

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No. 326/2005.

Jaipur, this the 21st day of July, 2005.

CORAM : Hon'ble Mr. Kuldip Singh, Vice Chairman.

S. K. Vyas
S/o shri J. B. Vyas
Aged 54 years,
R/o Temple of Vijay Gopalji,
Johari Bazar,
Jaipur.

... Applicant.

By Advocate : Shri Narendra Mishra.

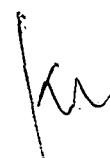
Vs.

1. Union of India
Through its Secretary,
Ministry of Water Resources,
Shram Shakti Bhawan,
Rafi Marg, New Delhi.
2. Assistant Director Monitoring
and Appraisal Directorate
Regional Office, CWC, 116,
Himmat Nagar, Tonk Road,
Jaipur.
3. Executive Engineer,
Central Water commission,
Chambal Division, 84/93-96 Pratap nagar,
Sanganer, Jaipur.
4. Estate Manager,
Jaipur Central Division-I,
Central Public Works Department,
Jaipur.

... Respondents.

: O R D E R (ORAL) :

This OA has been filed under Section 19 of the
Administrative Tribunals Act, 1985. The applicant
impugnes an order dated 22.6.2005 (Annexure A/1) vide



which the applicant has been conveyed an order passed by the Executive Engineer, Central Water Commission, Chambal Mandal, according to which the applicant has been conveyed that as per SR 317-B-10 since the applicant had refused to accept the government accommodation offered to him so he is not entitled for another accommodation for one year and besides that as per rules he is also not entitled to House Rent Allowance. He was further directed to deposit the HRA already received by him. On receipt of this order from the office of Executive Engineer, Central Water Commission, Chambal Mandal, the impugned order Annexure A/1 has been issued for compliance. Impugning the same in the OA, the applicant has stated that he was offered the government accommodation at Sector No.2, Quarter No.133, Vidyadhar Nagar, Jaipur but the applicant vide his letter dated 30.12.2005 requested cancellation of allotment as the ^{in his case} said quarter was on 3rd Floor and the applicant is a heart patient and his wife too is a patient of Gathia, so unable to climb up the stairs. The applicant also informed the department that since he is having his own suitable housing accommodation at S-38, Sanchar Vihar, R. K. Puram, Sitapura Sanganer, Jaipur, allotment offered to him should be cancelled. He has annexed along with his OA the letter by which he has asked for cancellation for allotment. So the short question arises is whether a person who has been allotted government accommodation and refused to accept the same is entitled to HRA, or not?



2. Learned Counsel for the applicant in support of his case referred to Rule 7 of HRA and CCA General Rules as stated by him in Para 4.6 of the OA, which is reproduced as under :-

"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 orders.

(ii)....

Note - the grant of house rent allowance to Government servant referred to (i) above will be subject to the fulfillment of the same conditions as apply to a Government servant residing in private rented accommodation.

(iii) In the case of a Government servant who owns a house at a place of duty but resides in a rent house instead, house rent allowance shall be paid in respect of the rented house, if otherwise admissible."

On the strength of the same, Learned Counsel for the applicant submitted that recovery of HRA cannot be effected from the applicant. He further referred to the judgment delivered by this Tribunal in the case of S. K. Vyas & ors. Vs. Union of India & Ors., OA No.171/2004 decided on 17.9.2004, where applicant himself was Applicant No.1 in the said case. A joint OA was filed to challenge a letter issued by the respondents wherein it was mentioned that if the employees fails to produce "No Accommodation Certificate" from the CPWD, they shall not be entitled for HRA w.e.f. December 2003 and the OA stated to have been allowed and the order dated 16.3.200

stating that No Accommodation Certificate was required was quashed. So Learned Counsel for the applicant relying upon the judgment submitted that even now the respondents cannot recover the HRA.

3. I have heard the learned counsel for the applicant. It appears that the applicant has not gone through the judgment thoroughly. Even in Para 3, the Court had mentioned that when the matter was listed before the Tribunal, the Court granted interim stay in favour of only those employees whose cases were covered in terms of Rule 7 of HRA and CCA rules and no stay was granted in favour of the employees who were residing in private rented accommodation and paying rent per month. Further while deciding the OA, the Court had referred to the judgment of the Apex Court on the same aspect in Director, Central Plantation Crops Research Institute, Kesaragod and Ors. Vs. M. Purushothaman and Ors. AIR 1994 SC 2541. In the quotation referred by the Tribunal, it is also clearly mentioned that it was obligatory on the part of the respondents to make allotment of accommodation at the first instance and then proceed to forfeit the HRA. The Court also quoted from the judgment that Para 4 b(i) provides for 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 thi:

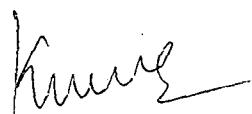
provision between those who applied and those who have not applied for accommodation.

4. The present case of the applicant seems to be fully covered under this observation of the Apex court where the applicant has been provided Government accommodation by the management and it is the applicant who had not accepted the accommodation. So the respondents are within their rights to forfeit the HRA. The respondents have also fulfilled their obligation when they have first made allotment to the applicant and it is only thereafter they have proceeded to forfeit the HRA. So they have complied with the other observations made by the Apex court. It was obligatory on the part of the respondents to make allotment of accommodation at the first instance and then proceed to forfeit the HRA.

5. I may further add, the letter written by the applicant after the allotment of government accommodation to the department vide Annexure A/3 simply states that the house is not suitable to him and his allotment should be cancelled. The applicant has not asked for exchange of the accommodation even if the house was not suitable to him. It appears that the applicant wants to live in his own accommodation and does not want to avail government accommodation. Even otherwise, I may mention that the applicant in the present OA is a resident of Temple of Vijay Gopalji, Johari Bazar, Jaipur, and in his



letter Annexure A/3 he says that he has got another accommodation at S-38, Sanchar Vihar, R. K. Puram, Sitapura, Sanganer, Jaipur. Thus, it appears that the applicant has got two accommodations of its own and he in fact is not in need of a government accommodation that is why he has refused to accept the government accommodation offered to him. So now he cannot prayed that HRA should not be recovered from him since Para 4 b (i) provides that he is not entitled to HRA. Thus, the OA is dismissed in limine.



(KULDIP SINGH)
VICE CHAIRMAN

P.C./