

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No. 350/1800/2017

Date of Order: 14.11.2018

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member

Kalyan Mukhopadhyay,
son of Late Chittaranjan Mukhopadhyay,
aged about 57 years, working for gain as
Deputy Commissioner (Tele) under Special
Bureau, Hathikanda, Government of India,

Nadia-741246 residing at SRIJA

APARTMENTnd Floor, Gupta Colony,
Babu Bazar, Rabindra Bazaar, Kolkata-700126.

.... APPLICANT

-VERSUS -

1. UNION OF INDIA,

Through the Secretary(R), Cabinet
Secretariat, Govt. of India, Room
No.7, Bikaner House (Annexe), Shahjahan
Road, New Delhi-110011

2. THE ADDITIONAL SECRETARY

(ADMINISTRATION), Cabinet Secretariat,
Head Quarter, New Delhi-110011.

3. THE UNDER SECRETARY(ADMN. A),

Government of India, Cabinet Secretariat,
New Delhi-110011.

4. THE ADDITIONAL COMMISSIONER(Tele),

Special Bureau, Hathikanda,District: Nadia,Pin-
741246.

5. COMMISSIONER (EZ),

Special Bureau, Govt. of India, 316, Shanti
Pally,East Kolkata Township Project,Kolkata-
700039.

6. THE ADDITIONAL COMMISSIONER.

Special Bureau, Govt. of India, 316, Shanti
Pally,East Kolkata Township Project,Kolkata-

RESPONDENTS

For the Applicant : Mr.S. K Datta, Counsel

Mr. B Chatterjee,Counsel.

For the Respondents : Mr B P Manna, Counsel

ORDERPer Ms. Bidisha Banerjee, Judicial Member:

1. The application has been preferred to seek the following relief :

a) An order holding that the actions on the part of the respondent authorities forcing the applicant to accept the allotted Government Accommodation/Quarter as well as making allotment unilaterally and stoppage of House Rent Allowance due to non-acceptance of allotted Quarter are bad in law, arbitrary and violation of rights guaranteed under Article 14 of the Constitution of India.

B

- b) An order quashing and/or setting aside the impugned Office Memorandum dated 23.09.2016 issued by the respondent authorities.
- c) An order quashing and/or setting aside the impugned Office Memorandum dated 17.11.2016 issued by the respondent authorities.
- d) An order quashing and/or setting aside the impugned Office Memorandum dated 09.03.2017 issued by the respondent authorities.
- e) An order directing the respondent authorities to grant and release the House Rent Allowance from the date it has been stopped along with arrear and all consequential benefits thereto.
- f) An order directing the respondent authorities to consider the representations of the applicant dated 23.12.2016, 23.08.2017 and 27.11.2017 in view of the settled position of law as mandated by the Hon'ble Apex Court of India as well as Hon'ble High Courts and this Hon'ble Tribunal.
- g) An order directing the official respondents to produce/cause production of all records relating to the subject matter of the case;
- h) Any other order or orders as this Tribunal may deem fit and proper.

2. The orders impugned in the present OA are extracted in seriatim, infra:

(i)

SECRET

No.05/04/2015-HTK(PERS)-4440



Dated the 23/09/16

Shri Kalyan Mukhopadhyay, Deputy Commissioner (Tele), (IRLA NO.3455) is hereby allotted Qtr. No.11/Type-IV of departmental pool accommodation at SB,Hathikanda.

The allotment of above mentioned Quarter is subject to the following conditions.

- (a) The officer is hereby directed to take possession of the said Qtrs. (Qtr No.11/Type-IV) after due acceptance within eight (08) days from the date of issuing this order.
- (b) The Order of allotment is affected from the date of occupation of the Qtr. or from 8th day of issue of allotment letter, whichever is earlier.
- (c) No addition/alteration or modification of the Qtr. shall be made without permission of the competent authority.
- (d) The allottee shall abide by the terms & condition of FR-45 & SR 311 & 317.
- (e) The allottee shall take possession of the Qtr. from the in-charge of Qtrs. and will hand over the same to him at the time of vacation of the Qtr. observing all formalities.
- (f) The allottee shall take occupation from the in-charge and shall be personally liable for payment of electric/water charges, license fees and damage of the Qtr. or Govt. property of Qtr. from the date of occupation.

(g) Under any condition the allottee cannot subject the allotted Qtr. to anybody, which would lead to breach of security and punishable offence under CCS(Conduct) rules.

(h) BREACH OF ANY PROVION OF THE ALLOTMENT RULES OR INSTRUCTIONS ISSUED WILL BE VIEWED SERIOUSLY.

3. This issues with the approval of Additional Commissioner (Tele), SB,Hathikanda, as Estate Manager.

(AMARENDU ROY)
DEPUTY COMMISSIONER (TELE)/HOO

(ii)

SECRET

No. 17/3/2016-Admn.1- 6401

Government of India
Cabinet Secretariat

New Delhi, the 17.11.16

MEMORANDUM

Subject: Allotment rules for residential quarters at SMU, Hathikanda

Please refer to Memo No.1/13/2016-HK-Pers-4689 dated 17.10.2016 addressed to US(Pers.E) on the *ibid* subject.

2. In terms of HRA Rules, the allowance is admissible to govt. servants eligible for govt. accommodation only if they have applied for govt. accommodation but have not been allotted the same. ~~if the accommodation is not accepted by Shri Kalyan Mukhopadhyay, he will not be entitled for HRA for the time he is debarred from further allotment of govt. accommodation.~~

3. This issues with the approval of ~~Under Secretary (Admn.)~~



(HITESH KUMAR)

UNDER SECRETARY(ADMN. A)

(iii)

No. 17/3/2016-Admn. 1- 1458

Government of India
Cabinet Secretariat

New Delhi, the 9.3.17

MEMORANDUM

Subject: Allotment of residential quarters at SMU, Hathikanda

Please refer to Memo No.05/04/2015-HTK (Pers.)-124 dated 11.01.2017 forwarding therewith representations of official posted at SMU,Hathikanda on the subject cited above.

2. The matter has been examined thoroughly. There is no merit in the representations of the officials. The allotment of government accommodation at various stations is governed by the allotment rules related to accommodation in these stations. The revision of plinth area of various categories of quarters by MoUD has been made in view of proposed multi storied constructions to make a provision for utility balcony for drying wet clothes etc. As such the representation of representing officials cannot be accepted. The officials may be informed accordingly.

D

3. Further, Shri Kalyan Mukhopadhyay DC(T) may be instructed to take over the possession of allotted flat within 5 working days of the receipt of this Memo, failing which, he will have to forego his HRA.

4. This issues with the approval of Joint Secretary (Admn.).

**(HITESH KUMAR)
UNDER SECRETARY(ADMN. A)**

3. The orders extracted supra would inarguably reveal and explicitly demonstrate that the authorities while issuing such order as impugned herein, asking the applicant to take possession of the Govt. accommodation within five (5) days failing which to forego HRA have refused to act in terms of the judgment of the Hon'ble High Court at Calcutta in WPCT 470 -- 474 of 2013, extracted infra :

"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 supposed 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."

It was argued that thereby they have made themselves liable to be hauled up in contempt proceedings.

4. However, since the present application is restricted to the legal right of the applicant to draw HRA without being asked or compelled to take up Government quarters, in view of the decision of Hon'ble High Court at Calcutta as extracted supra, the orders impugned in the present OA are quashed.

5. Consequently, the respondents are directed to consider and dispose of the representations seeking payment against HRA, in the light of the judgment extracted supra within the time of formal order within two(2) months from the date of communication of this order.

6. Accordingly this O A stands disposed of. No costs.

Bidisha Banerjee
Member (J)

AMIT