



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

Date of order : 02.01.2019

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr.(Ms) Nandita Chatterjee, Administrative Member

O.A.350/88/2016 - Swapan Kumar Sarkar,
Son of Late Santi Ranjan Sarkar,
Aged about 45 years, residing at
Santi Nagar Madhya Para,
Post Office – Bengal Enamel,
District-24 Parganas(North),
Pin – 743122 and working as
Lower Division Clerk in the
Metal & Steel Factory, Ishapore,
Post Office – Ishapore Nawabganj,
District – North 24 Parganas,
Pin - 743144

O.A.350/94/2016 - Bimal De,
Son of Late Nani Gopal De,
Aged about 42 years,
Residing at Kanakshally Solar Ghat,
Post Office – Chinsurah,
District – Hooghly,
Pin – 712 101,
And working as Lower Division Clerk
In the Metal & Steel Factory, Ishapore,
Post Office – Ishapore Nawabganj,
District – North 24-Parganas,
Pin – 743 144.

..... Applicants

-Versus-

1. Union of India
Service through the Secretary,
Ministry of Defence (Defence and
Production),
Government of India, South Block,
New Delhi – 110 001.
2. The Chairman-Cum-DGOF,
Ordnance Factory Board,
Having his office at 10A,

Shaheed Khudiram Bose Road,
Kolkata – 700 001.

3. The General Manager,
Metal & Steel Factory, Ishapore,
Post Office – Ichapore-Nawabganj,
District – 24-Parganas (North),
Pin – 743 144.
4. The Director of Estates,
Government of India,
Ministry of Urban Development
Department,
Nirman Bhawan,
New Delhi – 110 011.

.....Respondents.

For the applicant : Mr. P.C. Das, counsel
Ms. T. Maity, counsel

For the respondents : Mr. A. Mondal, counsel

ORDER

Bidisha Banerjee, Judicial Member

The applicants in these two O.As are identically aggrieved and have sought for identical reliefs. Therefore, these O.As are taken up for analogous hearing to be disposed of by a common order.

2. The background of these O.As are as under:-

(i) One O.A.No.1183 of 2010 was preferred by Om Prakash Sharma and 15 others working in different technical posts/trades in Metal and Steel Factory, Ichapore before this Tribunal. The applicants therein were residing earlier in the Government quarter allotted to them and were not drawing any HRA. Subsequently, they obtained House Building Loan from the Government and built their own houses. When their houses were prepared they vacated the Government accommodations, shifted to their own houses, and claimed HRA.

Orders dated 16.06.2009 and 27.03.2010 were issued declining HRA on the ground that as per rules, "Non-availability" Certificate could not be issued to them as large number of Government quarters were available for allotment. Hence, claiming benefit of a judgment of Central Administrative Tribunal, Bombay Bench dated 31.12.2007 in O.A.No.385/2007, the applicants approached this Tribunal vide O.A.No.1183/2010 praying HRA from the date they vacated the Government accommodations. The said O.A.1183/2010 was disposed of by this Bench with the following observations and order:-

"7. At the same time it may be noted that Rule 7 of the said O.M. of the Ministry of Urban Development provides that when a government servant is living in a house owned by him or his wife or children or parents he will be eligible for HRA. Thus, it appears that there are conflicting positions. On the one hand, a government servant is required to apply for accommodation and if accommodation is available, he has to accept the government quarters. Only if there is non-availability of government quarters, he will be issued non-availability certificate and the employee concerned is eligible for HRA. On the other hand if a government employee has his own house or he is living in his wife's or children's house or parents' house he is eligible to HRA."

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9. The respondents have mainly relied on the decision of the Madras High Court referred to above which was rendered mainly relying on the decision of the Hon'ble Supreme Court in the case of Director C.P. Corps. Research Institute v. N. Purushottaman (*supra*). The Hon'ble Apex Court held that HRA is not a matter of right, it is paid in lieu of accommodation 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 forfeit the HRA. The management cannot be saddled with double liability. In construct and maintain the quarters as well as to pay the HRA. This is the true import of the provision of paragraph 4 of the said government Office Memorandum.

10. As I have already indicated above, the same logic is also applicable to the employees who are also saddled with double liability to repay the HBA taken from the Government to construct and maintain the house built by them for their own residential purpose as well as not receiving HRA for compulsorily residing at government quarters. The policy of government is

to encourage its employees to build their own house and for that purpose various housing loan schemes are available from nationalized banks as also by the government itself. It may be noted that government quarter is not a permanent feature. An employee after his retirement has to settle in his own house and if they are compelled to live in government quarters all along and thereby not getting HRA, it will be very difficult for salaried employees to build their own house after retirement with the limited financial benefits received by them in the form of gratuity etc."

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12. Considering the matter from all angles I am of the opinion that the respondents cannot deny HRA to the applicants herein because they were granted HBA by the respondents themselves and they have also built their own house and are now occupying the same. They cannot be compelled to reside in government quarters and thereby not getting HRA and at the same time they are duty bound to repay HBA and suffer financial loss doubly.

13. For the reasons stated above, I allow this application and direct the respondents to pay HRA to the applicants from the date they vacated the government quarters. For that purpose, the impugned orders dated 16.6.2009 and 27.3.2010 are hereby quashed. No costs."

(ii) The aforesaid order was assailed before the Hon'ble High Court at Calcutta in WPCT:111/2011 and was affirmed with the order as under:-

"We have considered the rival contentions. We have considered the decision cited at the bar. The Apex Court considered a case where accommodations were offered to the Government employees, who, on one pretext or the other, refused to occupy such accommodations, resulting the accommodations being kept vacant. In the instant case, the respondents did not have accommodation of their own. They applied for Government accommodation, which was given to them. They occupied and enjoyed the same to long they could not arrange accommodation of their own. The Union of India themselves granted assistance to some of the respondents whereas others obtained financial assistance from Financial Institutions and arranged accommodation of their own and then left the Government accommodation. It is not the case of the petitioners that the accommodations are still vacant, in view of the respondents vacating those accommodations. Hence, we do not see any reason as to why they should be deprived of house rent allowance when their colleagues are enjoying accommodation of their own and getting such financial assistance. The

Tribunal approached the problem in a right direction, which does not deserve any interference by this Court.

W.P.C.T. 111 of 2011 fails and is hereby dismissed without any order as to costs."

(iii) An SLP was preferred against the above order vide Special Leave to Appeal (C) No.26234/2011 before the Hon'ble Apex Court at Calcutta which was dismissed "leaving the question of law open". However, in pursuance thereto, the applicants of the aforesaid O.A. were allowed the benefits of HRA by the Metal and Steel Factory vide its order dated 11.05.2012 with arrears from the date of surrender/vacation of quarters.

Seeking benefit of the said order a bunch of cases were filed being O.A.Nos.873,874,612,872 and 875 of 2012. While hearing such cases analogously, this Tribunal discussed the implications of various circulars as well as the judgments regarding grant of HRA and held that entitlement of HRA was strictly governed by the circular of 14.11.2007. The order of this Tribunal dated 14.08.2013 passed in the batch cases is reproduced below :-

"The present entitlements are governed by the circular dated 14.11.2007. The 14.11.2007 circular is imperative that the department is bound to explore the possibilities of transferring surplus units to the general pools or to offer the surplus quarters to the willing employees above their entitlements. 14.11.2007 does not operate to deny HRA if the quarter in question is offered/allotted to other employees and 27.11.1965 circular is clear that so long the quarter remains vacant, the government servant who whose the quarter was allotted is not entitled to claim HRA. The respondents cannot remain oblivious to the explicit provisions of the said circular.

15. The respondents having granted HRA to Apu Singh the applicant in OA 875/12 have only reinforced the entitlements to HRA on allotment to others employees. They cannot be allowed to adopt double standards for same set of employees or discriminate between equal to resort to macro compartmentalization on the basis of a micro distinction. It has been submitted by the respondents in their reply to OA. 875/12 that Apu Singh "

the applicant no. 1 was issued NAC with effect from 03.02.2011 after finding him eligible as per extant provisions as mentioned in preceding paragraphs. Consequent upon issue of NAC with effect from 03.02.2011 he became entitled for HRA with effect from the same date and accordingly HRA was released with effect from 03.02.2011. As per the instructions issued by the Ministry of Defence, HRA would be admissible only in the event of an employee not being able to secure Govt. accommodation and HRA cannot be paid when Govt. accommodation was available but the employee voluntarily surrendered. In the instant case, Govt. accommodation was available at the time when the applicant preferred claims for HRA. The applicant no. 1 was issued NAC only on 03.02.2011 when no Govt. accommodation as per his entitlement was available."

Thus if in the case of Apu Singh they could offer the quarter or grant a "No Accommodation Certificate", there is absolutely no reason why the same standard be not adopted for the applicants i.e. offering the vacant quarters to other willing employees.

Nothing is indicated to show that despite offering the vacant/surrendered quarters to others with lesser entitlement (i.e. above their entitlements) there were no takers or the quarters remained vacant as on date. (It is also not, as in the case of Apu Singh)

16. We note that imperative condition of 14.11.2007 of exploring other possibilities of existing departmental pool was not considered earlier. We find that it is in tune with the decision of the Hon'ble High Court in WPCT 111/11 wherein the Hon'ble High Court at Calcutta has observed that it is not the case of the respondents where the quarters are still vacant, in view of the respondents vacating these accommodations. Hence we do not see any reason as to why they should be "deprived", which view is upheld by the Hon'ble Apex Court while keeping the question of law open.

17. In such view of the matter, we dispose of this OA with a direction upon the respondents to ascertain whether the quarters vacated by the applicants or rendered surplus, were ever offered to other employees in terms of para 4(b) or 5 of 04.11.2007 OM. If it is found that the quarters were never offered to other employees in compliance of para 4(b) or 5 of the OM dated 14.11.2007, the Officers who are responsible for keeping the quarters vacant or violating para 4(b) or 5 of OM dated 14.11.2007 be put to task. The applicants shall not be prejudiced for such fallacy of the erring officers and they shall be paid HRA from the due dates which also includes the applicant in OA. 873/2012 who was never in requirement of a quarter, as also Apu Singh who is granted HRA but from a subsequent date long after he surrendered his quarter. If it is found that the quarters were offered immediately after vacating and were subsequently allotted to other employees, equal to or above their entitlement, HRA will be paid to the

applicants from the date the quarters were so allotted. The entire exercise be completed by two months from the date of communication of this order. With such directions the OA is disposed of. No costs."

(v) The said order was assailed in WPCT.470/2013 & Others before the Hon'ble High Court at Calcutta. Before the Hon'ble High Court at Calcutta, the present respondents, the writ petitioners argued as under:-

"The learned Counsel for the Petitioners argues that if the order of the Tribunal is to be implemented, it would be a huge task for the Officers concerned. According to him, the availability of accommodation is readily furnished to all the applicants. He submits that it is not merely the accommodation available in the ordnance factory but the general pool which will have to be taken into consideration to decide whether the accommodation was, in fact, available despite which the employee refused to occupy the quarters or that after he vacated the quarters the accommodation though available was not disclosed to all the employees. The learned Counsel further states that the petitioners have carried out a part of the order of the Tribunal and, therefore, have issued 'No Accommodation Certificate' in respect of 64 employees from 19th May, 2014 and have directed the release of House Rent Allowance from various dates.

According to the learned Counsel, this exercise was, in fact, conducted in August, 2012 and, therefore, the Tribunal was not right in directing any further exercise to be conducted for ascertaining whether accommodation, though vacant, was not offered to other employees in compliance with para 4(b) or 5 of the Office Memorandum, dated 14th November, 2007.

There is no material before us to indicate that this procedure was undertaken after the impugned order was passed. There is also no material on record to show that it was mandatory for the employees to live in the Government quarters. The appointment letters of these employees have been produced for our perusal and in none of these appointment letters does it appear that the employees are compulsorily required to occupy Government accommodation.

In our view, the Tribunal has not committed any error of law much less an error of law apparent on the face of the record by issuing the aforesaid directions. In fact, it has proceeded on the basis that its earlier decision had been upheld by the High Court and the later by the Supreme Court. The Tribunal was of the view that despite the quarters being

surrendered, there was no material to show that the quarters were, in fact, offered to other employees and it is in these circumstances, it has passed the aforesaid directions.

We are surprised that the Petitioners did not care to implement the earlier order of the Tribunal as upheld up to the Supreme Court in respect of all employees and instead, required each employee to approach the Tribunal before securing House Rent Allowance. It is well-settled that every employee need not rush to the Court for redressal of the same claim, as is granted to other employees, similarly situated, by Courts it is expected that the employer implements the decision of the Court in respect of all employees and not just those who have the wherewithal to approach the Court. In the case of State of Karnataka and Others VS. C. Lalitha, reported in (2006) 2 SCC 747, the Supreme Court has observed that it is not necessary for each individual to approach the Court when one person similarly situated has been granted the relief by the Court. The employer is expected to apply the same logic in respect of all other employees to grant them relief. This would apply with greater force when Government is the employer as it is supposedly a model employer.

In our opinion, the impugned order is correct and in consonance with the decision of the Division Bench of this Court in WPCT No. 111 of 2011 which has been confirmed by the Supreme Court. The criticism of the learned Counsel for the Petitioners against the order is unfounded and baseless. We see no reason to interfere with the order.

The writ petitions are dismissed with no order as to costs."

(vi) Claiming benefit of the said decision of the Hon'ble High Court at Calcutta, affirming the decision of this Tribunal, the present applicants have preferred O.A.No.350/88/2016 and O.A.No.350/94/2016 seeking the following reliefs respectively:-

O.A.No.350/88/2016

"8(a) To quash and/or set aside the impugned office letters dated 16.06.2009 issued by the Metal & Steel Factory, Ishapore by which your applicant was forced to obtain 'No Accommodation Certificate' despite the applicant produced his pay slips before the authority which is clearly against the decision passed by this Hon'ble Tribunal in a catena of decisions as well

as Hon'ble High Court and Hon'ble Supreme Court being Annexure A-4 of this original application;

(b) To pass an appropriate order directing upon the respondent authority to release the House Rent Allowance in favour of the applicant with effect from 2nd April, 2007 to 18.05.2014 and to release the same along with all arrears and consequential benefits in the light of the decision made by this Hon'ble Tribunal O.A. No. 1183 of 2010 dated 18.11.2010 along with decision of the Hon'ble High Court at Calcutta in W.P.C.T. No. 111 of 2011 dated 17.05.2011 and ultimately upheld by the Hon'ble Supreme Court in Special Leave Petition being SLP (Civil) No. 26234 of 2011 vide order dated 29.06.2011 as well as in the light of the recent order passed by this Hon'ble Tribunal dated 14.08.2013 in O.A. No. 875 of 2012 and upheld by the Hon'ble High Court at Calcutta in W.P.C.T. No. 470 of 2013 (Union of India & Ors. –Vs- Apu Singh & Ors.).

(c) Costs and incidental of this original application;

(d) Any further or other order or orders as Your Honour may seem fit and proper."

O.A.No.350/94/2016

"8(a) To quash..and/or set aside the impugned office letters dated 30.07.2010 issued by the Metal & Steel Factory, Ishapore by which your applicant was forced to obtain 'No Accommodation Certificate' despite the applicant produced his pay slips before the authority which is clearly against the decision passed by this Hon'ble Tribunal in a catena of decisions as well as Hon'ble High Court and Hon'ble Supreme Court being Annexure A-4 of this original application;

(b) To pass an appropriate order directing upon the respondent authority to release the House Rent Allowance in favour of the applicant with effect from 24.12.2009 to 18.05.2014 and to release the same along with all arrears and consequential benefits in the light of the decision made by this Hon'ble Tribunal O.A. No. 1183 of 2010 dated 18.11.2010 along with decision of the Hon'ble High Court at Calcutta in W.P.C.T. No. 111 of 2011 dated 17.05.2011 and ultimately upheld by the Hon'ble Supreme Court in Special Leave Petition being SLP (Civil) No. 26234 of 2011 vide order dated 29.06.2011 as well as in the light of the recent order passed by this Hon'ble Tribunal dated 14.08.2013 in O.A. No. 875 of 2012 and upheld by the Hon'ble High Court at Calcutta in W.P.C.T. No. 470 of 2013 (Union of India & Ors. –Vs- Apu Singh & Ors.).

(c) Costs and incidental of this original application;

(d) Any further or other order or orders as Your Honour may seem fit and proper."

3. At hearing, Id. counsel for the applicants would submit that their repeated representations to the authorities seeking HRA from the dates they vacated the quarters went unheeded to. Id. counsel for the applicants would further submit that their HRA was released from 19.05.2014 and not from an earlier date. He would also submit that in terms of the directions of this Tribunal affirmed by the Hon'ble High Court, the HRA should be released from the date the applicants vacated the Government accommodation.

4. Per contra, Id. counsel for the respondents vehemently opposing the contentions would submit that since the vacant quarters became uninhabitable and were declared as such in May,14, HRA was released with effect from 19.05.2014 to the present applicants because prior to that date "No accommodation" certificate could not be granted to the present applicants, therefore, they could not claim HRA for the period prior to 19.05.2014 as they were not supposed to claim HRA in absence of any "No Accommodation" Certificate issued by the authority in their favour.

5. Id. counsels were heard and materials on record were perused.

6. Inasmuch as detailed orders have been passed by this Tribunal in similar matters, which were subsequently affirmed by the Hon'ble High Court, as enumerated supra, and such orders were implemented by the authorities without questioning the orders any further and also in view of the fact that the present applicants stand on the same footing, we dispose of this O.A. with a direction upon the respondents to consider the pending representations of the applicants regarding their claim of HRA, in the light of the aforementioned decisions of this

Tribunal, Hon'ble High Court and Hon'ble Apex Court, as quoted supra, and pass appropriate orders releasing HRA, as the applicants would be entitled to, in accordance with the tenor of those judgments, within a period of two months from the date of receipt of a copy of this order, if nothing stands in the way.

6. Accordingly the O.As stand disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member
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(Bidisha Banerjee)
Judicial Member