

क.प्र.प्र. (प्रक्रिया) नियमावली के नियम 22 के अन्तर्गत निः शुल्क प्राद

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH AT JODHPUR

O.A Nos.212/2010. 213/2010 & 307/2010

Date of decision: 7<sup>th</sup> August, 2012

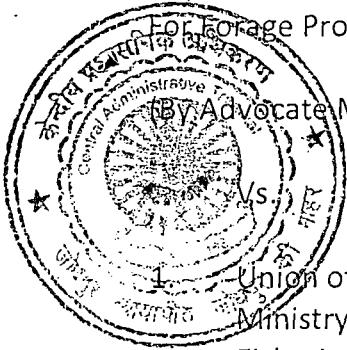
CORAM

HON'BLE MR. G. SHANTHAPPA, JUDICIAL MEMBER  
HON'BLE MR. B K SINHA, ADMINISTRATIVE MEMBER

OA 212/2010

Sahib Ram Son of Shri Syokaran Ram  
Resident of Ward No.27, Near BDO Colony,  
Suratgarh, Dist. Sriganganagar  
at present employed on the post of Jeep Driver  
in the Office of the Ministry of Agriculture  
Department of AHD & Fisheries Regional Station  
For Forage Production & Demonstration, Suratgarh.....Applicant

(By Advocate Mr. J.K.Mishra)



1. Union of India through Secretary  
Ministry of Agriculture, Department of AHD &  
Fisheries, Room No.417, Krishi Bhawan,  
New Delhi.
2. Director, C&FF, Govt. of India, Ministry of  
Agriculture, Department of AHD &  
Fisheries, Room No.337, Krishi Bhawan,  
New Delhi.
3. Shri Yogendra Kumar, Director I/C  
Regional Station for Forage Production & Demonstration,  
Suratgarh.
4. Director,  
Regional Station for Forage Production &  
Demonstration, Suratgarh.  
(impleaded vide order dated 15.9.2011 in MA 145/2011)

1/17

.....Respondents

(By Advocate Mr. Vinit Mathur, ASGI with Adv. Ankur Mathur (for R.1,2&4)  
None for R.3)

OA No. 213/2010

Bisna Ram son of Shri Karna Ram,  
Resident of Village and Post Manaksar, Ward No.5,  
Teh Suratgarh, Dist.Sriganganagar  
at present employed on the post of Tractor Driver  
in the Office of the Ministry of Agriculture  
Department of AHD & Fisheries Regional Station  
For Forage Production & Demonstration, Suratgarh

(By Advocate Mr. JK Mishra)

Vs.

1. Union of India through Secretary  
Ministry of Agriculture, Department of AHD &  
Fisheries, Room No.417, Krishi Bhawan,  
New Delhi.
2. Director, C&FF, Govt. of India, Ministry of  
Agriculture, Department of AHD &  
Fisheries, Room No.337, Krishi Bhawan,  
New Delhi.
3. Shri Yogendra Kumar, Director I/C  
Regional Station for Forage Production & Demonstration,  
Suratgarh.
4. Director,  
Regional Station for Forage Production &  
Demonstration, Suratgarh.

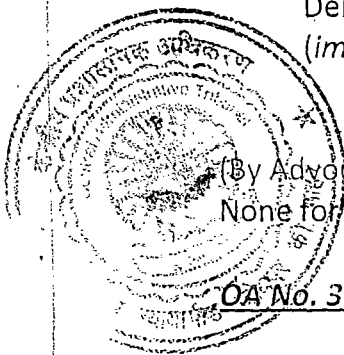
(impleaded vide order dated 15.9.2011 in MA 146/2011)

.....Respondents

(By Advocate Mr. Vinit Mathur, ASGI with Adv. Ankur Mathur (for R.1,2&4)  
None for R.3)

OA No. 307/2010

Satish Kumar son of Shri Bishmber Dayal,  
Resident of Ward No.2, House No.119,  
Near Raju Ki Chakki, Suratgarh,



Distt. Sriganagar at present employed  
on the post of Peon  
in the Office of the Ministry of Agriculture  
Department of AHD & Fisheries Regional Station  
For Forage Production & Demonstration, Suratgarh  
(By Advocate Mr. J.K.Mishra)

Vs.

1. Union of India through Secretary  
Ministry of Agriculture, Department of AHD &  
Fisheries, Room No.417, Krishi Bhawan,  
New Delhi.
2. Director, C&FF, Govt. of India, Ministry of  
Agriculture, Department of AHD &  
Fisheries, Room No.337, Krishi Bhawan,  
New Delhi.



Shri Yogendra Kumar, Director I/C  
Regional Station for Forage Production & Demonstration,  
Suratgarh.

4. Director,  
Regional Station for Forage Production &  
Demonstration, Suratgarh.

(impleaded vide order dated 17.10.2011 in MA 178/2011)

.....Respondents

(By Advocate Mr. Vinit Mathur, ASGI with Adv. Ankur Mathur (for R.1,2&4)  
None for R.3)

### ORDER

Per: B K Sinha, Administrative Member

These OAs are directed against the order of the 3<sup>rd</sup> respondent No.8/1/94-  
Estt/FS/490 dated 9<sup>th</sup> June, 2010 of the third respondent allotting quarters to the  
applicants and Order No.8/1/94-Estt/537 dated 28<sup>th</sup> June, 2010 stopping House  
Rent Allowance of the applicants wef 16.6.2010.

Relief(s) sought

- (i) *That the impugned order dated 10.6.2010 (Annexure.A./1) allotment of quarter to the applicant and the order dated 28.3.2010 (Annexure.A/2) stopping of HRA qua the applicant may kindly be declared illegal and the same may be quashed. The applicant may be allowed all consequential benefit including regular payment of HRA/Refund of amount deducted towards HRA.*
- (ii) *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 to this case in the interest of justice.*
- (iii) *The cost may also be awarded to the applicant.*

2. The above three cases namely OA Nos. 212/2010, 213/2010 and 307/2010 are being heard jointly together as they arise from a common set of orders, cover the same subject and have sought common reliefs. Hence, the three cases are being disposed of by the instant common order.

**Case of the applicant in OA 212/2010.**

3. The case of the applicant in brief is that he is working as Jeep Driver under the 3<sup>rd</sup> respondent in the grade pay of Rs.4200/- and he was being received Rs.1475/- as House Rent Allowance (HRA for short) till May,2010. [A3]. He has taken a House Building Advance of Rs. 65000/- from the department during 1996 and constructed a house in Ward No.27, Near BDO Colony Suratgarh where he is residing presently. The repayment of this loan alongwith interest has already been completed. Even though the applicant has not submitted any request for allotment of government quarter, he was allotted a Type II Quarter at Suratgarh vide order dated 9.6.2010[A1]. Since the applicant has never made any request for allotment and he is residing in his own house built taking House Building



Advance from the Department, he did not occupy the said quarter. However, he made a representation dated 14.6.2010 to the third respondent for cancellation of the allotment in his name and to allot the other eligible interested employees as per rules. [A4]. However, the respondents have not considered the representation, instead they had vide A2 stopped the HRA without prior notice or hearing. Applicant submits that as per Rule 7 of HRA and CCA a Government Servant living in a house owned by him is also eligible for HRA. He has cited a Judgment of this Bench of the Tribunal in OA 71/2008 Narendra Nath Vyas Vs.

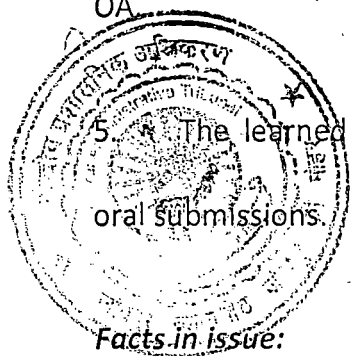
Union of India and others. The applicant alongwith other applicants in the connected OAs made a written complaint to the higher authority against the order of the 3<sup>rd</sup> respondent as also the police authority [A5 and A6]. He has stated that as per rules an employee cannot be compelled to occupy accommodation when those who are eligible waiting for allotment of accommodation. He has stated that since the HRA was stopped without a prior notice or personal hearing the same is against the principles of natural justice as enshrined in Art.14 and 21 of the Constitution of India.

***Case of the respondents in all the three cases:***

4. The respondents filed a detailed counter affidavit and opposed the OA. They have stated that in the residential colony of the department there were 4 quarters lying vacant as 4 persons including the applicant were residing outside the campus area and they were being paid HRA. There were audit objections regarding payment of HRA to the applicants herein even though the residential

quarters were lying vacant. Hence in the month of November, 2009 a review meeting was held at Krishi Bhavan, New Delhi wherein all the Directors/Director-in-Charge were directed to allot the vacant quarters as the government is bearing double loss because the officials who are residing outside the colony have to pay HRA whereas for the construction of the quarters the government spent huge amount. They have also stated that the quarters were in the farm sight itself for proper utilization of the services of its employees on emergency as well as in the best interest of service. Hence the vacant quarters were allotted to the applicants as per allotment letter dated 9.6.2010. Since the applicants have been allotted quarters as per the need of the services and as the occupation report were not received from them, vide order dated 28.6.2010 the HRA was stopped. The vacant quarters were allotted to the applicant as per the procedure in vogue and as per the seniority of the applicants. They have submitted that the applicants have no right to challenge the impugned orders and prayed for dismissal of the

OA

**Facts in issue:**

- (i) ***Whether government quarters can be allotted to persons who have not applied for the same?***
- (ii) ***Whether the government servant who refused to reside in such quarters stand to forfeit their House Rent Allowance (HRA)?***
- (iii) ***What relief, if any, can be granted to the applicants.***

22

**Whether government quarters can be allotted to persons who have not applied for the same?**

6. In order to resolve this issue one has to go into the mechanism and process of allotment of government accommodation. The Government constructs and maintains accommodation for the benefit of its employees and also for the convenient facilitation of government work. The issue of allocation has been dealt with under SR 311 made under FR 45 being reproduced for ready reference as follows:

**FR.45: The Central Government may make rule or issue orders laying down the principles governing the allotment to officers serving under its administrative control. For use by them as residences, of such buildings owned or leased by it, or such portions thereof, as the Central Government may make available for the purpose. Such rules or orders may lay down different principles for observance in different localities or in respect of different classes of residences, and may prescribe the circumstances in which such an officer shall be considered to be in occupation of a residence."**

The government has also devised a standardized formulation accounting procedures for receipt of licence fee as also for recovery of such licence fee from the Central Government employees in occupation of the government accommodation and payment of licence fee to the State Government. These have been provided under the provisions of Part II of FR 45 (A) as reproduced below:

**" II. For the purpose of the assessment of licence fee, the capital cost of a residence owned by Government shall include the cost or value of sanitary, water supply and electric installations and fittings; and shall be either—**

**(a) the cost of acquiring or constructing the residence including the cost of site and its preparation and any capital expenditure**

73  
incurred after acquisition or constructions; or, when this is not known,

- (b) the present value of the residence, including the value of the site.

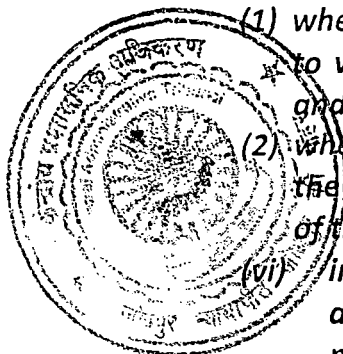
Provided that—

- (i) the Central Government may make rules providing the manner in which the present value of residence shall be determined.
- (ii) the Central Government may make rules determining what expenditure is to be regarded, for the purpose of sub-clause(a) above, as expenditure upon the preparation of a site;
- (iii) the Central Government may, for reasons which should be recorded, authorize a revaluation of all residences of a specified class or classes within a specified area to be conducted under the rules referred to in proviso(i) above, and may revise the capital cost of any or all such residences on the basis of such revaluation'
- (iv) the capital costs, howsoever calculated, shall not take into consideration (1) any charges on account of establishment and tools and plant other than such as were actually charged direct to the work in cases in which the residence was constructed by Government, or (2) in other cases, the estimated amount of such charges;
- (v) the Central Government may, for reasons which should be recorded, write off a specified portion of the capital cost of a residence—

(1) when a portion of the residence must be set aside, by the officer to whom the residence is allotted, for the reception of official and non-official visitors visiting him on business, or

(2) when it is satisfied that the capital cost, as determined under the above rules, would be greatly in excess of the proper value of the accommodation provided;

(vi) in assessing the cost or value of the sanitary, water supply and electric installations and fittings, the Central Government may by rules determine what are to be regarded as fittings for this purpose."



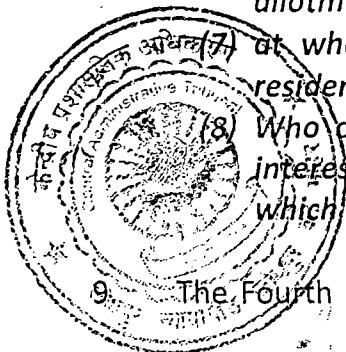
8. Part IV of ER 45-A further lays down the two principles governing the accommodation and realization of licence fee.

IV. When Government supplies an officer with a residence leased or requisitioned or owned by Government, the following conditions shall be observed:-



24

- (a) *The scale of accommodation supplied shall not, except at the officer's own request, exceed that which is appropriate to the status of the occupant.*
- (b) *Unless in any case it be otherwise expressly provided in these rules, he shall pay—*
  - (i) *Licence fee for the residence, such licence fee being the standard licence fee as defined in Clause III above or 10 per cent of his monthly emoluments, whichever is less:*
    - (ii) .....
    - (iii) .....
  - (c).....
  - (iii) *by general or special order, provide for taking a lice fee in excess of that prescribed in sub-clause(b) or sub-clause(c)(i) above from an officer—*
    - (1) *who is not required or permitted to reside on duty at the station at which the residence is supplied to him, or*
    - (2) *who, at his own request, is supplied with accommodation which exceeds that which is appropriate to the status of the post held by him, or*
    - (3) *who is in receipt of a compensatory allowance granted on account of dearness of living, or*
    - (4) *who is permitted to sub0-let the residence supplied to him, or*
    - (5) *who sub-lets without permission he residence supplied to him, or*
    - (6) *who does not vacate the residence after the cancellation of allotment, or*
    - (7) *at whose request additions or alterations are made in the residence supplied to him.*
    - (8) *Who or any member of his family owns a house or has any interest in a house belonging to a Hindu undivided family of which he is a member."*



9. The Fourth Pay Commission considered fixing flat rate of licence fee for residential accommodation all over the country and has made amendment to the FR and SR fixing flat rates applicable for a period of three years. This would include the common services like stair case light, common light charges in multi storied buildings etc. Where the government is not in a position to provide accommodation to its employees as per their demand, it provides to them House Rent Allowance (HRA) in lieu thereof so that they may hire accommodation of

their choice from the general market. The rate at which the HRA is paid is governed by the classification of the cities as per the OM dated 29.8.2008 of the Ministry of Finance. Inter alia the payment of HRA have been made subject to the following conditions:

Classification of cities/towns	Rates of HRA
(i) 'X'	30% [
(ii) 'Y'	20% [ *of Basic Pay + NPA
(iii) 'Z'	10% [

**HRA with reference to place of duty:-** Admissible with reference to the place of duty irrespective of the place of residence.

**During leave/vacation:-** Admissible during leave of all kinds including study leave and also during vacation, at the rate admissible before proceeding on leave, for the first 180 days of combined period of leave/vacation/holidays. Beyond this period, allowances can be claimed by furnishing prescribed certificates.

**Leave with medical certificate—**Allowances admissible up to 8 months. Controlling Officers to decide payment of the allowances beyond this period subject to furnishing requisite certificate.

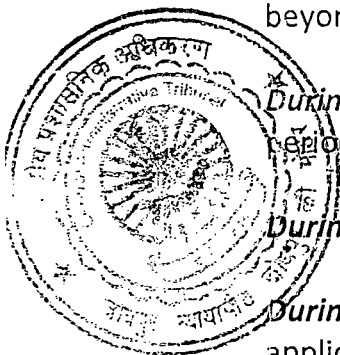
**During suspension—**Admissible for the first 180 days. Beyond this period, payment will be subject to furnishing the required certificates.

**During joining time—**Admissible at the same rates as the old station.

**During Temporary Transfer—**Admissible upto 90 days at the rates applicable at the old station and beyond this period at the rates applicable for the new station.

**During training abroad—**Admissible at the rates applicable at headquarters subject to furnishing certificates. Not admissible during leave taken while on training or immediately thereafter.

**No HRA if occupying Government occupation—**HRA not admissible to those provided with Government accommodation, female employees staying in Government run hostels, employees allotted hostel



accommodation run by Autonomous and Semi-autonomous organizations at subsidized rent and officers staying in inspection quarters.

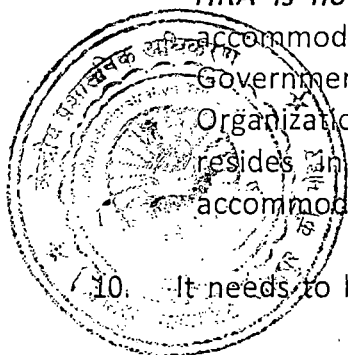
**Refusal of accommodation**—HRA not admissible for the period employees are debarred from further allotment on their refusal of allotted accommodation.

**Date of discontinuance of HRA**—From the date of occupation or from 8<sup>th</sup> day of allotment, whichever is earlier. In the case of refusal, from the date of allotment.

**Persons owning houses**—HRA admissible to employee living in a house owned by him/his wife/children/father/mother. Also admissible if he owns a house but lives in a rented house.

**Residing in accommodation allotted to a relative**—HRA not admissible if the employee resides in accommodation allotted to his/her parents, son/daughter by the Central/State Government, Autonomous Bodies, Public Sector Undertaking or semi-Government Organization, e.g. Municipality, Port Trust, Nationalized Bank, LIC etc.

**HRA is not admissible**—if his wife/her husband has been allotted accommodation at the same station by the Central Government, State Government, an Autonomous Public Undertaking or Semi-Government Organization such as Municipality, Port Trust, etc. whether he/she resides in that accommodation or he/she resides separately in accommodation rented by him/her.



10. It needs to be clearly understood that HRA is only provided under where the government is not in a position to provide accommodation to the government employees. The relevant portion of SR 311 is as follows:-

**"SR.311: When a building owned or leased by Government or a portion thereof has been made available by the Government for use as a residence by an officer under its administrative control, the competent authority may allot such building or part of a building to a post specified in the order of allotment for use as a residence by the incumbent of the post."**

11. The payment of HRA is subject to certain conditions.—there is a continued lack of accommodation; the accommodation should be of entitled class and not below or above; as soon as suitable accommodation is made available the payment of HRA shall be seized from the date of occupation of such government accommodation; the house owning officer are also entitled to HRA with prior approval of the government. It follows from above that application for accommodation is a necessary condition precedent for its allocation. The government is perfectly within its rights to make accommodation available and allot the same to the employee. The wishes of the employee is immaterial and where he does not wish to reside in the government accommodation of his entitlement allotted to him or fails to occupy such accommodation, his claim to HRA ceases to exist. For that matter HRA is not to be equated with income or a part of the salary, but is rather a compensatory allowance for an act of deprivation.

***Whether the government servant who refused to reside in such quarters stand to forfeit their House Rent Allowance (HRA)?***

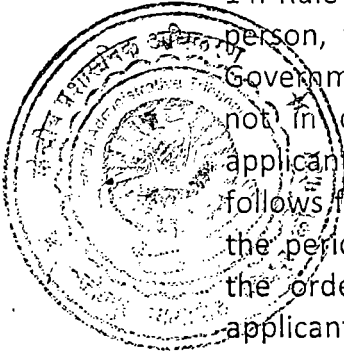
12. A similar issue as in these OAs was considered by the Hon'ble Bangalore Bench of CAT in ***Shri M.F.Karim Vs. Director, Central Poultry Breeding Farm, Hesaraghatta, Bangalore North and another (OA 966/1987) (1988(2) ATJ 53***

wherein the Tribunal held as under:

"7. The Rules made by the President under the proviso to Article 309 of the Constitution do not specifically regulate, compulsory occupation of Government quarters and they are silent on the point. There is a yawning gap on the point.

8. That a yawning gap on a point can be filled up or removed by Government, in exercise of its executive powers is now well settled. On that view it was open to Government to make an order against the applicant. On an examination of the fact-situation, as a whole, Government had made such an order in the present case. If this is so, then we cannot hold, that the order of Government is not within its jurisdiction and power at all. In this view, the question of our examining the power of the Director does not arise. But we are inclined to hold, that Director also can exercise that power.

9. On the necessity or otherwise, of an official being compelled to stay in the official quarters attached, Government/Director are the best judge to decide the same. This Tribunal which is ill-equipped to decide on the same, cannot examine such a decision as a Court of appeal and come to a different conclusion. In the absence of a plea of malafides, this Tribunal should accept such a decision and should not even interfere with the same. On these considerations, this Tribunal should reject the challenge of the applicant to the orders of Government/Director.



14. Rule 4(b) (1) of the HRA Rules, prohibits grant of HRA to a person, for a period of one year from the date, he vacated Government quarters on his own. The validity of the said Rule is not in challenge. When that rule is enforced against the applicant, as had been done by the Director, it necessarily follows from the same, that the applicant cannot claim HRA for the period from 1.5.1986 to 30.4.1987. We therefore, uphold the order of the Director, disallowing grant of that to the applicant for the period from 1.5.1986 to 30.4.1987.

20. In the light of our above discussion, we make the following orders and directions:

- (i) We dismiss this application in so far as it claim HRA for the period from 1.5.1986 to 30.4.1987.
- (ii) We declare that the applicant is entitled for payment of HRA for the period from 1.5.1987 to 30.10.1987, in accordance with the Rules regulating the same. We direct the respondents to make payment of HRA, due to the applicant, for the aforesaid period only, with all such expedition as is possible, in circumstances of the case.

- (iii) We dismiss the applicant, in so far as it challenges the orders of Government/Director, compelling him to occupy Government quarter Type. III allotted to him to Hesaragatta Farm,. But notwithstanding the same, we grant time to the applicant to occupy the said quarters from 1.5.1988 or from such earlier date as may be decided by him."

13. This matter have been dealt with in a decided case of the Hon'ble Supreme Court in the case of *Director Central Plantation Crops Research Institute, Kasagargod and others Vs. M.Purushothaman and others 1994(3) SLJ 237* the Hon'ble Supreme Court has held:

"3. It cannot be disputed and it does not appear to have been disputed before the Tribunal that it is para 4 of the Office Memorandum dated 27.11.1965 of the government of India, Ministry of Finance which would govern 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) 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 eh 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

X  
30

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."

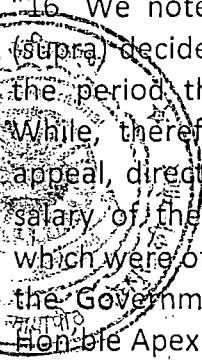


It is clear from the aforesaid provisions that paragraph 4(a)(1) and (ii) lay down the procedure for making application for accommodation. Paragraph 4(b)(i) lays down the consequences on refusal to accept the accommodation when offered. There is no doubt that paragraphs 4(a)(i) and (ii) state that an application has to be made to secure accommodation. However, that does not mean that Government or the organization such as the appellant organization to which the said provisions apply, cannot on their own offer accommodation to the employees. Hence the reason given by the Tribunal that it is only if the employee applies for such accommodation and he refuses to accept the same when offered that he would be disentitled to the HRA, is not correct. It must be remembered in this connection that the Government or the organization 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.

8. The HRA would be covered by the definition of Compensatory Allowance. It is compensation in lieu of accommodation. This definition itself further makes it clear that compensatory allowance is not to be used as a source of profit. It is given only to compensate for the amenities which are to available or provided to the employee. The moment, therefore the amenities are provided or offered, the employee should cease to be in receipt of the compensation which is given for want of it. We wish the tribunal had perused the definition of "pay" and "Compensatory allowance" given in the Fundamental Rules before pronouncing that the HRA is a part of the wages or pay and , therefore, cannot be disturbed.

9. For both these reasons, therefore, we are unable to accept the conclusion of the Tribunal."

14. This decision was further backed up by another decided case of this Bench of the Tribunal vide its order dated 27 Feb 2009 in OAs 71/2008, 101/2008 & 219/2008 which has examined the issue and held as under:



"16. We note that Honourable Supreme Court in Director CPCRI case (supra) 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-organization 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 Hon'ble Apex Court in Director CPCRI case (supra), and hence we hold the said Government OM dated 27.11.1965 as legally valid.

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.A1) dated 15.12.2007 (Annexure.A2) 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 other, 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.1 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."

***What relief, if any, can be granted to the applicants?***

15. In the instant case it is significant to note that the respondent organization is a research organization. The learned counsel for the respondents emphatically pleaded that the applicants are required to stay in the quarters for

2/3

facilitation of government work which would not otherwise be served if they are staying outside. It is emphasized that drawal of HBA (House Building Advance) and construction of the house with the same is a separate incident of service and it does not create any right whatsoever to reside in the house so built with government advance. Here we fully concur with the argument of the learned counsel for the respondents that the government is being put a double jeopardy having made investment in the accommodation, given the House Building Advance and now by paying HRA as well. Hence we have no hesitation in passing the following order:

- (i) The prayer of the applicants for declaring Annexures.A1 and A2 as illegal and for quashing the same is disallowed.
- (ii) The respondent organization is at liberty to allot the quarters to other eligible employees and the day the availability of entitled accommodation to the employees is exhausted, the applicants may be provided NAC for drawing HRA.
- (iii) There shall be no order as to costs.



(B.K. SINHA)

ADMINISTRATIVE MEMBER

(G. SHANTHAPPA)

JUDICIAL MEMBER

COMPARED &  
CHECKED

*Rm*

CERTIFIED TRUE COPY

Dated 9-8-2012

*Sd. Bala*

Secretary, Labour & Industrial Relations

Government of India

Ministry of Labour & Industrial Relations

1, Park Road, New Delhi-110001

Phone: 23380001, 23380002, 23380003

Telex: 23380001, 23380002, 23380003

*P/K*  
*9/8/12*

*10/8/12*