

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 11th day of April, 2005

ORIGINAL APPLICATION No.47/2005

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)

Rishi Raj Singh Tyagi
s/o Shri Ghanshyam Singh,
aged about 46 years,
r/o D-85, Anand Vihar Railway Colony,
Jagatpura, presently working as
Senior Geographer O/o Directorate
of Census Operation, 6B,
Jhalana Doongri, Jaipur.

.. Applicant

(By Advocate: Mr. P.N.Jatti)

Versus

1. Union of India through
the Registrar General Census,
Ministry of Home Affairs,
2A Mansingh Road, New Delhi.
2. The Joint Director,
Directorate of Census,
6B, Jhalana Doongri,
Jaipur.
3. The Estate Officer,
Central Public Works Department, O/o
the Executive Engineer, Jaipur Central
Division I, NCR Building,
Statue Circle, Jaipur.

.. Respondents

(By Advocate: Mr. N.C.Goyal and Mr. Tej Prakash Sharma)

ORDER (ORAL)

The present application has been filed against inaction on the part of respondent No.2 ^{in notice} allowing HRA to the applicant w.e.f. January, 2005 as the applicant has surrendered the Government accommodation which was allotted to him. By way of relief, the applicant has prayed that respondents be directed to pay House Rent Allowance (HRA) to the applicant w.e.f. January, 2005.

2. Briefly stated, the applicant who is working as Senior Geographer in the Department of Census Operation, Jaipur was allotted Q.No. 51/IV, Nirman Vihar-II, Sector No.2 Vidyadhar Nagar, Jaipur on 14.5.2003. The applicant has vacated the said quarter on 30.12.2004 and possession of the quarter has been taken on behalf of respondent No.3 by the Junior Engineer on 30.12.2004 (Ann.A3). The applicant vide representation dated 3.1.2005 (Ann.A1) addressed to respondent No.2 requested for release of HRA w.e.f. January, 2005 on account of surrender of Government accommodation, but nothing was heard from respondent No.2. The applicant has also sent notice to respondent No.2 dated 27.1.2005 (Ann.A5) to draw HRA in favour of the applicant as per rules with the pay of January, 2005. Since nothing was heard from respondent No.2,

the applicant has filed this OA before this Tribunal. The Tribunal when hearing the matter on 16.2.2005 granted mandatory relief in favour of the applicant keeping in view the provisions of instructions/rules and also issued notices to the respondents. While issuing notices and granting interim relief, this Tribunal has observed as under:-

“The grievance of the applicant in this case is that pursuant to the allotment made by the respondents he occupied quarter on 14.5.2003 and subsequently the same was stated that the department has taken the possession of the said quarter as can be seen from the certificate dated 30.12.2004 (Annexure A/3). The applicant has further stated that the said quarter has also been allotted to one Shri P.C.Verma, Assistant Engineer, C.P.W.D.. In view of the averment made by the respondents, I am of the view that the applicant has made out a case for the grant of ex-parte stay. Though I am also conscious of the view that ordinarily no mandatory relief can be granted.

Learned counsel for the applicant has drawn my attention to Para 4(b) of the Government of India, Ministry of Finance Office Memorandum No. F2(37)-E.II(B)/64 dated 27.11.1965 as amended from time to time, which stipulated that the allowance shall not be admissible to those employees who occupy accommodation provided by the Government or those whom accommodation has been offered by the Government but have refused it. Learned counsel for the applicant has also drawn my attention to Para 4 b (ii) whereby it has been provided that in case of surrender of government accommodation the HRA will be payable from the date of such surrender.

In view of the aforesaid provisions, I am of the view that the applicant has made out *prima facie* case for grant of mandatory relief, more particularly, when the CPWD has taken the possession of the quarter from the applicant and the same has further been allotted to one Shri P.C.Verma, Assistant Engineer, CPWD, as such, the said quarter is no longer available for allotment. Accordingly, respondent No.2 is directed to pay HRA as admissible to the applicant forthwith.”

3. The respondent No.2 and respondent Nos. 1 and 3 have filed separate replies. Respondent No.2 in its reply has stated that the representation of the applicant is still pending. However, the fact that the

quarter No., 51, Type IV, Sector-2, Vidyadhar Nagar, has now been allotted to Shri P.C.Verma, Assistant Engineer, CPWD has been denied for want of knowledge by respondent No.2. However, respondent Nos. 1 and 3 have not controverted this fact in the reply filed by them. Thus, the fact remains that the quarter which was allotted to the applicant and which has been surrendered by him has now again been re-allotted to Shri P.C.Verma, Assistant Engineer, CPWD and the same is no more available with the respondent for allotment.

4. I have heard the learned counsel for the parties and gone through the material placed on record.

4.1 The sole question which requires consideration in this case is whether it was legally permissible for the respondent to stop the HRA of the applicant especially when the quarter in dispute which was allotted to the applicant has been surrendered by him and the same has again been re-allotted to Shri P.C.Verma, Assistant Engineer, CPWD. The learned counsel for the respondents could not satisfy this Tribunal under what provision of law HRA of a person can be stopped once the accommodation allotted to him has been surrendered by him, more particularly, in view of the instructions issued by the Government vide Para 4(b)(ii) of the Memorandum dated 27.11.1965. The

learned counsel for the respondents, however, argued that the provision contained in Para 4(b)(ii) are liable to be misused by the Government employees, inasmuch as, after allotment of Government accommodation, the Government employees may surrender the accommodation after few days/months and then claim HRA on the basis of Para 4(b)(ii). The learned counsel for the respondents also argued that lot of quarters are still vacant and as such the practice of surrendering of quarter which has been allotted should not be encouraged, even if there is a provision under the rules that in case of surrender of Government accommodation, HRA, if otherwise admissible will be payable from the date of such surrender. The argument advanced by the learned counsel for the respondents, though attractive, is not applicable in the facts and circumstances of this case and also not legally sustainable. At this stage, it will be useful to quote Para 4(b)(ii) of the Government instructions as issued vide Memorandum dated 27.11.1965 and as amended from time to time which is in the following terms:-

"(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 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. In case of surrender of Government accommodation, the house rent allowance, if otherwise admissible, will be payable from the date of such surrender.

NOTE.- In the case of surrender of Government accommodation, the house rent allowance, if otherwise, admissible, will be payable from the date from which 'no accommodation certificate' is issued by the accommodation controlling authority."

From perusal of the aforesaid provision, it is clear that HRA shall not be admissible to those employees who occupy the accommodation provided by the Government or those whom accommodation has been offered, but who have refused it. The last portion of the rules, further make it clear that in the case of surrender of Government accommodation, HRA, if otherwise admissible will be payable from the date of such surrender. It is not a case of the nature where the applicant has been allotted accommodation and he is demanding HRA for the said period. Further, it is also not the case of the nature that the accommodation has been allotted and the applicant has refused the same. In the present case, the accommodation has been allotted to the applicant as far back as 14.5.2003 and the same was surrendered by him after a lapse of more than 1½ years on 30.12.2004 and possession of the said quarter was also taken by the competent authority. Further, the accommodation which was occupied by the applicant viz. Q.No.51, Type-IV, Sector-2, Vidyadhar Nagar, Jaipur has again been re-allotted to one Shri P.C.Verma, Assistant Engineer, CPWD. Thus, the said

quarter is no longer available for allotment. This Tribunal in the case of Dr. R.K.Das and ors. vs. Union of India and ors. in OA No. 80/2004 decided on 17.9.2004 has categorically stated that HRA cannot be stopped on the ground that the Government servant has failed to produce 'No Accommodation Certificate' from the competent authority. As such, note appended to para 4(b)(ii) is not attracted in the instant case. Thus, it was not legally permissible for the respondents to stop the HRA of the applicant once the accommodation has been surrendered by him in terms of Para 4(b)(ii) as reproduced above.

4.2 That apart, as per provisions contained in SR-317-B-11 of F.R. and S.R. which are statutory in nature, prescribes period for which the allotment subsists and is in the following terms:-

"SR.317-B-11. (1) An allotment shall be effective from the date on which it is accepted by the officer and shall continue in force until,-

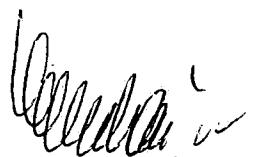
- (a) the expiry of the concessional period permissible under sub-clause (2) after the officer ceases to be on duty in an eligible office in Delhi.
- (b) It is cancelled by the Director of Estates or is deemed to have been cancelled under any provision in these rules;
- (c) It is surrendered by the officer, or
- (d) The officer ceased to occupy the residence."

Thus, as per the aforesaid rule, the quarter allotted to the applicant vide order dated 14.5.2003 (Ann.A2) subsists till 30.12.2004 when it was surrendered by the applicant and possession of the

said quarter was taken by the respondents. Further, in terms of sub-rule (1) (d) of S.R. 317-B-11, the officer ceased to occupy the residence allotted to him when the same was again re-allotted to another person namely Shri P.C.Verma, Assistant Engineer, CPWD, Jaipur. Thus, there being no fresh allotment order in favour of the applicant, the HRA could not have been stopped to the applicant in terms of earlier part of provisions contained in para 4(b)(ii) of the memorandum dated 27.11.1965 as amended from time to time.

5. In the peculiar facts and circumstances of this case, I am of the view that the applicant has made out a case for grant of relief. Accordingly, the respondents are directed to grant HRA to the applicant w.e.f. January, 2005 and arrears, if any, be paid within two months from today. The interim stay granted on 16.2.2005 is made absolute. The OA is allowed accordingly with no order as to costs.

6. Misc. Application for vacation of stay is rejected, in view of what has been stated above.



(M.L.CHAUHAN)

Member (J)