CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

ORIGINAL APPLICATIONS NO.
71 of 2008
101 of 2008
219 of 2008

JODHPUR THIS DAY 27 FEBRUARY, 2009

CORAM:
HON'BLE MR. N.D. RAGHAVAN, VICE CHAIRMAN (J)
HON'BLE Dr. RAMESH CHANDRA PANDA, MEMBER (A)

I. OA NO. 71 of 2008 :

1. Narendra Nath Vyas Junior Engineer,
S/o Shri Pukhraj Vyas,
Central Public Works Department,
Central Circle,
Jodhpur (RAJASTHAN).

2. Yashwant Singh Junior Engineer,
S/o Shri Prem Singh,
Central Public Works Department,
Central Circle,
Jodhpur (RAJASTHAN).

3. Bhagirath Gaur Junior Engineer,
S/o Shri Banshilal Gaur,
Central Public Works Department,
Central Circle,
Jodhpur (RAJASTHAN).

4. V.S. Rathore Asst. Engineer,
S/o Late Shri Kalyan Singh,
Central Public Works Department,
Central Circle,
Jodhpur (RAJASTHAN).

5. R.C. Deora Asst. Engineer,
S/o Shri Bhanwarlal Deora,
Central Public Works Department,
Central Circle,
Jodhpur (RAJASTHAN).

6. N.L. Meghwal Asst. Accounts Officer,
S/o Shri Chhoganlal Meghwal,
Central Public Works Department,
Central Circle,
Jodhpur (RAJASTHAN).

7. Jagdish Choudhary Senior Clerk,
S/o Shri Achala Ram Choudhary,
Central Public Works Department,
Central Circle,
Jodhpur (RAJASTHAN).

8. N.C. Soni Head Clerk,
S/o Shri Gordhan Lal Soni,
Central Public Works Department,
Central Circle,
Jodhpur (RAJASTHAN).

9. G.L. Verma Executive Engineer,
S/o Shri Pratap Ram,
Central Public Works Department,
Central Circle,
Jodhpur (RAJASTHAN).

10. B.R. Choudhary Junior Engineer,
S/o Shri Nenaram Choudhary,
Central Public Works Department,
Central Circle,
Jodhpur (RAJASTHAN).

.... Applicants

(By Advocate: Mr. J.K. Mishra)

VERSUS

1. Union of India through,
Secretary to the Government of India,
Ministry of Urban Development,
Directorate of Estates,
Nirman Bhawan,
New Delhi.

2. Estate Officer/Executive Engineer,
Jodhpur Central Circle,CPWD,
Nirman Bhawan,
West Patel Nagar,
Circuit House Road,
Jodhpur (RAJASTHAN).

.... Respondents

(By Advocate: Mr. M. Godara, representing Mr. Vinit Mathur)

II. O.A.No. 101 of 2008

1. R.N. Bairwa Asst. Accounts Officer,
S/o Late Shri B.L. Bairwa,
Central Electric Division,CPWD,
Jodhpur (RAJASTHAN).

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2. V.S. Khamesra Junior Engineer (E),
S/o Shri Chater Singh,
Central Electric Division, CPWD,
Jodhpur (RAJASTHAN).

3. Smt. Purnima Office Supdt.,
W/o Late Shri R. Kundir,
Central Circle,CPWD,
Jodhpur (RAJASTHAN).

4. Ghyan Shyam Arora UDC,
S/o Late Shri Madan Lal,
Central Division, CPWD,
Jodhpur (RAJASTHAN).

5. Satish Kumar Sharma Head Clerk,
S/o Shri K.P. Sharma,
Central Electric Division,CPWD,
Jodhpur (RAJASTHAN).

6. Anil Kumar UDC,
S/o Late Shri Chauhal Singh,
Central Electric Division, CPWD,
Jodhpur (RAJASTHAN).

7. Raj Kumar Khanna Asst. Accounts Officer,
S/o Late Shri Puroshottam Das,
Central Electric Division, CPWD,
Jodhpur (RAJASTHAN).

8. Madan Gopal Sharma UDC,
S/o Late Shri Ganga Ram,
Central Circle, CPWD,
Jodhpur (RAJASTHAN).

9. Ashok Kumar Gupta UDC,
S/o Late Shri Babu Lal Kulwal,
Central Circle, CPWD,
Jodhpur (RAJASTHAN).

10. Lalit Dubey LDC,
S/o Late Shri Harish Chander,
Central Division, CPWD,
Jodhpur (RAJASTHAN).

11. Raimal Chowkidar,
S/o Late Shri Pema Ram,
Central Electric Division, CPWD,
Jodhpur (RAJASTHAN).

12. Phool Chand Meena Vyas Peon,
S/o Late Shri Kalyan Meena,
Central Circle,CPWD,
Jodhpur (RAJASTHAN).

13. Smt. Shiv Kumari Peon,
W/o Late Shri Tola Ram,
Central Division, CPWD,
Jodhpur (RAJASTHAN).

14. Harka Ram Daftry,
S/o Shri Gorakh Ram,
Central Division, CPWD,
Jodhpur (RAJASTHAN).

15. Gumman ram Meena Group D (ELE),
S/o Shri Ramjeevan Ram,
Central Division, CPWD,
Jodhpur (RAJASTHAN).

.... Applicants

(By Advocate: Mr. J.K. Mishra)

VERSUS

1. Union of India through,
Secretary to the Government of India,
Ministry of Urban Development,
Directorate of Estates,
Nirman Bhawan,
New Delhi.

2. Estate Officer/Executive Engineer,
Jodhpur Central Circle,
Nirman Bhawan,
West Patel Nagar,
Circuit House Road,
CPWD Jodhpur (RAJASTHAN).

.... Respondents

(By Advocate: Mr. M. Godara, representing Mr. Vinit Mathur)

III. OA NO. 219 of 2008

1. Nand Kishore Meena UDC,
S/o Shri Chanda Ram,
Central Division, CPWD,
Jodhpur (RAJASTHAN).

.... Applicant.

(By Advocate: Mr. J.K. Mishra)

VERSUS

1. Union of India through,
Secretary to the Government of India,
Ministry of Urban Development,
Directorate of Estates,

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Nirman Bhawan,
New Delhi.

2. Estate Officer/Executive Engineer,
Jodhpur Central Circle,
Nirman Bhawan,
West Patel Nagar,
Circuit House Road,
CPWD Jodhpur (RAJASTHAN).

3. Assistant Engineer (Mu),
Jodhpur Central Circle,
Nirman Bhawan,
West Patel Nagar,
Circuit House Road,
CPWD Jodhpur (RAJASTHAN).

.... Respondents.

(By Advocate: Mr. M. Godara, representing Mr. Vinit Mathur)

: O R D E R :

Hon'ble Dr. Ramesh Chandra Panda, Member (A):

All these 3 Original Applications are taken-up together for our determination, since the applicants belong to one organization viz. Central Public Works Department ('CPWD' for short) and have same grounds and have sought for the same relief(s). We, therefore, combine these OAs to pass this common order.

2. All the Applicants have approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 with following prayer(s):

"(i) That impugned order dt. 14.11.2007 (Annexure A-1), order dated 15.12.2007 (Annexure A-2), and order dated 18.2.2008 may be declared illegal and the same may be quashed and the respondents may be directed to adhere to and follow the prescribed procedure for allotment of government accommodation in accordance with decision in case of Dr. R.K.Das supra. The applicants may be allowed all the consequential benefits.

(ii) That any other direction, or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.

(iii)That, the costs of this application may be awarded."

3. The facts of the case in all the three applications being same are briefly stated here. The applicants are Central Government employees and are employed in C.P.W.D. at Jodhpur. They are holding various posts. All of them are eligible for Government accommodation of various types (Type I, II, III, IV and V). The second respondent has constructed certain Government quarters / Apartments which are to be allotted to the Government employees. The first respondent has issued instructions to the second respondent vide his letter dated 14.11.2007**(Annex-A1)** stating that the Government employees are required to produce 'No Accommodation' Certificate [NAC] before they are allowed to draw House Rent Allowance [HRA] in certain specified stations. The said letter indicates a list of 22 cities where NAC is required for HRA purpose, and the list is at **Annex. A/1**. As per the paragraph 3 (b), Jodhpur comes at Serial No. 22 in the list notified by the second respondent as per which NAC must be issued by the Local Estate Manager before the HRA is sanctioned by the respective department. The applicants aver that some of the employees are not interested to have the Government accommodation for the reasons like; they have their own house or like to stay in the house constructed by their relatives or they would like to stay in certain private accommodation which would be nearer to their working place and would also get such accommodation at a cheaper rate compared to the admissible HRA. They also submit that the second respondent has issued order dated 15.12.2007 (**Annex-A2**) and 18.2.2008 (**Annex-A3**) for implementing the first respondent's order as per which HRA would not be paid until the NAC from the competent authority was furnished in respect of the particular employee. They

also submit that surplus higher level accommodation would be allotted to some of them by charging three times of the normal license fee. As per the applicants statement, in Jodhpur Central Circle of CPWD, the number of accommodations available are: Type- I – 27, Type – II – 24, Type – III – 30, Type – IV - 4 and Type – V – 1. As per their averment, 50% of the staff posted at Jodhpur could get accommodated with the available Government quarters/apartments. They allege that respondents have prescribed time consuming procedure for allotment of Government accommodation to the employee concerned. They aver that after allotment and occupation of all the available vacant accommodations, the remaining employees would not get government accommodation and as such they would be entitled to get NAC and therefore can draw HRA. In view of the above brief facts, the applicants have been aggrieved and are seeking intervention of this Tribunal in these OAs.

4. Sh. J.K. Mishra, learned counsel for the applicants and Sh. Mahendra Godara, learned counsel for Sh. Vineet Mathur, representing the respondents, argued the case. We have heard them and perused the pleadings.

5. Sh. Mishra, learned counsel for the applicants reiterated the back-ground of the case and highlighted that the applicants had been denied HRA on the ground that they had not been given NAC. The impugned order issued by the Directorate of Estates, Ministry of Urban Development dated 14.11.2007 is not sustainable because NAC cannot be demanded as a precondition for grant of HRA. He also contended that as per Para 4 (a) (i) of the Government of India order dated 27.11.1965 and the Para 4 (b) (i) of the said order are distinct and not

interdependent. Therefore he pleaded that the respondents should be directed to pay HRA to the applicants without insisting on the submission of the NAC to the respondent department. He also contended that the directions issued by the Local Estate Officer dated 15.11.2007 (**Annex.A/2**) and Office Memorandum dated 18.2.2008 (**Annex.A/3**), intending to implement the impugned order dated 14.11.2007 are arbitrary and need to be quashed and set aside. Another contention he brought in, relates to the Annexure enclosed to the Additional Affidavit in support of their claim that 25 Departments have been intimated including this Tribunal where the NAC would be applicable and **Annex.A/5** to **Annex. A/17** are the copy of the letters issued by CPWD, Jodhpur Circle, on 30.12.2006 intimating that totally 328 houses have been fully constructed for providing accommodation to the Government employees. He also drew our attention to the averments made in the additional affidavit stating that for 13 departments, 271 official accommodations have been ear-marked. These would fulfill only about 50% of the total accommodation demand of the Government employees. He argued that when the 100% accommodations had not been provided for the employees, denial of HRA to the employees would not be rational and should be treated as arbitrary. In support of his contentions Sh. J.K. Mishra relied on the decision of the Single Bench of this Tribunal at Jaipur in **OA No. 80/2004** decided on 17.9.2004 between **Dr. R.K.Das and Others Versus Union of India and Others (Dr. R. K. Das case** in short)

6. On the contrary, the learned counsel for the respondents vehemently opposed the contentions put forward by Shri Mishra. He contended that the decision of the Tribunal in the relied OA has got

different facts and circumstances than the one that exists here. He submitted that CPWD being the Department in charge of the Government accommodation, and all the applicants being from the CPWD, the OA filed by them seem to be in the nature of self promoted public interest litigation. He submitted that the Government accommodations had been built with the public funds at a very high cost and should not remain vacant. If the HRA is paid to the employees, the Government will suffer on two counts, viz. (i) the respondents have to maintain the Government accommodation which remains unoccupied and (ii) the applicants will be paid HRA. He also submitted that there was no contradiction and conflict between the OM dated 27.11.1965 and the impugned order. He also informed that none of the applicants seem to have applied for any accommodation available with CPWD. In the absence of the NAC the letters stipulate that the payment of HRA would not be admissible. He also submitted that Para 4 (a) (i) and Para 4 (b) (i) are complimentary to each other when the former being the cause and latter being the consequence. He submitted that on the grounds contended by him, all the three OAs are liable to be dismissed.

7. Having heard the rival contentions, we note that all the applicants belong to CPWD, the same organization which has constructed the residential accommodation for the Government employees at considerable investment. The applicants, we note from the pleadings, have taken photo copy of good number of communications which mean, they are fully aware of the availability of accommodation. Undisputedly, it does appear that it is para 4 of the Office Memorandum dated 27-11-1965 of the Government of India,

Ministry of Finance which governs the present case. The relevant portion of the said paragraph reads as follows:

> "4. The grant of house rent allowance shall be subject to the following conditions -
>
> (a)(i) To those Government servants who are eligible for Government accommodation, the allowances will be admissible only if they have applied for such accommodation in accordance with the prescribed procedure, if any, but have not been provided with it, in places where due to availability of surplus Government accommodation, special orders are issued by the Ministry of Works and Housing from time to time making it obligatory for employees concerned to obtain and furnish 'no accommodation' certificate in respect of Government residential accommodation at their place of posting. In all other places no such certificate is necessary.
>
> (ii) Government servants posted in localities where there is at present no residential accommodation in the general pool owned or requisitioned by the Central Government for allotment to them, need not apply for Government residential accommodation in order to become eligible for house rent allowance. But where Government quarters are available for the staff of specified Departments or for specified categories of staff, the procedure for applying for accommodation will be regulated under the rules of allotment of the Department concerned or of the local office of the Central Public Works Department, as the case may be.
>
> (b)(i) The allowance shall not be admissible to those who occupy accommodation provided by Government or those to whom accommodation has been offered by Government but who have refused it. In the latter case, the allowance will not be admissible for the period for which a Government servant is debarred from further allotment of Government accommodation under the allotment rules applicable to him.
>
> (ii) The house rent allowance drawn by a Government servant, who accepts allotment of Government accommodation, shall be stopped from the date of occupation, or from the eight day after the date of allotment of Government accommodation, whichever is earlier. In case of refusal of allotment of Government accommodation, house rent allowance shall cease to be admissible from the date of allotment of Government accommodation. In case of surrender of Government accommodation, the house rent allowance, if otherwise admissible, will be payable from the date of such surrender."

8. At this point, we need to examine the concern raised by the learned counsel for the applicant that the instructions are issued by the respondents demanding the NAC, are contrary to the Office

Memorandum dated 27-11-1965 and he went to the extent that Para 4(a)(i) and Para 4(b)(i) are distinct and cannot be interpreted together. We feel otherwise and note that all relevant paragraphs of the OM dated 27.11.1965 are to be considered and read together to get right interpretation. The Honourable Supreme Court has dealt similar type of concerns in a case which we will deal and rely on separately to bring home that all relevant provisions in an order shall be read and comprehended as a whole for proper interpretation. In this context we examine the applicability of the **Principle of harmonious construction** in the present case. Honourable Supreme Court has applied the principle in the case of **Jagdish Singh versus Lt. Governor Delhi and Others** (1997 STPL (LE) 23328 SC) decided on 11.3.1997, which reads as follows :-

> ".....It is a cardinal principle of construction of a statute or the statutory rule that efforts should be made in construing the different provisions, so that, each provision will have its play and in the event of any conflict a harmonious construction should be given. Further a statute or a rule made there under should be read as a whole and one provision should be construed with reference to inconsistency or repugnancy between one provision and the other should be avoided."

9. Do the Applicants rightly interpret the HRA order dated 27-11-1965 and the executive instructions need to be looked into by us keeping in view its purport and tenor. Makers of the said order furthermore must have presumed to have in mind, while laying down the same, to give justice to all concerned. The executive instructions only clarify the same and provide supplementing guidance in furtherance of the objectives for which the order has been issued. We note that Para 4(a) (i) makes it obligatory for employees to obtain and furnish NAC for claiming HRA. Order dated 14.11.2007, 15.12.2007 and 18.2.2008 are in conformity with Para 4 (a) (i) of the said OM and

also other provisions in the OM. We have to interpret the order and executive instructions as required to be interpreted harmoniously so as to give effect to all the relevant aspect of the order. In **British Airways Plc. Versus Union of India** [2001 STPL(LE) 30415 SC] decided on 6-11-2001 the Honourable Supreme Court set the dicta on harmonious construction which we find is more relevant to rely on.

> "While interpreting a statute the court should try to sustain its validity and give such meaning to the provisions which advance the object sought to be achieved by the enactment. The court cannot approach the enactment with a view to pick holes or to search for defects of drafting which make its working impossible. It is a cardinal principle of construction of a statute that effort should be made in construing the different provisions so that each provision will have its play and in the event of any conflict a harmonious construction should be given. The well-known principle of harmonious construction is that effect shall be given to all the provisions and for that any provision of the statute should be construed with reference to the other provisions so as to make it workable. A particular provision cannot be picked up and interpreted to defeat another provision made in that behalf under the statute. It is the duty of the court to make such construction of a statute which shall suppress the mischief and advance the remedy. While interpreting a statute the courts are required to keep in mind the consequences which are likely to flow upon the intended interpretation.

10. We note that the learned counsel for the applicants relied on the decision of a coordinate Single Bench (Jaipur) of this Tribunal in OA No. 80 of 2004 decided on 17.9.2004 between **Dr. R.k. Das and 29 Others Versus Union of India and Others (Dr. R.K.Das case** in short**)**. The prayer of the applicants is also to direct the respondents to follow the directions given in said **Dr. R.k. Das case.** While concluding and deciding the HRA issue in **Dr. R.k. Das case** the coordinated Bench relied on the judgment of Honourable Supreme Court in the Civil Appeal decided on 26.7.1994 between **Director, Central Plantation Crops Research Institute, Kesaragod Versus M. Purushothaman** [SCC-1995-SUPP4-633] (**Director CPCRI Case** in short).

11. It is relevant for us to give the details of the **Director CPCRI Case** (supra) for determination of this OA. Honourable Apex Court considered whether the employees of the appellant organisation, viz., the Central Plantation Crops Research Institute are entitled to House Rent Allowance (HRA) although they are offered official accommodation and they refuse to occupy the same. While examining the decision of this Tribunal relevant to that case, Honourable Supreme Court noted that the respondent-employees were occupying various posts in the appellant-organization. Orders allotting official quarters were passed by the appellant organization but the employees declined to occupy the same for different reasons. On their refusal to occupy the quarters, the appellant issued orders denying them the benefit of HRA which they were till then drawing. The respondent-employees challenged these orders before the High Court. Their writ petitions were transferred to the coordinated Bench of this Tribunal which decided the issue by a common decision dated 5-5-1988 that the employees could not be compelled to occupy the official quarters and hence on their refusal to occupy the same, they would not be denied the benefit of the HRA on two grounds (i) under the relevant provisions, it is only those employees who applied for official accommodation and refused to occupy the same are liable to forfeit the benefit of the HRA and not others; and (ii) the "HRA is a part of wages and no deduction from the wages can be made merely on account of the refusal to accept the accommodation". Honourable Apex Court did not agree with either of the said reasons and decided the issue whether the HRA is part of pay/wages?. Hon'ble Apex Court held that as per the Fundamental Rule 9 (21) (a) HRA is not part of "pay", and under the Fundamental Rule 44, HRA would be covered by the

definition of Compensatory Allowance. It is compensation in lieu of accommodations. The Honourable Supreme Court observed and we quote that "It must be remembered in this connection that the Government or the organisation of the kind of the appellant spends huge public funds for constructing quarters for their employees both for the convenience of the management as well as of the employees. The investment thus made in constructing and maintaining the quarters will be a waste if they are to lie unoccupied. The HRA is not a matter of right. It is in lieu of the accommodation not made available to the employees. This being the case, it follows that 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. This is the rationale of the provisions of paragraph 4 of the said Government Office Memorandum." Further it was observed that "paragraph 4(b) (i) provides that the HRA shall not be admissible to those who occupy accommodation provided for them as well as to those to whom accommodation has been offered but who have refused to accept it. The provisions of paragraph 4(b)(i) are independent of the provisions of paragraph 4(a)(i) and (ii). Whereas paragraph 4 (a) (i) and (ii) speak of procedure to be followed by the employees who are in need of accommodation, paragraph 4 (b) (i) provides for the forfeiture of the HRA even when the accommodation has been offered on its own by the management whether the application for the same has been made or not. There is no distinction made in this provision between those who have applied and those who have not applied for accommodation. Even otherwise, we are of the view that the distinction sought to be made by the Tribunal is on the face of it,

irrational, particularly taking into consideration the resources spent on constructing the quarters." Therefore, Honourable Supreme Court did not accept the conclusion of the Tribunal and while allowing the appeal decided as follows:-

> "11. Shri Ranjit Kumar, learned counsel appearing for the appellant-organisation pointed out a letter dated 13-8-1986 addressed by the Under Secretary of the Indian Council of Agricultural Research to the appellant wherein it is stated that the matter was examined and it was held that the HRA should be denied to the employee who refuses to take the allotment made or when offered to him till such time the quarter in question lies vacant for want of any other taker. This would mean that the HRA would be denied to the employee only for the period the quarter lies vacant consequent upon his refusal. While, therefore, setting aside the impugned order and allowing the appeal, we direct the appellant-organisation to deduct the HRA from the salary of the respondent-employees only for the period the quarters which were offered to the employees remained vacant. The appeal is allowed accordingly with no order as to costs."

12. We have perused the decision of the coordinated Single Bench (Jaipur) of this Tribunal referred to by the learned counsel for the applicants and find that the decision has extensively quoted the decision of the Honourable Supreme Court in the of **Director CPCRI case(supra)**, and ultimately comes to the conclusion as follows :-

> "6 At this state, I wish to make it clear that it was not the intention of this Tribunal that the Govt. accommodation / quarters which have been constructed by the Govt. By spending huge public funds and for convenience of the employees should remain unoccupied. Undoubtedly, such accommodation cannot be allowed to remain unoccupied and the Govt. employees cannot take stand that they are not willing to occupy the same as they are either living in rented houses or in their own houses or houses constructed by their relation. The respondents cannot be shouldered with double liability of construction and maintain the quarters as well as pay the HRA. This is the rational of the provisions of para 4 of the said Govt. OM dated 27.11.65. Thus, the Govt. employees have either to accept the accommodation which has been offered to them or forfeit the HRA but before forfeiting the HRA, the respondents are equally bound to follow its own instructions and act reasonably. Under Rules/Govt. instructions, the HRA can be forfeited only in the manner stipulated in para 4 (b) (i) of the OM dated 27.11.65. As already stated above, in the instant case, the HRA has been forfeited by the respondents solely on the basis of para 4 (a) (i) which only

lays down the procedure regarding making of application for accommodation / submission of 'No Accommodation Certificate'. The letter dated 25th October, 2003 (Annex.A9) issued by the Govt. of India, Ministry of Urban Development and Poverty Alleviation, Directorate of Estate, which has been issued in view of provisions contained in para 4 (a) (i) of the general rules and orders issued by the Govt. of India in respect of HRA and CCA to its employees has to be read in the manner as interpreted by the Apex Court in the case of Director, Central Plantation Crops Research Institute (supra). It cannot supersede the specific provisions contained in paragraph 4 (b) (i) which provides consequences of forfeiture of HRA and HRA can be stopped only in the circumstances mentioned therein and not otherwise.

7. Accordingly, this OA is allowed. The impugned order dated 12.2.2004 (Ann.A1) is quashed. The respondents are directed to proceed with the allotment of vacant quarters in the manner as stated above. No costs."

13. Our interpretation of Para 4 of the Office Memorandum dated 27-11-1965, we find that the grant of house rent allowance is conditional and as such there are two parts in the said Para of the OM, viz (1) **Enabling part** and (2) **prohibitive part**.

14. Hence we analyse the conditional processes sequentially of the **Enabling part**. **First** step is that in the places where surplus Government accommodation is available, special orders are to be issued by the Ministry concerned making it obligatory for employees concerned to obtain and furnish 'no accommodation' certificate in respect of Government residential accommodation at their place of posting. **Second** step is that the Government servants who are eligible for Government accommodation shall apply for such accommodation in accordance with the prescribed procedure. **Third** step is that the Government servants so applied and have not been provided with such accommodation would be eligible for NAC. Consequent to the 3rd step, the **fourth** step is that the Competent Authority will be duty bound to issue no accommodation certificate (NAC). **Fifth** step is that on receipt of the NAC from the employee concerned, the Government servants'

organization will have to grant them with house rent allowance. We find that the 1st step has been done by the respondent No.1 and 2. Other steps need to follow as per the OM dated 27.11.1965 and the orders issued.

15. The Para 4 has a **prohibitive part** and indicates at 4 (b)(i) that the house rent allowance shall not be admissible to those Government servants (1) who occupy accommodation provided by Government; (2) those to whom accommodation has been offered by Government but who have refused the same. In the case of above item (2), the allowance is not admissible for the period for which the concerned Government servant is debarred from further allotment of Government accommodation under the allotment rules applicable to him. As per the said para, in case of refusal of allotment of Government accommodation, house rent allowance ceases from the date of allotment of Government accommodation.

16. We note that Honourable Supreme Court in **Director CPCRI case** decided that the HRA would be denied to the employee only for the period the quarter remains vacant consequent upon his refusal. While, therefore, setting aside the impugned order and allowing the appeal, directed the appellant-organisation to deduct the HRA from the salary of the respondent-employees only for the period the quarters which were offered to the employees remained vacant. We take note that the Government OM dated 27.11.1965 has not been quashed by the Honourable Apex Court in **Director CPCRI case (supra),** and hence we hold the said Government OM dated 27.11.1965 as legally valid.

17. The present Applications do not provide information on many aspects like (i) whether the applicants have applied for the Government accommodation? (ii) how many of them have their own house or house owned by their family members? (iii) how many have come on transfer? (iv) who all have been offered Government accommodation and declined to occupy and if so for what reasons? and how many of the applicants have been drawing HRA and how long?. These aspects need to be examined by the respondents for deciding each applicant's case to grant NAC or not.

18. Taking the totality of facts and circumstances into account and legal position in the subject, we come to the considered conclusion that the orders issued by the respondent concerned dated 14.11.2007 (**Annexure A-1**), dated 15.12.2007 (**Annexure A-2**), and dated 18.2.2008 being in consonance with the extant Government OM dated 27.11.1965 are legally valid. Para 7 of the OM deals with the Government servant living in the house owned by the employee and such an employee shall be entitled for the HRA. There is justification for the HRA, if applicant having their own house or their immediate family members have their house where they stay or intend to stay. But, those applicants who desire to stay in private accommodation while the government accommodations are available, are not entitled for HRA. We are of the considered opinion that harmonious construction of all the relevant paragraphs (4 and 7) of OM dated 27-11-1965 bring out that the applicant and their immediate family members having houses/apartments where the applicants stay being different from others, will be eligible to get HRA in the location having surplus Government accommodation. We also find that as per the OM

dated 27.11.1965, the NAC is a precondition to draw HRA only in the notified locations. Jodhpur is one of the locations notified by respondents. We also conclude that the demand for NAC from the applicants by the respondent No.2 is just and right procedure. However, we note that it is the executive to decide each applicant's case about the eligibility for NAC and HRA. In the result we direct the respondent no.2 to adopt the following procedure which is in conformity with the extant OM dated 27-11-1965 and in view of our observations within in deciding each applicant's case relating to (a) whether the applicant concerned is entitled for NAC and (b) consequently whether the applicant concerned is eligible for HRA:-

> **I.** The "no accommodation certificate" may be issued in case of the applicant who comes in one of the 2 following categories subject to the condition that the applicant declares the accommodation with detailed proof where he stays:-
>
> **i.** The applicant who owns a house/apartment at the place of posting (Jodhpur).
>
> **ii.** The applicant whose immediate family member (spouse/child/father/mother) own a house/ apartment where the applicant stays in the posting place of the applicant (Jodhpur).
>
> **II.** Once the respondent identifies an applicant who does not come within the ambit of I above, the concerned applicant is to be offered Government accommodation as per extant rules/instructions by the competent respondent. If the applicant offered with the Government accommodation accepts or declines, such applicant will not be entitled for no accommodation certificate and consequently not eligible for the house rent allowance.

19. With the above observations and directions all three Original Applications are disposed of without any order as to cost.

(Dr. Ramesh Chandra Panda)
Member (A)

(N.D.Raghavan)
Vice Chairman(J)

jr

R/C

3/3/09

Part II and III destroyed
in my presence on 8/8/...
under the supervision of
section officer (J.) as per
order dated 07/07/2015

Section officer (Record)