

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

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Date of Order: 28.4.16.

OA. 350/01271/2014

Present

:Hon'ble Ms. Bidisha Banerjee, Judicial Member

J. Mani Rajan & 13 Others, all the applicants are working under CQA (HV) & CQA (AVL) Avadi, Chennai under Directorate of Quality Assurances (Combat Vehicle) Near Engine Factory Avadi, Chennai- 600054.

.....Applicants.

-versus-

1. Union of India service through the Secretary Ministry of Defence (Defence and Production), Government of India, South Block, New Delhi- 110001;
2. The Director General of Quality Assurance (DGQA), Government of India, Ministry of Defence, Dept. Of Defence Production, Room No. 26, "G" Block Nirman Bhawan, New Delhi- 110011;
3. The Controllerate of Quality Assurance (Heavy Vehicle) Government of India, Ministry of Defence Avadi, Chennai- 600054;
4. The Controllerate of Quality Assurance, Armoured Vehicle Electronics, Government of India, Ministry Of Defence, PB 17, Avadi, Chennai- 600054;
5. The Directorate of Quality Assurances (Combat Vehicle) Near Engine Factory Avadi, Chennai- 600054;
6. The Controllerate of Quality Assurance, (ICV), Government of India, Ministry of Defence, Yeddu-mailaram, District- Medap, Telangana- 502205;
7. The Chairman, Ordnance Factory Board, Govt. Of India, Ministry of Defence, having his office at 10A, Shaheed Khudiram Bose Road, Kolkata- 700001;

.....Respondents.

For the Applicant

: Mr. PC Das, Counsel

For the Respondents

: Mr. LK Chatterjee, Counsel
Mr. UP Bhattacharyya, Counsel

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ORDER

Per Ms. Bidisha Banerjee, JM:-

This matter is taken up in Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.

2. Heard both.

3. This application has been filed by the applicants, 14 in numbers, working under CQA (HV) & CQA (AVL) Avadi, Chennai under Directorate of Quality Assurances. They have prayed for following reliefs:

"8(a) Leave may be granted to the applicants to file this application jointly under Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987 as all the applicants have a common grievance and they are aggrieved in respect of non-getting the House Rent Allowance.

(b) To quash and/or set aside the impugned speaking order dated 01.01.2014 and 26.12.2013 issued by the ADGQA (CV), in the office of Directorate of Quality Assurance (Combat Vehicle) Near Engine Factory, Avadi, Chennai and others by relying upon their own circular rejected the claim of the applicants for grant HRA in favour of them being Annexure A-12 of this original application;

(c) To pass an appropriate order directing upon the respondent authority to release the House Rent Allowance in favour each and every applicant for the period as mentioned as per Annexure A-1 of this original application including arrears and consequential benefits in the light of the decision made by the Hon'ble Central Administrative Tribunal, Bombay Bench dated 31st December, 2007 in O.A. No. 385 of 2007 and the order dated 17th May, 2011 passed by the Hon'ble High Court at Calcutta in WPCT No. 111 of 2011 and the order of the Hon'ble Supreme Court dated 26.09.2011 passed in SLP (Civil) No. 26234 of 2011 and in the light of the implementation order of other similarly circumstanced persons issued by the Government of India, Ministry of Defence dated 11.5.2012 along with all consequential benefits to all the applicants;

(d) Costs and incidental of this original application;

(e) Any further or other order or orders as your honour may seem fit and proper;"

4. The order that is impugned in the present OA, is a speaking order issued pursuant to the direction in an earlier OA, whereby and whereunder the claim of the applicant for HRA with effect from 2007 onwards have been rejected on the ground that in view of OM dated 14.11.2007, Para 4(a) (ii) of Ministry of Fin OM No. F2(37) E.II (B)/64 Dt. 27.11.1965 as also DGQA Departmental rules (SRO 1E & 31), HRA could be permitted only and only if the entitled quarter to an employee was not available for which he is accorded an "NAC" on his applying for an eligible quarter.

The order issuing authority has specified the reason for rejection in the following words:

"In view of the foregoing, it is evident that HRA is payable only when the employee applies for allotment of a quarters within the stipulated period and obtain NAC if there is no vacancy to accommodate him in the quarters. As you had not applied for a quarter within the stipulated one month period from your date of reporting, neither a quarter was allotted nor NAC accorded. We are constrained to decide that HRA is not payable to you. However, when you applied for an accommodation on 27.07.2011 your application was considered and NAC accorded (as no entitled quarter was vacant at that time and HRA allowed). It may be noted that at the relevant point of time quarters were vacant and so had you applied quarters might have been allotted to you.

My decision in this behalf is fortified by the Order dated 17.09.2012 in W.P. Nos. 42562/2011 & 10405-407/12(S-CAT) C/W, W.P. Nos. 39592/2011 & 4139-4144/12 (S-CAT) wherein Hon'ble High Court of Karnataka has held that the HRA is not a matter of right. It was further held that HRA is paid in lieu of the accommodation when the employer is not in a position to accommodate its employees. This being the case, it follows that whenever the accommodation is offered the employees have either to accept it or to forgo the HRA. The management cannot be saddled with double liability viz to construct and maintain the quarters as well as to pay the HRA. This is the rationale of the provisions of paragraph 4 of the said OM. It further observed that the earlier rule SRO 1 E for allotment of Accommodation were only prospective in nature and subsequently the said Rules were amended by introducing Rule 11A making it retrospective.

In view of the above, it is crystal clear that both SRO 1E, 31 & Ministry of Urban Development OM referred to above is akin in rule position w.r.t. grant of HRA i.e. submitting an application for allotment of a quarter is pre-requisite for obtaining NAC. Since you haven't applied for accommodation (and obtained NAC) as per the existing rules for grant of HRA, your request for consideration of your case for payment of HRA for the period in question could not be acceded to."

5. The respondents took a preliminary objection in regard to want of territorial jurisdiction in as much as neither the applicants nor the concerned respondents came under the territorial jurisdiction of Calcutta Bench except Respondent No. 4.

6. Dispelling this contention the learned counsel for applicants relied upon a decision rendered by this Bench in OA. 1038 of 2013 on 30.11.2015 wherein, in the case of Employees of Quality Assurance posted at Dehradun, this Tribunal answered why the Calcutta Bench would have jurisdiction in the following manner:

".....We would like to point out that the territorial jurisdiction of the respective CATs is for enabling the employees of the locality to approach easily the CAT concerned. Admittedly, the applicants have already filed this OA before this Bench within whose jurisdiction Respondent No. 4 is situated. The deep question involved is as to whether the Chairman himself can pass any order awarding HRA in favour of the applicants or in any manner give direction. But one fact is clear that Respondent No. 3 is lower in rank than the Respondent No. 4. Throughout India for ordnance factories there is only one post of Chairman which is situated in Calcutta only. In view of the above, we do not think that the Respondent No. 4 has nothing to do with the administrative matters pertaining to the applicants. No doubt, the Respondent No. 4 himself may or may not pass

orders in each and every matter but as a superior authority he could guide the subordinate officers and in that matter even if the Respondent No. 4 is having no power to take a decision on HRA he could refer the matter to the Ministry concerned. Then the technical question arises about the maintainability of this OA before this CAT, Calcutta Bench. In our considered opinion when already certain matters have been dealt with in this CAT Calcutta Bench itself and those matters attained finality and in such a case on acceptance of the technical plea put forth by the respondents if the applicants is asked to file application before another bench of CAT which is a national tribunal the net result would be the same. In earlier OA the Respondent No. 4 herein was arraigned as Respondent No. 3 therein. If really Respondent No. 4 had nothing to do with the administrative matters like awarding HRA to the applicants, then we are at a loss to understand as to why he did not take step for deletion of his name and on the other hand all respondents contested the matter upto Hon'ble Supreme Court on merits and not on technicalities. As such, we are of the view that this OA cannot simply be dismissed for want of territorial jurisdiction alone. It would not be out of place to specify here that this OA was filed on 23.8.2013 and now we are in the end of 2015 and taking into account 'the arisal of major part of the cause of action theory' if the OA is returned it would cause more harm than subserving justice.

7. Learned counsel for applicant would argue that the decision being already implemented had attained finality and would be binding on this Bench.
8. Learned counsel for respondents however repelling the claim submitted that since none of the applicants resided or served within the territorial jurisdiction of this Tribunal and as all the concerned respondents had their offices situated outside the territorial jurisdiction, the matter should be dismissed due to want of territorial jurisdiction. Learned counsel further invited my attention to SRO embodying DGQA Quarters Allotment Rules, issued by the Ministry of Defence which specified that all the Civilian posts of DGQA Establishments would be governed by the rules and "Allotting Authority" under the rules would be the Coordinating officer of DGQA Establishments nominated at the station, duly authorised to act on behalf of DGQA on accommodation matters. Referring to the said rules, learned counsel for respondents would argue that the DGQA was the ultimate authority to decide on allotments of residential accommodation to the Civilians under DGQA Establishment. The Chairman, O.F.B. had no role to play in such matter and therefore, only because the Office of the Chairman, O.F.B. fell within the territorial jurisdiction of this Tribunal, this Tribunal would lack jurisdiction in the matter. It was argued that such rules were never brought to the notice of the Bench that decided OA. 1038 of 2013 supra. It was indicated that array of Respondent No. 4 was a misjoinder.

9. In my considered opinion the order passed in OA. 1038 of 2013 that pronounced on territorial jurisdiction in regard to employees of Dehradun as office of Respondent No. 4 was situated within territorial jurisdiction of Calcutta Bench attained finality with its implementation being never questioned before any higher forum. The respondents including Chairman, OFB thus acquiesced with the situation having voluntarily forsaken assertion of a right to challenge the order at the proper opportunity thereby subjecting themselves to the jurisdiction of Calcutta Bench could not be permitted to assail the forfeiture already established.

It was held in the case of **Additional District and Sessions Judge 'X' vs. Registrar General, High Court of Madhya Pradesh and Others**, reported in (2015) 4 SCC 91:

".....It is now well understood that an individual who subjects himself/herself to the jurisdiction of an authority, cannot turn around to find fault with it at a later juncture. If there is a fault, the same should be corrected before one accepts to submit to the jurisdiction of the authority concerned....."

It was also held in the case of **R. v. Mortlock, (1789) 3 TR 300**:

"Where a man with knowledge of the irregularity of a particular course, nevertheless concurs in it, he cannot afterwards take advantage of the irregularity when it suits his purpose."

Such being the position, no contrary view is required to be taken by this Bench.

10. In regard to the merits of this matter, it could be noticed that the respondents have allowed HRA to the applicants from a date subsequent to the date they left the Government quarters etc. The grievance of the applicants would be that having availed government loan from the department as well as other financial institution for constructing their own houses they were residing at their own houses and therefore from the date they were residing as such they would be entitled to get HRA. Per contra the respondents would argue that after appointment it was mandatory for them to apply government quarter and only on being granted no accommodation certificate (NAC in short) of government accommodation they could be granted HRA.

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11. The applicants submitted that such contention was baseless and in substantiation thereof they relied upon a decision rendered by this Bench in OA. 1183 of 2010 in the case of **Om Prakash Sharma & 15 Others**. Excerpts whereof are extracted hereinbelow:

"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 HRA 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 HRA 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."

The said order was upheld by the Hon'ble High Court at Calcutta with the following observation:

"Opposing the application, Mr. P. C. Das, learned counsel for the respondents, contends that it is not a case where the respondents refused to stay in the Government accommodation. The respondents were enjoying Government accommodation after being allotted to them. During their stay at the Government accommodation they applied for loan both to the petitioners, being the employer, as well as to the Bank and ultimately arranged their own accommodation. They received financial assistance from the Union of India and/or the Financial Institutions. After arranging their own accommodation they left the Government accommodation and thus were entitled to house rent allowance, which the petitioners denied.

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 so 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 interfere by this Court.

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

(emphasis added)

The SLP against the said judgment was dismissed by the Hon'ble Apex Court leaving the question of law open. Following the said decision OA. 1038 of 2013 supra was decided by a Division Bench of this Tribunal in regard to Employees of DGQA posted at Dehradun.

12. During the course of hearing the issue that emerged was whether in order to get HRA the applicant had to obtain no accommodation certificate (NAC) from the DGQA.

13. Learned counsel for respondents in support of their contention that an NAC was mandatory, placed relevant DGQA quarter allotment rules. Fundamental principle envisaged therein would be as under:

"Fundamental principles"

(a) *The application for allotment of a residence should be made within a period of one month of taking up the applicant.*

(b) *The employee applying for allotment of residence must be holding a regular post in the establishment in Station as opposed to the temporary duty attachment."*

Application for Allotment

(a) *An officer/employee joining duty at any one of the Directorate General of Quality Assurance Establishment in a station as first appointment or on transfer may submit his/her application for allotment of residence to the Allotting Authority within one month of his joining duty. An employee seeking deferment due to valid reasons should mention the period of deferment in their application.*

A bare perusal did not reveal any mandatory clause that an employee is bound to apply for Government quarters due to use of the word "may".

Rules in regard to "***Non acceptance of allotment of offer or failure to occupy the Allotted Residence after acceptance***" lay down the following:

(a) *If any employee fails to accept the allotment of residence within Five days or fails to take possession of that residence after acceptance within Eight days from the date or receipt of the letter of allotment he/she shall not be eligible for another allotment for a period of One year from the date of the allotment letter.*

(b) *If an officer occupying a lower type residence is allotted or offered a residence of the type for which he/she is eligible, he/she may on refusal of the said allotment or offer of allotment, be permitted to continue in the previously allotted residence on the following conditions namely:*

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- (i) That such an employee shall not be eligible for another allotment for a period of six months from the date of the allotment letter for the higher class allotment
- (ii) While retaining the existing residence he/she be charged the same licence fee which he/she would have/had to pay in respect of the residence so allotted or offered or the licence fee payable in respect of the residence already in his occupation, whichever is earlier."

Again no mandatory clause could be noted.

14. Learned counsel, Shri LK Chatterjee appearing for the respondents, citing the aforesaid provisions would vociferously submit that the rules mandated that, on appointment, each and every employee under DGQA was required to make an application for allotment of a residence. However, the provision did not exemplify any penalty clause entwined therein which would mandate an application for government accommodation.

15. Learned counsel for respondents would further place the rules in regard to following :

"THOSE OCCUPYING OR REFUSING GOVERNMENT ACCOMMODATION NOT ELIGIBLE FOR HOUSE RENT ALLOWANCE", excerpts whereof would run thus:

4. The grant of House Rent Allowance shall be subject to the following conditions:-

(a)(i) To those Government servants who are eligible for Government accommodation, the allowances will be admissible only if they have applied for such accommodation in accordance with the prescribed procedure, if any, but have not been provided with the it, in places, where due to availability of surplus Government accommodation, special orders are issued by the Ministry of Urban Development from time to time making it obligatory for employees concerned to obtain and furnish 'no accommodation' at their place of posting. In all other places, no such certificate is necessary.

(ii) Government servants posted in localities where there is at present no residential accommodation in the General Pool owned or requisitioned by the Central Government for allotment to them, need not apply for Government residential accommodation in order to become eligible for House Rent Allowance. But where Government quarters are available for the staff of specified Departments or for specified categories of staff, the procedure for applying for accommodation will be regulated under the rules of allotment of the Department concerned or of the local office of the Central Public Works Department, as the case may be.

Review of demand and availability of General Pool Accommodation controlled by the Directorate of Estates- In supersession to this Directorate's OM of even number, dated 9.9.1988 on above cited subject, the undersigned is directed to say that the position of demand and availability of General Pool Accommodation controlled by the Directorate of Estates in Delhi and various stations has been reviewed and it has been found that the General Pool

Accommodation in certain types are presently surplus in 5 cities, viz. Kolkata, Shimla, Faridabad, Ghaziabad and Nagpur. It has, therefore, been decided that the Government servants who are eligible for General Pool Accommodation but who do not submit applications for such accommodation or those who after submitting such applications refuse to accept the accommodation offered/allotted or those who after having accepted such accommodation surrender it, may be paid HRA, if otherwise admissible, without obtaining 'No Accommodation Certificate' from the Directorate of Estates or its Regional Offices, as the case may be, in respect of all types of accommodation at the under-mentioned stations:

1. <i>Delhi</i>	2. <i>Mumbai</i>	3. <i>Chennai</i>
4. <i>Chandigarh</i>	5. <i>Bangalore</i>	6. <i>Indore</i>

2. *The Government servants who after submitting applications refuse to accept the accommodation offered/allotted or those who after having accepted such accommodation surrender it as stated above will be considered again for allotment of Government accommodation at the same stations in accordance with the provisions of SR-317-B-10.*
3. *The Government servant who after submitting his application for allotment succeeds in making his own arrangement for residential accommodation and informs the Directorate of Estates or its Regional Offices before actual allotment is offered to him, will be deemed not to have submitted the application for allotment of Government accommodation.*
4. *This issues with the concurrence of the Finance Division of the Ministry of UD & PA vide their No. 1679/Dir. (F), dated 12.4.2001.*

[G.I. M.U.D., Directorate of Estates, O.M. No. 12034/1/88-Pol. III dated the 27th June, 2001]

A cursory glance at the rules would reveal that only in places where quarters were surplus an NAC would be mandatory. In places like Chennai where quarters were not surplus, no NAC would be required for getting HRA.

16. Learned counsel for respondents therefore made a tenuous effort to convince the Tribunal that failure to seek government accommodation and non grant of NAC would result in denial of HRA. On the contrary Para 4(ii) supra is explicit that an application for no accommodation certificate for grant of HRA would be sine qua non only in those places/localities which had a surplus in General Pool Accommodation i.e. Kolkata, Shimla etc. Those eligible for General Pool Accommodation in localities without any surplus residential accommodation in the general pool need not apply for government residential in order to become eligible for HRA. A review of the demand and availability in general pool accommodation controlled by Directorate of Estate, Delhi and various station revealed that there was a surplus in only 5 cities viz. Kolkata, Shimla, Faridabad,

Ghaziabad and Nagpur but not at Chennai. Therefore, the persons serving at 'Chennai' who were eligible for general pool accommodation but did not submit applications or surrendered the quarters could be paid HRA even without obtaining no accommodation certificate (NAC) from the Directorate of Estate or its Regional office. Therefore, under no stretch of imagination, the present applicants, posted at Chennai, a place without any surplus in general pool, would require a no accommodation certificate (NAC) in order to be entitled to HRA. Such being the position I am unable to concur with the view of the respondents that the applicants could be paid HRA only upon furnishing an NAC.

17. Accordingly, OA is allowed. Respondents are directed to verify the claim of each and every applicants and release arrears of HRA from the due date as prayed for in the present OA without insisting for an NAC.

18. The arrears be released within two months from the date of communication of this order. No costs.


(Bidisha Baherjee)
Member (J)

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