

(11/18)

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application Nos.123/2009

Date of decision: 9-11-2010

**Hon'ble Mr. Justice Syed Md Mahfooz Alam, Judicial Member.
Hon'ble Mr. Sudhir Kumar Administrative Member.**

Jetha Ram Gehlot, S/o Shri Daya Ram Gehlot, aged about 59 years, R/o 16/95, Kheme Ka Kuan, near temple of Mataji, Pal Road, Jodhpur at present employed on the post of Dy Field Officer, under Addl. Commissioner, Special Bureau, Govt.of India, Jodhpur.

: Applicant.

Rep. By Mr. J.K. Mishra : Counsel for the applicant.

Versus



1. Union of India through Secretary, Cabinet Secretariat, Special Bureau, 7th Annexcy Bikaner House, Shahjahan Road, New Delhi.

2. The Director (Adm), Special Bureau, 7th Annexcy, Bikaner House, Shahjahan Road, New Delhi.

3. Addl. Commissioner, Special Bureau, Subhash Nagar, Pal Road, Jodhpur (Raj).

4. Sankar Prasad, Section Officer, Special Bureau, Subhash Nagar, Pal Road, Jodhpur (Raj)

: Respondents.

Rep. By Mr. M. Godara Proxy counsel for
Mr. Vinit Mathur : Counsel for the respondents.

ORDER

Per Mr. Justice S.M.M. Alam, Judicial Member.

Signature
Applicant Jetha Ram Gehlot, who was employed on the post of Deputy Field Officer, under the Addl. Commissioner, Special Bureau, Government of India Jodhpur, has preferred this O.A claiming the following reliefs:

(i) That the impugned order dated 7-2-2008 (Annex. A/1) allotment of Type II quarter No.10 to the applicant, order dated 21-2-2008 (Annex. A/2) to the extent of declaring the applicant as not eligible for HRA and the pay slip for the month of March 2008 (Annex. A/3) to the extent of recovery and non inclusion of HRA may kindly be

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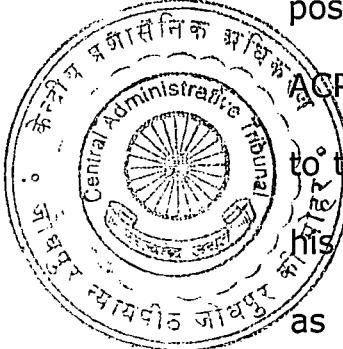
declared illegal and the same may be quashed. The order Annexure A/4 dated 16.06.2008 may also be quashed and set aside. The applicant may be allowed all consequential benefit including regular payment of HRA along with arrear.

- (ii) The applicant may also be allowed the interest on the amount deducted towards HRA at market rate.
- (iii) Any other direction or orders may be passed in favour of the applicant which may deemed just and proper under the facts and circumstances to this case in the interest of justice.
- (iv) The cost may also be awarded to the applicant.

2. The brief facts of the case are as follows:-

The applicant was initially appointed as driver in Special Bureau in the year 1971. After change of cadre, he became Senior Field Assistant (MT). In the year 1986 he was promoted to the post of Assistant Field Officer. He was also given the benefits of 2nd ACP in the pay scale of Rs. 5500-9000 and then he was promoted to the post of Deputy Field Officer with effect from 29.07.2008 and his pay was fixed at Rs. 17040/- in the corresponding scale of pay as per 6th Central Pay Commission's recommendations w.e.f. 01.01.2006. The applicant was residing in his own house bearing No. 16/95 Kheme ka Kuan, Pal Road Jodhpur. He was getting HRA at the rate of Rs. 1631/- upto January 2008 (Annex. A/6). In support of his case that he is residing in his own house, the applicant has annexed the patta of the house (Annex.A/7).

3. Further case of the applicant is that he did not submit any application for allotment of government quarter at Jodhpur although he was eligible for Type III quarters on the basis of his basic pay. But the respondents in violation of the existing rules in vogue, at that time, vide order dated 07.02.2008 (annex. A/1)



1/20

allotted Type II Quarter No.10 to the applicant. Since the applicant had never asked for type II accommodation he refused to accept the said allotment as indicated in the order dated 21.02.2008 (annex.A/2), on the ground that Type II quarter is below his eligibility and he had never asked for type II accommodation. At the same time the respondents have informed the accounts section that the applicant is not entitled for drawal of HRA and TPT and the respondents thereafter stopped the payment of HRA and also started recovery of Rs. 1525/-p.m. from March 2008 (Annex. A/3). The contention of the applicant is that as per FR-SR, Part V HRA & CCA Rules, a government servant living in his own house is also entitled for HRA. It is also stated that government servant cannot be compelled to accept the government accommodation for which he is not entitled to.

Further case is that the applicant took up the matter with the 3rd respondent and placed all relevant documents but no order was passed. Meanwhile the applicant's pay was fixed as per the recommendations of 6th Pay Commission and became entitled to draw HRA at the rate of Rs. 3,800 per month, which has been withheld by the respondents and in the meantime vide order dated 16.06.2008 (annex. A/4) the applicant was allotted Type III accommodation but this time also the applicant refused to accept type III accommodation. On his refusal the same was allotted to one G.R. Acharya vide order dated 25.06.2008 but since thereafter the applicant was not paid HRA. It is further stated that a similar

(112)

controversy has already been settled by a Bench of this Tribunal in the case of **Narendra Nath Vyas and others vs. UOI and ors** [O.A. Nos. 71/08, 101/08 and 219/08] and vide order dated 27.02.2009, it was decided that the government servants living in his/her own house are also entitled for HRA. It is stated that the present case is covered by the decision given in the above case. On the above pleadings the applicant has prayed for grant of the reliefs claimed.

5. On filing of the O.A, notices were issued to the respondents and in response to the notices, respondents appeared through lawyer and filed reply to the O.A. As per the reply, the case of the respondents in brief is that as per provisions contained in Office Memorandum dated 14.11.2007, issued by the Ministry of Urban Development, Directorate of Estates (annex.R/3), central government servants eligible for GPRA in cities with a surfeit of GPRA shall be eligible to draw HRA only upon their providing the concerned DDO with a 'No Accommodation Certificate' (NAC for short) issued by local Estate Manager. In the list of cities, where surfeit number of GPRA are available, Jodhpur has been shown at Sl. No 22. The case of the respondents is that the applicant was provided Government quarter (GPRA), but he refused to occupy the same and also failed to produce NAC, as such the applicant is not entitled to get HRA. It is further stated that the applicant's contention, that since he is residing in his own house and as per rule he is entitled to get HRA, is not correct as the applicant was



1/22

drawing HRA on the basis of receipts given by him that he was residing in rented house and in this regard the respondents have annexed five receipts (R-1 series) produced by the applicant for claiming HRA.

6. We have heard the argument of learned advocate Shri J.K. Mishra, counsel for the applicant as well as the argument of learned advocate Shri M. Godara, proxy counsel for Shri Vinit Mathur, counsel for the respondents, at length. On the basis of the arguments and on perusal of the pleadings of both the parties, we are of the view that to decide the controversy the reference of para 7 (i) FR-SR, part V HRA & CCA Rules, office memorandum dated 27.11.1965 of the Government of India, Ministry of Finance and office memorandum dated 14.11.2007 issued by Government of India, Ministry of Urban Development, Directorate of Estates will be relevant. Firstly, we quote the provisions contained in the memorandum dated 27.11.1965 of the Government of India, Ministry of Finance which governs the rule with regard to grant of HRA. The relevant paragraphs of the said memorandum are being incorporated below:-

"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

C/123

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.

(b) (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 eighth 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."

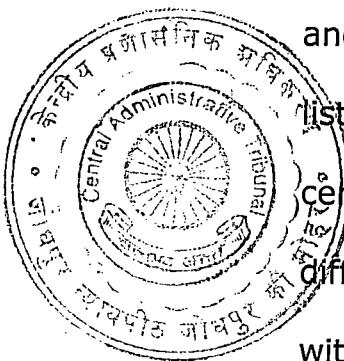
Thus, from the provisions of office memorandum dated 27.11.1965 of the Government of India, it is clear that in places where due to availability of surplus Government accommodation, special orders are issued by the Ministry of Works and Housing it is



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obligatory for employees to obtain and furnish 'no accommodation certificate' in respect of Government residential accommodation to claim HRA. Clause (b)(i) of the said memorandum says that the HRA will not be admissible to those Government employees, whom accommodations were offered by the Government but who refused to occupy the accommodation. It appears that the office memorandum dated 14.11.2007, Government of India, Ministry of Urban Development, Directorate of Estates was issued in pursuance of the OM dated 27.11.1965 of the Government of India, Ministry of Finance. Clause 3 (b) of the said memorandum incorporates the name of the cities having surplus stock of quarter and so for the employees posted at the stations mentioned in the list claiming HRA are required to produce 'no accommodation certificate' issued by the local Estate Manager. We have no difficulty in holding that this memorandum was issued in conformity with OM dated 27.11.1965 of the Government of India, Ministry of Finance. In the list of cities having surplus number of quarters the name of Jodhpur city has also been incorporated. It is mentioned at serial No.22 and, therefore, we are of the view that as per OM dated 14.11.2007 (Annex.R/3), which was issued in conformity with the Government memorandum dated 27.11.1965 it is mandatory for employee claiming HRA to produce no accommodation certificate (NAC) issued by local Estate Manager. Admittedly in this case, the applicant did not produce any such certificate Para-7. The contention of the applicant's lawyer is that the applicant was residing in his own house and an employee living



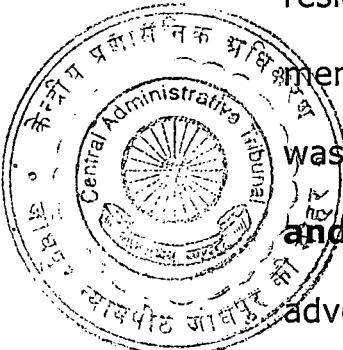
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11/25

in his own house is also entitled for HRA. In this regard the applicant has referred para 7 (i) of FR-SR Part V HRA & CCA Rules, which is being reproduced below:-

"7.(i) A Government servant living in a house owned by him, his wife, children, father or mother shall also be eligible for House Rent Allowance under these rules".

Relying upon the above mentioned rule, we have no hesitation to hold that a Government servant residing in his own house is also entitled for grant of HRA but it is subject to fulfilling certain conditions i.e. the applicant makes declaration that he was residing in his own house or in the house of his immediate family member with detailed proof of such accommodation. Similar view was taken by this Bench in OA No.71/2008 **Narendra Nath Vyas and others vs. UOI and ors.** The contention of the learned advocate of the respondents is that the applicant never informed the department that he was residing in his own house rather he claimed HRA on the basis of the certificate produced by him that he was residing in a rented house. In support of his arguments, the learned advocate of the respondents has placed reliance upon the five rent receipts (Annex.R-1 series) produced by the applicant for claiming HRA. We have perused the rent receipts (Annex.R-1 series), which clearly establish that the applicant had been claiming HRA on the basis of the fact that he was residing in a rented house owned by one Girdhari Lal Gehlot. So the rent receipts (Annex.R-1 series) falsify the contention of the applicant that he is entitled



7/28

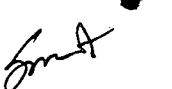
for HRA as he was residing in his own house for which production of "no accommodation certificate" is not required.

7. It has been argued by Shri J.K. Mishra, the learned advocate for the applicant that the respondents were knowing this fact that the applicant was residing in his own house, which fact is established from Annexure-A/9 by which the respondent department sanctioned house loan for construction of first floor over the building owned by him situated at plot No.16/95, khasara no.773, Khema ka Kuan, Pal Road, Jodhpur. His argument is that the Annex.A/9 sufficiently establishes that the department was in know of the fact that the applicant was residing in his own house and on that basis the department could have issued no accommodation certificate to the applicant suo moto. We are not convinced with the submission of the learned counsel as sanction of loan for construction of house is a different matter and the statement which is required to be made to the effect that a particular employee was residing in his own house is another matter and both the matter cannot be interlinked. The fact is that the applicant never claimed HRA on the basis of the fact that he was residing in his own house and so as per the above Government instructions, the applicant was duty bound to produce NAC for being entitled to get HRA, it was also essential in view of the fact that as per OM dated 14.11.2007 (Annex.R/3) the Jodhpur city has been shown as cities having surplus number of Government accommodation.



(127)

8. It is the admitted case of the parties that by order dated 07.02.2008 (Annex.A/1) and by order dated 16.06.2008 (Annex.A/4), the applicant were allotted Government accommodation, but on both the occasions the applicant refused to occupy the Government accommodation and so as per para 4 (b)(i) of the Government memorandum dated 27.11.1965 issued by the Government of India, Ministry of Finance, the applicant on his refusal to occupy the Government accommodation is not entitled for grant of HRA. It has been pointed out by the learned advocate of the applicant that as per order dated 07.02.2008 the applicant was allotted type II quarter whereas the applicant was eligible for type III quarter. We find that this averment of the applicant was not denied by the respondents, therefore, we are of the view that as the allotment of type II quarter was below the standard accommodation to be provided to the applicant so it can be easily held that on that date the standard accommodation for which the applicant was entitled i.e. type III quarter, was not available and so it will be deemed that the applicant was legally entitled to refuse the occupation of such sub-standard quarter. However, it appears that vide memorandum dated 16.06.2008 the applicant was allotted type III quarter for which he was entitled but he again failed to occupy the same and, therefore, we are of the view that his failure to occupy the said quarter makes him disentitled for grant of HRA as provided in para 4 (b) (ii) of the Government

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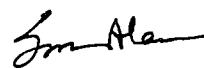


memorandum dated 27.11.1965 from the date of the order of allotment i.e. 16.06.2008.

9. Summing up the discussions, we find and hold that the applicant is entitled to get HRA prior to the date i.e. 16.06.2008 when he was allotted type III quarter because of the fact that type II quarter allotted to him vide order dated 07.02.2008 was sub-standard for the applicant and he was justified to refuse to occupy the said quarter. We further hold that the applicant is not entitled for grant of HRA since 16.06.2008 when he was allotted type III quarter by Annex.A/4 but he failed to occupy the same in spite of the fact that the allotment of the quarter was in accordance with his rank. It is further observed that the applicant is entitled to refund of H.R.A. prior to the date of 16.06.2008. In the result this original application is partly allowed with above directions. No order as to costs.



[Sudhir Kumar]
Administrative Member


[Justice S.M.M. Alam]
Judicial Member

दिनांक 12/11/16 का आदेशानुसार
पैदल दूरी 12/11/16
को अन्त तक यहां पहुंच दिया गया।

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अनुशासन अधिकारी

केन्द्रीय प्रशासनिक
जोखपुर न्यायिक, राजस्थान