in the absence of any such rule, the rules of Government of India in such matters are required to be followed. The judgements relied by the applicant relates to the cases of Postal Department, Railways, and the Kendriya Vidyalaya Sangthan. They have their own separate rules/conditions of the payment of HRA and, therefore, these judgements are not applicable in the case of the applicant. The judgement of the Hon'ble Apex Court quoted by the learned counsel for the applicant is squarely applicable in this case. The Hon'ble Apex Court has held that HRA is a compensatory allowance and not a part of the wages. It is also held that the discontinuance of the HRA on providing the amenity(Quarters), is justified. The Hon'ble Apex Court has further held that para 4(b) (i) of O.M. issued by the Government of India, Ministry of Finance, governing this case also, provides for the forfeiture of HRA even when the accommodation is offered by the authorities at their own and that the provisions of para 4(a) (i) & (ii) which provides procedure for making application for accommodation ^{those} to/who are in need of the quarter and



that the provisions of para 4(b) (i) is independent to the provisions of para 4 a(i) (ii). Why the department has created excess quarters without requirement is not a issue before us. The main issue is whether the applicant is entitled to HRA when the official accommodation is offered to him & when he refuses to occupy the same.

6.4 The contention of the applicant is that as per condition 8 of the allotment letter, he cannot be allotted accommodation is neither correct nor relevant. We agree with the averment of the respondents, that condition 8 is only for giving preference and cannot over ride the provisions of the Government of India rules and instructions, which are applicable in the case of the respondents department. Further it is an admitted fact that the applicant does not have house within the municipale limits of Jodhpur city. The wording of the condition 8 would mean consideration by the authorities for cancellation of quarters if the employee possesses house at Jodhpur. The authorities have neither cancelled the accommodation nor it could be cancelled since they has ample quarters. Also the applicant does not posses house at Jodhpur.



7.0 In view of the above discussion, we do not find any merit in this application and accordingly it is dismissed without any order as to costs. The interim order also stands vacated. While the OA has been dismissed, the respondents are directed to

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ensure that the HRA is denied only to such number of employees, who are offered quarters as per rules but they refuse to occupy, as the number of quarters which remain vacant and for the period they remain vacant. Since the facts and relief sought in other OAs (i.e. OA No. 77/2002, 85/2002, 86/2002, 87/2002, 88/2002, 95/2002, 115/2002, 116/2002, 117/2002, 121/2002 and 122/2002) are similar, these OAs are also dismissed without any order as to costs.

8.0 Before we part, we may observe that the respondents department have more number of quarters than required for the present strength of the employees and some of them are lying vacant and that about 40 quarters have also been offered to the other Central Government Employees. It may, therefore, be necessary for the respondents to consider allotment all more number of quarters to other Central Government employees and to the employees of Centrally Controlled Autonomous bodies, if any, situated nearby, so that the assets created by the government do not remain unutilised and also the employees of their department are not denied HRA for long period. Respondents may also consider the allotment of the quarters to their employees, one type higher than their entitlement as per rules so as to attract some of them to occupy the quarters. We hope that the Governing counsel of the respondents authorities will duly consider the observation on priority.



प्रमाणित सही प्रतिलिपि

03/12/2002
प्रमुख अधिकारी (न्यायिक)
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर

(H. O. GUPTA)

MEMBER (A)

(JUSTICE O. P. GARG)

VICE CHAIRMAN

Revised copy
8/1/02
(3/6/02) (S. M. Toshmire)

Revised copy
Shawver
4/6/02

Part II and III destroyed
in my presence on 1/6/07
under the supervision of
section officer (1) as per
order of 1415202
Section officer (Record)