

LIBRARY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH, CALCUTTA

O. A. No. 350/00 722 of 2016

IN THE MATTER OF:

ICHHABATI DASH, wife of Shri Surkanti Dash,
aged about 47 years, residing at K.V. No.
1, Ishapore, Post Office- Ichapur-Nawabganj,
District- 24-Parganas (North), Pin-743144, and
working as Trained Graduate Teacher in the
school of Rifle Factory, Ishapore, Post Office-
Ishapore Nawabganj, District- North 24-
Parganas, Pin 743144;

...Applicant

-Versus-

1. UNION OF INDIA service through the
Secretary, Ministry of Defence (Defence
and Production), Government of India.
South Block, New Delhi-110001.

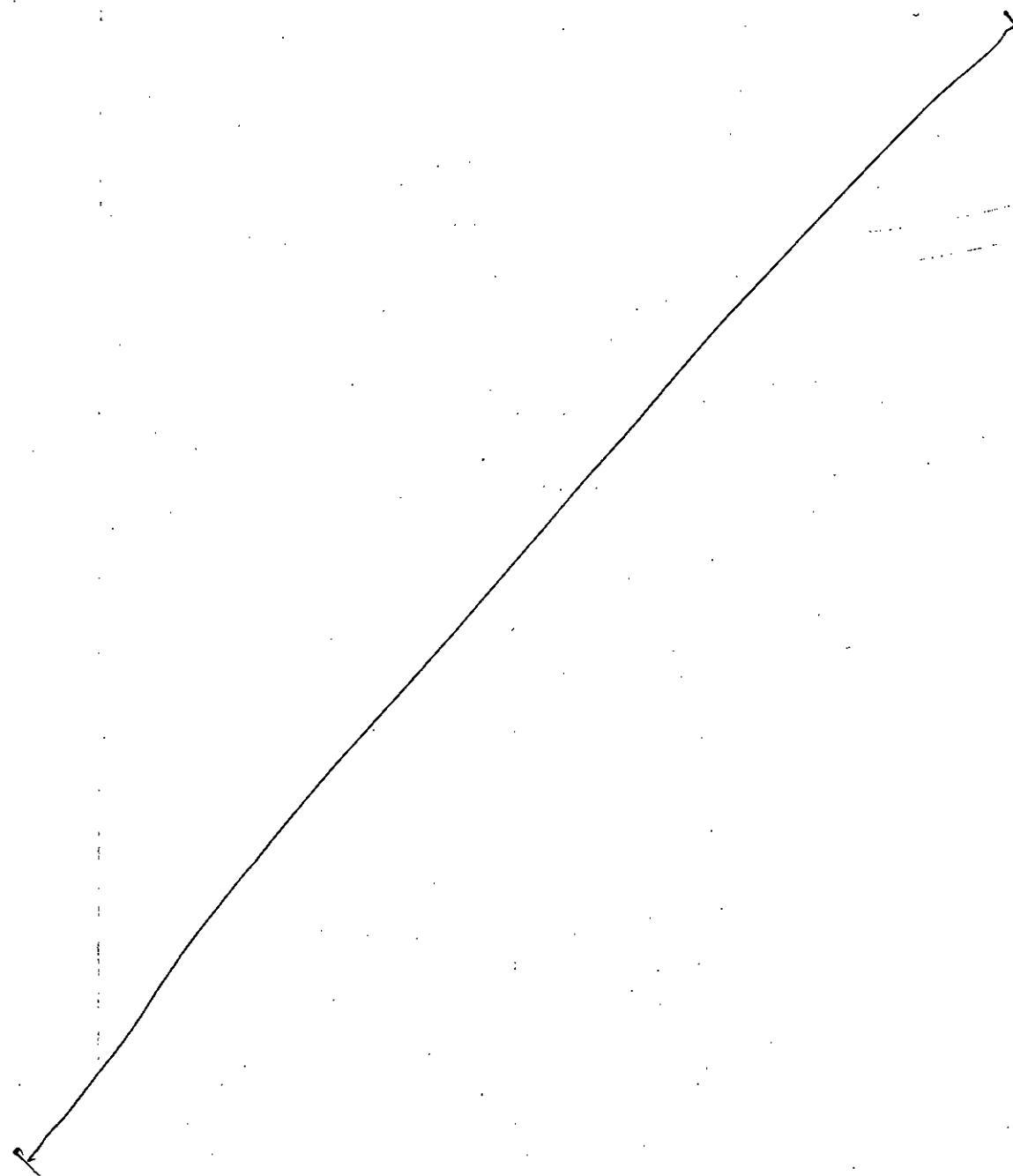
2. THE CHAIRMAN-CUM-DGOF, Ordnance
Factory Board, having his office at 10A,
Shaheed Khudiram Bose Road, Kolkata-
700001

3. THE GENERAL MANAGER, Gun & Shell
Factory, Cossipore, 7, Khagen Chatterjee
Road, Cossipore, Kolkata- 700002.

4. THE GENERAL MANAGER, Rifle Factory,
Ishapore, Post Office-Ishapore-Nawabganj,
District-24-Parganas (North), Pin-743144;

5. THE DIRECTOR OF ESTATES,
Government of India, Ministry of Urban
Development Department, Nirman Bhawan,
New Delhi- 110011

...Respondents.



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.350/722/2016

Date of order : 25.9.19.

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

ICHHABATI DASH
VS.
UNION OF INDIA & OTHERS

For the applicant : Mr. P.C. Das, counsel

For the respondents : Mr. P. Mukherjee, counsel

ORDER

Bidisha Banerjee, Judicial Member

This application has been preferred to seek the following reliefs:-

- "a) To quash and/or set aside the impugned speaking order dated 22.01.2016 issued by the Rifle Factory, Ishapore whereby and whereunder your applicant's claim has been rejected on the ground which is not tenable in the eyes of law being Annexure A-15 of this original application;
- "b) To quash and/or set aside the impugned office letters dated 13.03.2010 and 12.03.2010 issued by the Union of India by which your applicant was forced to obtain 'No Accommodation Certificate' despite the applicant produced her 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;
- c) To pass an appropriate order directing upon the respondent authority to release the House Rent Allowance in favour of the applicant with effect from the date her appointment and to release the same along with all arrears and consequential benefits in the light of the decision made by this Hon'ble Tribunal in 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.);
- d) Costs and incidental of this original application;

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

2. The subject matter of challenge in the present O.A. is a speaking order dated 22.01.2016 issued pursuant to the direction of this Tribunal dated 04.12.2015 in O.A.No.350/1838/2015.

3. Ld. counsels were heard and materials on record were perused.

4. This Tribunal in O.A.No.350/1838/2015 had ordered thus:-

"3. It is noticed that the representation dated 02.05.2011 seeking HRA is pending before the General Manager, Rifle Factory, Ishapore and no adverse order has been passed on the said representation as yet. As such no adverse order is under challenge.

4. Learned counsel for applicant has brought to my notice the decision rendered in OA.1183/2010 dated 18.11.2010 whereafter the representation was filed. It is also placed on record that a decision rendered by this Tribunal in batch cases in O.A. 873/2012 decided on 14.08.2013 was affirmed by the Hon'ble High Court vide its judgment dated 18.07.2014 in WPCT No.470/2013 along with WPCT No.471/2013, 472/2013, 473/2013, 474/2013 wherein the Hon'ble High Court observed the following(emphasis supplied)

"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."

5. In view of the settled position, as the said judgment indicates and the orders passed in the OAs, the General Manager, Rifle Factory, Ishapore is directed to look into the grievance of the present applicant, to give her a personal hearing, if required and dispose of the representation within 1 month. In case applicant is entitled to the relief as claimed for, appropriate order shall be passed within 2 months thereafter, in the light of the decision referred to hereinabove. The decision so taken shall be communicated immediately thereafter to the applicant.

6. OA is accordingly disposed of. No costs."

Pursuant to the said direction a speaking order was issued which

reads as under:-

SPEAKING ORDER

No. 1754/9/Housing/Yard,
Dated 22/01/2016

To
Smt. Ichhabati Dash
TGT/RFHS
Personal No. 818254

Through :- HOS/RFHS

AC/
85.01/16

Sub :- Arrear HRA release of.

Ref:- Hon'ble CAT Calcutta Order dated 04/12/2015 in OA No.
350/01838 of 2015.

You are transferred from GSF joined RFI w.e.f. 01.03.08 on permanent transfer. On your joining on transfer in this factory you did not apply for allotment of quarters. Even though many circulars for allotment of quarters have been issued as per SRO provisions and norms.

02. In accordance with instructions issued by Ordnance Factory Board (OFB), Kolkata vide no. 3065/A/A dated 04/04/2006 and I.S. Note No. 263ries, (Vol. I) dated 29.07.2005, the matter of allotment of govt. quarters and grant of HRA to the employees of Ordnance Factories, is regulated in terms of provisions contained in the SRO-149 dated 23.09.2004, Fundamental Rules Part-V, Ministry of Finance OM No. F-2 (37) - F- II(B)/64 dated 27th Nov. 1965 etc. which are as under:-

- All employees of Ordnance & Ordnance Equipment Factories are to apply for govt. accommodation in the estate. Anyone who does not apply for a govt. accommodation will not be eligible for HRA.
- If a Govt. accommodation is allotted and the allotted refuses to take possession, he/she will not be entitled for HRA.
- If even a single accommodation of a particular type is vacant, no one entitled for such accommodation will be paid HRA.
- As per the relevant SRO and the system that is being followed in the factory is that the individual is to apply in a format against advertisement for quarter issued from time to time and mentioning therein the No. of the quarter of his/her entitlement advertised for the purpose. Thus the quarters are offered to the employees through such advertisement and they have to apply against the advertisement.
- The circular is a must because the quarters are allotted for those already holding quarters and new recruits and/or come on transfer. Those who are coming on transfer they are treated as new employee in the factory. As per the rule those who are holding quarter will get the priority in change over and then remaining quarters are allotted according to seniority read with the choice indicated in the application format.

03. Further, as per clarification given by the Ministry of Urban Development OM No. F-12034/1/2007-POL-III dated 14.11.2007 received under the MoD ID No. 1055/IV/D(Fy.II)/07 dated 31.03.2008 as sent by OFB vide instruction No.3165/A/A dated 06.06.2008, HRA can be paid only if Govt. accommodation is not available. In the matter of admissibility of HRA, the MoD further clarified that HRA would be admissible only in the event of an employee not being able to secure govt. accommodation and HRA cannot be paid when the govt. accommodation was available but the employee voluntarily surrendered it.

04. It is understandable that the Govt. quarters are made to facilitate the employees for stayal. Govt. money is invested for the purpose and if the employees do not stay in the quarter then this is a substantial loss to the exchequer which is adversely criticized in CAG audit.

5. Record shows that you are erroneously granted HRA from March-2008 to February-2010. Even though you did not produce NAC. As per Ministry of Finance O.M. No. F-2(37)-E-II(B)/54 dated 27.11.1965, House Rent Allowance would be admissible only on production of 'No Accommodation certificate' (NAC) issued by the Competent Authority. In this context observation of A.O./RFI issued vide letter No. P/V-Vol-IV dated 12/03/2010 is as under "In this connection it is requested to ensure that HRA claimed in r/o Smt. Ichhabati Dash, Teacher is proper as per issue of NAC is concerned. Further, other cases may also be verified so far claim for HRA is concerned" Accordingly HRA was stopped from salary bill from March-2010. You have applied for Govt. accommodation vide your application dt. 04.05.11 for the first time after a lapse of more than 3 yrs from the date of your joining.

6. Circulars for allotment of Govt. accommodation were issued from time to time asking the employees to apply in the format as prescribed in the said circulars. Record shows that the you did not apply in response to any of the circulars since your joining in this factory. In this context, circulars of vacant quarters notified and the position is given below:

7. You applied for Govt. accommodation only on 04.05.2011. NAC was issued to her on 04.05.2011 as per Govt. instructions mentioned above. Accordingly, HRA was released to them with effect from the same date i.e. 04.05.2011 which is in consonance with Govt. Instructions.

Sl No	Name of applicant	Date of joining on transfer	Date of application for quarter at the time of joining and nature of application	Position of vacant quarters from March-2008 to May-2011	Circular issued during the period March-2008 to May2011	Whether applied against any specific circular	Remarks
(1)	(2)	(3)	(5)	(6)	(7)	(8)	(9)
1	Ichhabati Dash	Trf. From GSF and join in RFI on 01.03.08	04.05.11 and not against any specific quarters	Total 147 Nos.	No.58 dt. 06/3/08, No. 62 dt. 10/03/08 No. 81 dt. 02/04/08, No. 87 dt. 11/04/08, No. 85 dt. 10/04/08 No. 89 dt. 16/04/08, No. 100, dt. 30/04/08, No. 117 dt. 22/05/08, No. 126 dt. 03/06/08, No. 143 dt. 23/06/08, No. 168 dt. 30/07/08, No. 205 dt. 09/09/08, No. 249 dt. 12/11/08, No. 256 dt. 03/12/08,	Not applied	Govt. order I.S. Note No. 263/A/A (Vol.I) dt. 29.07.05 states that even if a single accommodation of a particular type is vacant, no one entitled for such accommodation will be paid HRA.

					No. 17 dt. 20/01/09, No. 120 dt. 16/06/09, No. 130 dt. 03/7/09, No. 169 dt. 08/08/09, No. 226 dt. 21/10/09, No. 264 dt. 01/12/09, No. 23 dt. 01/02/10, No. 48 dt. 10/03/10, No. 82 dt. 03/05/10, No. 89 dt. 15/05/10, No. 101dt. 02/06/10, No.285 dt. 26/07/10, No. 160 dt. 26/08/10, No. 226 dt. 10/11/10, No. 234 dt.24/11/10, No. 247 dt. 08/12/10, No. 05 dt. 06/01/11 & No. 83 dt. 28/03/11		
--	--	--	--	--	---	--	--

08. You applied for Govt. accommodation only on 04.05.2011. NAC was issued to you on 04.05.2011 as per Govt. instructions mentioned above. Accordingly, HRA was released to you with effect from the same date i.e. 04.05.2011 which is in consonance with Govt. Instructions. Thus any claim to HRA prior to that date (and if paid) that is recoverable.

This disposes of your application dt.02/05/2011 in compliance with the order of the Hon'ble CAT dt. 04/12/2015.


(Officer in Charge)
Rifle Factory, Ishapore

5. We note that the decision in O.A. No.873/2012 (Annexure A/11) & others clearly clarified the implications of circulars dated 14.11.2007 and 27.11.1965 in the following manner:-

"14. xxx xxx

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 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."

Said order when assailed before the Hon'ble High Court in WPCT No.470/2013, the Hon'ble High Court observed as under:-

"In the present petitions, we are concerned with five Original Applications viz., O.A. 873 of 2012, O.A. 874 of 2012, O.A. 612 of 2012, O.A. 872 of 2012, O.A. 875 of 2012.

The employees, i.e., the Respondents herein, were aggrieved by the decision of the petitioners not to pay them House Rent Allowance, although they had not availed of Government accommodation. These employees contended that they were entitled to House Rent Allowance from the date when they did not occupy the Government accommodation. In the case of some employees this date from which they sought the allowance was from the date of appointment in service. In the case of others it was from a later state, when the employee vacated the Government accommodation.

As these employees were not paid the House Rent Allowance or arrears of House Rent Allowance w.e.f. the date they did not occupy or had vacated the Government Quarters, they filed the aforesaid original applications.

A reply was filed by the petitioners contending that the Respondents were not entitled to House Rent Allowance immediately after they vacated the quarters or from the date of appointment, as the case may be. According to the Petitioners, unless a 'No Accommodation Certificate' is issued by the competent authority indicating that there is no Government accommodation available for the employee to occupy, he is not entitled to House Rent Allowance.

The Tribunal, by its impugned decision, has passed certain directions for payment of House Rent Allowance. By a common order the Tribunal has considered the case of the applicants in each of the applications, as is apparent from the order itself. In O.A. 874 of 2012, the applicant sought House Rent Allowance from the due date. In O.A. 612 of 2012, the applicants sought House Rent Allowance from the date they vacated the Government Quarters they had initially occupied. In O.A. 872 of 2012 also the applicants sought House Rent Allowance from the date they surrendered the Government accommodation occupied by them earlier. Similarly, in O.A. 875 of 2012 the same prayer was made. The applicants had claimed the amount on the basis of the decision of the Tribunal in O.A. 1183 of 2010 [Om Prakash Sharma and Others VS. Union of India & Others]. The Tribunal took note of the fact that its decision in the aforesaid case had been upheld by this Court in WPCT No.111 of 2011 on 17th May, 2011 and confirmed later by the Supreme Court in SLP (Civil) No.26234 of 2011 by its order dated 26th September, 2012. The Tribunal has then considered the arguments advanced on behalf of the Parties and the relevant Rules applicable for payment of House Rent Allowance. After perusing Rule 4 of the General Rules and Orders relating to those occupying or refusing Government accommodation contained in the House Rent Allowance, the instructions issued by the Directorate of Estate, certain instructions and memoranda issued by the Government from time to time in respect of House Rent Allowance, the aforesaid judgments of the Tribunal, the High Court and the Supreme Court, it has concluded thus:

"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. It if 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."

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 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.

6. We would further note that while this Tribunal discussed the implications of the circulars threadbare it found that it was mandatory for the authorities to explore possibilities of transferring surplus units to the general pool or to offer the surplus quarters to the willing employees above their entitlements which exercise was never undertaken by the respondents when a mandatory order was issued by this Tribunal upon the respondents to ascertain whether quarters vacated by the applicants were ever offered to other employees in terms of O.M. dated 14.11.2007 which view was upheld by the Hon'ble High Court, as enumerated supra, with an additional observation that there was nothing to indicate that such procedure was undertaken after the order was passed by this Tribunal or it was mandatory for the employees to live in Government quarters or that their appointment letters had a compulsory clause requiring them to occupy Government accommodation.

7. We fail to comprehend how the respondents rejected the claim of the present applicants applying a circular mandating issuance of 'No Accommodation Certificate(NAC)' in order to make one eligible to claim HRA. The speaking order being thus violative of the directions of this Tribunal and the decision of the Hon'ble High Court as enumerated supra, is quashed. The matter is remanded back to the authorities to first undertake an exercise in terms of the direction in O.As 873,874,612, 872 and 875 of 2012 and pass appropriate orders keeping in view the decision of the Hon'ble High Court in WPCT.470/2013 within a period of 3 months from the date of communication of this order.

8. Accordingly the application is disposed of. No order as to cost.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

sb