

Reserved on 13.08.2018

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD

(This the **28th Day of August**, 2018)

Hon'ble Mr. Gokul Chandra Pati, Member (Administrative)

Original Application No.330/446/2013
(U/S 19, Administrative Tribunal Act, 1985)

1. Suresh Kumar Sachan aged about 52 years son of late Ram Deen Sachan, working as Chargeman under P. No.904955 in Field Gun Factory, Kanpur, R/o No. 75, 'B' Block, Panki.
2. R.P.S. Yadav aged about 55 years, son of late H.N.S. Yadav, working as Chargeman under P. No.905278 in Field Gun Factory, Kanpur, R/o No. MIG/II/47, Mahabalipuram, Panki Kalyanpur Road, Kanpur Nagar 208 017.
3. Jitendra Yadav aged about 50 years, son of Shri Parashuram Yadav, working as Millwright Highly Skilled under Personnel No.1998 in Field Gun Factory, Kanpur R/o 4/301 , Ambedkarpuram, Avas Vikas – 3, Kalyanpur, Kanpur Nagar – 208 017.
4. Rama Shanker aged about 56 years son of Late Shivpujan, working as Machinist Highly Skilled Grade I under Personnel No.599, in Field Gun Factory Kanpur R/o 116/281, Mathura Nagar, Rawatpur Gaon, Kanpur.
5. Sriniwas Pandey aged about 54 years, son of late Devendra Pandey, working as Fitter Highly Skilled Grade I, under T. No.676 in Field Gun Factory, Kanpur, R/o 3/240, Ambedkarpuram, Avas Vikas -3, Kalyanpur, Kanpur 208 017.
6. Madhur Srivastava aged about 39 years son of Shri Shyam Kishore Srivastava, working as J.W.M. under P. No.970007 in Filed Gun Factory Kanpur. R/o Flat No.16, 3/254, Classic Apartment Vishnupuri, Kanpur Nagar – 208 002.
7. Gautam Chaki aged about 53 years son of late J.K. Chaki, working as Chargeman under P. No.860438 in Small Arms Factory, Kanpur. R/o Mayur Enclave, MTG 'B' Block Flat S-1 Panki Kanpur Nagar.
8. Ranjit Kumar aged about 33 years s/o late Ganga Ram, working as Examiner, Highly Skilled Grade I in Small Arms Factory, Kanpur. R/o K-145, Keshavpuram, Avas Vikas-I, Kalyanpur Kanpur Nagar.
9. M.P. Yadav aged about 55 years, son of late R.D. Yadav, working as Chargeman under P. No.860528 in Small Arms Factory, Kanpur R/o 3/131, Ambedkar Puram, Avas Vikas Kalyanpur Kanpur Nagar.

10. Kalyan Kumar Sarkar aged about 55 years son of late Jyotirmey Sarkar, working as Junior Technical Officer in SQAE (SA) Kanpur, R/o Flat No.F-7, Mayur Enclave No.I, MIG-909 'B' Block, Panki Kanpur Nagar – 20.

..... Applicants

By Advocate: Shri R.K. Shukla

Versus

1. Union of India through the Secretary, Ministry of Defence, Deptt. of Defence Production & Supplies, South Block, New Delhi -11.
2. The Secretary, Ordnance Factory Board, Indian Ordnance Factories, Ministry of Defence, 10-A, Shaheed Khudiram Bose Road, Kolkata -1.
3. The General manager, Ordnance Factory, Kalpi Road, Kanpur Nagar, 208 009.
4. The General Manager, Field Gun Factory, Kalpi Road, Kanpur Nagar 208 009.
5. The General Manager, Small Arms Factory, Kalpi Road, Kanpur Nagar- 208 009.
6. The Senior Quality Assurance officer (SA) Office of the Senior Quality Assurance Estt. (SA), Kanpur Nagar 208 009.

..... Respondents

By Advocate: Shri Anil Kant Tripathi

ORDER

Present Original Application (in short OA) has been filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985 for the following main relief(s)-

- “i. to issue a writ order or direction in the nature of certiorari quashing the impugned order of refusing to issue N.A.C. & payment of HRA.*
- ii. to issue a writ, order or direction in the nature of mandamus directing the respondents to pay H.R.A. with effect from the date of vacation of Govt. accommodation with other consequential benefits.*
- iii. to issue a writ, order or direction in the nature of mandamus directing the respondents to decide the representations of the applicants for payment of issuance of NAC/HRA.”*

2. The facts, in brief, are that the applicant Nos. 1 to 6 are employed in Field Gun Factory, Kalpi Road, Kanpur and applicant Nos. 7 to 9 are working in Small Arms Factory, Kalpi Road, Kanpur and applicant

No.10 is working on the post of junior Technical Officer in Senior Quality Assurance Establishment (Small Arms) of Small Arms Factory, Kalpi Road, Kanpur.

3. All the applicants, as per their entitlements, were allotted government quarter but later on, they surrendered the aforesaid quarters to the respondent No.3 vide their application dated 02.12.2010, 26.05.2011, 30.08.2008, 12.10.2011, 18.08.2008, 03.01.2011, 11.02.2011, 29.04.2009, 29.06.2009 and 10.05.2011 respectively (Annexure A-3).

4. After surrendering the Govt. accommodations allotted by the authorities, the applicants submitted representation for issue of No Accommodation Certificate (in short NAC) for grant of House Rent Allowances (in short HRA), but the same was rejected by the respondents. In the case of applicant No.5, the respondents vide order No.1103/QR/CR intimated that NAC cannot be issued to the applicants as there are several quarters lying vacant. Being aggrieved, the applicants have filed the present Original Application for redressal of their grievances.

5. The applicants in the O.A., also placed reliance on the order passed by Kolkata Bench of this Tribunal in O.A. No.1183 of 2010 (Om Prakash Sharma & Ors vs. Union of India & Ors) decided on 18.11.2010 which was also affirmed by the Hon'ble High Court of Kolkata as well as Apex Court by which the respondents were directed to pay the HRA to the applicants (in that O.A.) from the date they vacated the Government quarters.

6. On notice, counsel for the respondents filed counter reply and raised objection regarding maintainability of the Original Application on the ground that it is badly delayed, because the cause of action of the applicants was arose when they submitted their respective application to issue the NAC in their favour i.e. between the year 2008 to 2011, and applicants have filed this O.A. in the year 2013. Secondly, the applicants have challenged the letter No.1103/QR/CR Anubhag dated 19.04.2010 (Annexure A-1 of the O.A.), which was issued to Shri Niwas Pandey, (Applicant No.5) which is not any order and it is only a

communication of earlier decision taken by the respondents on this issue.

7. It is also stated that in the counter reply applicants have surrendered their government quarter voluntarily and as per directions of Ministry of Defence communicated vide Ordinance Factory Board Kolkata letter dated 24.11.2010, HRA would be admissible only in the event of an employee not being able to secure Government Accommodation. It is also stated that the HRA cannot be paid when Government accommodation was available and the employee voluntarily surrendered it. A copy of the order passed by Hyderabad Bench of this Tribunal in O.A. No.188 of 2010 decided on 09.08.2010, who also enclosed with the counter reply.

8. The applicants have filed Rejoinder and mainly reiterated the points mentioned in the O.A. and denying the contentions in the Counter. It is stated in Para 20 of the Rejoinder that the respondents have issued NAC in favour of the applicants vide the letter dated 28.03.2014 (Annexure RA-1).

9. Heard Shri R.K. Shukla, counsel for the applicant and Shri Anil Kant Tripathi, counsel for the respondents and perused the pleadings available on record. Admittedly, the employees are required to furnish the NAC required for sanction of HRA. Even the rules 3b(i) of HRA rules referred in Para 4.11 of the O.A., the HRA is admissible from the date NAC is issued by the concerned authority.

10. The impugned order dated 19.04.2010 states that the NAC cannot be issued to the applicants as long as the quarters which can be allowed to them are available with the respondents and when no quarter will be available for allotment, issue of NAC to the applicants will considered. It is also seen that the applicants have already been issued NAC w.e.f. 28.03.2014 as stated in Para 20 of the Rejoinder filed by the applicants. It is not stated in the pleadings if the quarters were available for allotment prior to that date i.e. 28.03.2014.

11. The judgment in the case of Om Prakash Sharma (Supra) is inapplicable to this case since in that case, the employee had built own

house after availing house building advance and Loans from Government. There is nothing on record in the instant O.A. to show that the applicants are similarly situated. Hence, the case of Om Prakash Sharma (Supra) cited by the applicants, is distinguishable.

12. In view of above, the OA is disposed of with a direction to the respondents No.3 to consider the case of the applicants for issue of NAC as per the rules with effect from a date prior to 28.3.2014, taking into account depending on the physical availability of quarter/accommodation available with the respondents for allotment to the applicants and pass a speaking order copy of which be communicated to the applicant within a period of three months from the date of receipt of certified copy of this order. There shall be no order as to costs.

[Gokul Chandra Pati]
Member-A

Anand...