

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved: 01.03.2017

Delivered on: 28.03.2017

CORAM

THE HONOURABLE MR.JUSTICE K.K SASIDHARAN
and
THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.Nos.26589 and 26590 of 2015

P. Subramanian ...Petitioner in
W.P.26589 of 2015
P. Neelamegam ... Petitioner in
W.P.26590 of 2015

versus

1. The Central Administrative Tribunal,
Chennai Bench, Rep by its Registrar,
City Civil Court Building,
High Court Complex, Chennai.
 2. The Union of India
Rep by The Chairman
Ordnance Factory Board,
Ayudh Bhvan,
No.10-A, Shahid Khudiram Bose Road,
Kolkata-700 001.
 3. The General Manager
Heavy Alloy Penetrator Project
Ministry of Defence,
Government of India,
Tiruchirappalli-620 025
- .. Respondents in
both the W.Ps.

Petitions filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondents Tribunal in O.A.Nos.1723 and 1722 of 2013 dated 03.06.2015 upholding the orders passed by 3rd respondent in OA 1472 & 1471/13/Conf/HAPP/13 dated 21.11.2013, quash both the orders and consequently direct the 3rd respondent to grant House Rent Allowance to the petitioners without insisting on NAC (No Accommodation Certificate) with effect from 12.1.2012 and 15.07.2012 onwards respectively.

For Petitioner .. Mr. V. Vijay shankar

For Respondents .. Mr. V.P. Sengottuvel
SCGSC for R2 AND 3

COMMON ORDER

Both the Writ Petitions arise out of a common order dated 3.6.2015 passed by the Central Administrative Tribunal (in short, 'the Tribunal'), Madras Bench in OA Nos.1722 and 1723, dismissing the applications filed by the petitioners herein.

2. The petitioners herein have approached the Tribunal, seeking the following relief:

"To call for the records of the 2nd respondent pertaining to the order of the 2nd respondent made in OA 1471/12/Conf/HAPP/13, dated 21.11.2013 rejecting the request of the applicant for the payment of House Rent Allowance and set aside the same and direct the 2nd respondent to pay the House Rent Allowance to the applicant without insisting NAC with effect from 12.01.2012 onwards."

"To call for the records of the 2nd respondent pertaining to the order of the 2nd respondent made in OA 1472/12/Conf/HAPP/13, dated 21.11.2013 rejecting the request of the applicant for the payment of House Rent Allowance and set aside the same and direct the 2nd respondent to pay the House Rent Allowance to the applicant without insisting NAC with effect from 12.01.2012 onwards."

3. The petitioners were the employees of Heavy Alloy Penetrator Project (HAPP), Tiruchirappalli. They had originally in occupation of Government servant quarters for several years and due to their personal requirements, they have surrendered the quarters and claimed House Rent Allowance (in short, 'HRA') since they were in occupation of private residences. According to the petitioners, after vacating the quarters by them, the same were allotted to other employees, however, the HRA was not paid to the petitioners since the official respondents insisted for production of "No Accommodation Certificate" (in short, 'NAC'). According to the petitioners, NAC was not warranted in their case since there was no other official quarter available for occupation and as there was 100% occupancy, insistence of NAC was unwarranted and uncalled for. The petitioners also contended that there were hundreds of employees who were in receipt of HRA and against whom, no such demand insisting production of NAC was raised by the respondents. Therefore, the insistence of production of NAC by the official respondents, per se discriminatory, arbitrary and contrary to the instructions issued by the Government of India.

4. In the Original Applications filed before the Tribunal, the petitioners produced the statement obtained under Right to Information Act, which was made as part of the pleadings in para 4.4. As per the information furnished, all the quarters were in occupation and no quarter was unfilled during the relevant time. It was also informed under the RTI Act, that there were 438 employees, who were paid with HRA and there was 100% occupancy during the relevant point of time. In such view of the matter, the question of production of NAC does not arise at all and any such requirement insisted by the official respondents, cannot be countenanced in law.

5. Per contra, it was contended on behalf of the official respondents before the Tribunal that the petitioners have surrendered their quarters allotted to them for their own reasons and HRA was admissible in such circumstances only on production of NAC and in the absence of said NAC by the petitioners, the question of grant of HRA would not arise. According to the official respondents, as per Rule 22(2) of SRO-149 dated 23.09.2004 of Ministry of Defence, an employee who surrenders his quarters, shall not be considered for allotment of Government accommodation at the same station for a period of six months from the date of such surrender and as such, as per para 4(b)(i) of OM dated 27.11.1965, the allowance will not be admissible for the period, the petitioners are debarred from applying for Government accommodation and thereafter as per para 4(a)(ii), the procedure for applying for government accommodation has to be followed for determining the entitlement of HRA. It was also contended on behalf of the respondents that between January 2010 and May 2014, applications were invited for occupation of vacant Government quarters which clearly demonstrate the fact that there were surplus vacant Government quarters available and in such scenario, the question of entitlement of HRA as far as the petitioners are concerned, cannot be admissible.

6. After taking note of the submissions of the parties, the learned Tribunal, in para 10 of its order, found that there was surplus of Government accommodation at HAPP and hence, insistence of NAC, cannot be faulted with. The learned Tribunal, further proceeded on that footing and extracted the provisions of OM dated 27.11.1965 as if there were surplus Government quarters available and therefore, the petitioners cannot be granted the relief as prayed for. The finding of the learned Tribunal, as regards availability of surplus quarters for occupation of the employees of HAPP, as could be seen from the records, has no basis at all. Unfortunately, the learned Tribunal has not appreciated the information obtained under the RTI Act, which was made as part of the pleadings in the Original Applications, for which, there was no answer from the official respondents. In view of the factual information made available

in favour of the petitioners, under the RTI Act, we are unable to understand from where the Tribunal has got the contra evidence as to the surplus of Government quarters available for accommodation of the employees of HAPP.

7. From the records, it could be seen that the petitioners have made out a clear case for the relief sought for by them and the findings of the learned Tribunal in respect of availability of Government quarters as found in paragraph 10 of the impugned order, cannot be sustained both in law and on facts. Particularly so, the official respondents have not chosen to refute the specific pleadings in this regard as found in the Original Applications. In the absence of specific denial, more particularly, the information obtained under the RTI Act, the Tribunal ought to have accepted the version put forth by the petitioners, which of course, had gone uncontroverted. Moreover, the decisions cited by the learned Tribunal rendered by the Hon'ble Supreme Court and the Hon'ble High Courts of Bombay and Madhra Pradesh, cannot be made applicable to the factual matrix of the present case and the reliance placed by the learned Tribunal on the decisions, a portion of which, had been extracted in the order, is misconceived. The finding of the learned Tribunal that the decisions as extracted in the impugned order squarely applicable to the present case, may not be correct and the reliance placed by the Tribunal is without appreciating the circumstances which formed the basis of the petitioners' claim, is misconceived.

8. Therefore, the ultimate decision of the Tribunal in dismissing the applications, cannot be sustained. We are, therefore, of the view that the Tribunal has misdirected itself in dismissing the applications without due reference to the factual and legal position and therefore, the orders passed by the learned Tribunal in O.A.Nos.1722 and 1723 of 2013 are set aside and consequently, both the Applications stand allowed.

9. Accordingly, the official respondents are directed to release and disburse the HRA allowance admissible to the petitioners from the date of their private occupation, i.e. 12.01.2012 and 15.7.2012 and continue to pay the same, without insisting upon production of NAC.

With the above direction, the Writ Petitions are allowed. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

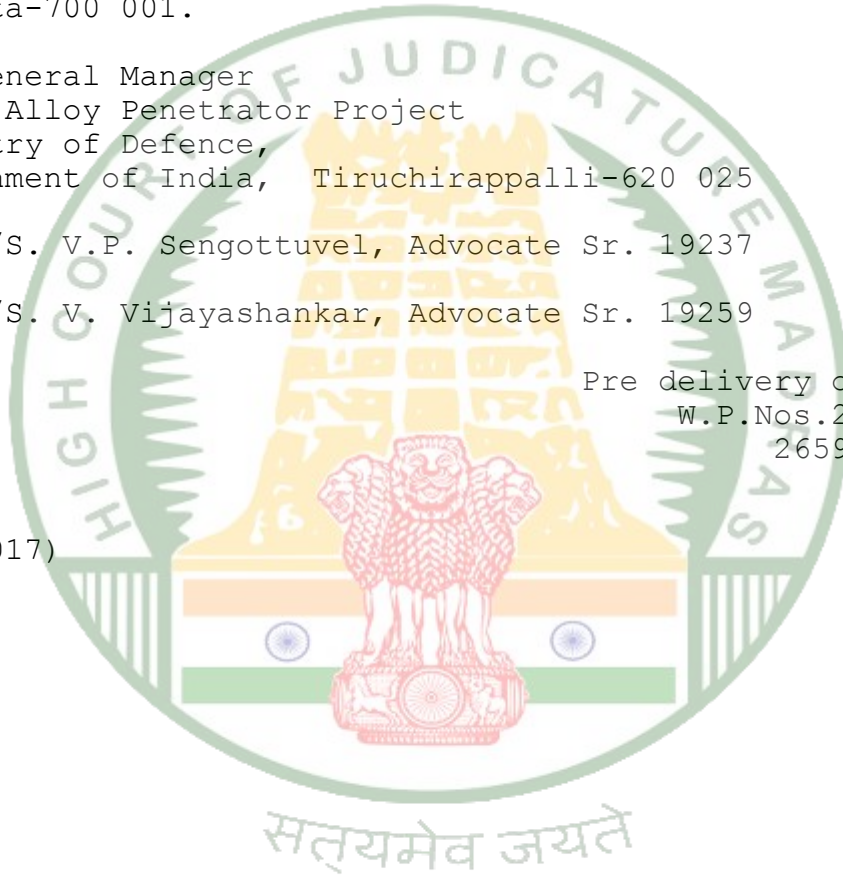
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+1cc to M/S. V.P. Sengottuvel, Advocate Sr. 19237

+1cc to M/S. V. Vijayashankar, Advocate Sr. 19259

Pre delivery order in
W.P.Nos.26589 &
26590 of 2015

SAI (CO)
VR(24/4/2017)



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