

BEFORE

HON'BLE MR JUSTICE IA ANSARI

HON'BLE MRS JUSTICE ANIMA HAZARIKA

By this common Judgment and Order, we propose to dispose of the present three writ petitions, namely WP(C) No. 6249/2011, WP(C) No. 5053/2011 and WP(C) No. 5245/2010, made under Article 226 of the Constitution of India inasmuch as the facts of each of the writ petitions are, in substance, identical and involve the same questions of law for determination.

2. We have heard Mr D P Challiha, learned Senior counsel, for the petitioners, assisted by Mr HG Baruah, Advocate. We have also heard Mr A Hussain, Mr JMA Choudhury and Mr K. Paul, learned Central Government counsel, appearing for the respondents In WP(C) Nos. 6249/2011, 5053/2011 and 5245/2011 respectively.

3. The subject matter of controversy, in the present set of writ petitions, relate to the orders, dated 14.01.2010, and, 21.06.2010, issued by the Director General, Assam Rifles. By the order dated 14.01.2010, aforementioned, while the authorities concerned have been directed to recover license fee from the occupants of the residential houses of the Government, the order, dated 21.06.2010, aforementioned requires the petitioners to pay license fees for the Government accommodation provided to them.

4. Impugning the orders, dated 14.01.2010 and, 21.06.2010, aforementioned, Original Application (in short O.A.) No. 311/2010 was filed in the learned Central Administrative Tribunal, Guwahati Bench. By its order, dated 29.07.2011, which stands impugned in one of the present three writ petitions, namely, WP(C) No. 6249/2011, the learned Central Administrative Tribunal has dismissed the said Original Application No. 311/2010.

5. Considering the fact that so long as the order, dated 29.07.2011, passed, in O.A. No. 311/2010, by the learned Central Administrative Tribunal remains effective, no relief can be granted to any of the writ petitioners, we are required to, first, determine the correctness and validity of the order, dated 29.07.2011, whereby the learned Tribunal has dismissed the O.A. No. 311/2010.

6. With regard to the above, it is noteworthy that the learned Tribunal has referred to, at paragraph 6 of its impugned order, the decision of Government of India, Ministry of Housing and Works, which was conveyed by Office Memorandum No. 12-11/60-ACC-I, dated 02.03.1960.

7. In view of the fact that the contents of O.M. No. 12-11/60-ACC-I, dated 02.03.1960, aforesaid laid the foundation for dismissal of the O.A. No. 311/2010, the said Office Memorandum is reproduced below:

G.I.M.H. & W., O.M. No. 12-11/60-ACC-I, dated 2-3-1960

The undersigned is directed to refer to this Ministry's O.M. No. 3765-W.III/49, dated 26.11.1949 and No. 5219-W.III/50, dated August, 1950, laying down that the criterion for grant of rent-free concession shall be the obligatory stay of the incumbent at the office premises for proper discharge of official duties. The position has been reviewed in the light of observations made by II Pay Commission and it has been decided, with the concurrence of Ministry of Finance, that where for the efficient discharge of duties it is necessary that an employee should live on or near the premises where he works, it would be desirable that he should be provided with a Government residence. But the residence should be rent free or rent recovered at reduced rates only if the natures of his duties or conditions under which they have to be performed are such that a higher scale of pay or special pay. Etc., would be granted but for the concession of rent-free accommodation or recovery of rent at reduced rates. It has also been decided that this concession should, in future, be allowed only with the concurrence of Ministry of Finance in each case.

2. The Ministry of Home Affairs, etc., are requested to review the rent concession already allowed to Government servants in the Ministry and the officers attached and subordinate to them, in consultation with their associated Finance. For this purpose lists of cases which do not fulfil the criterion mentioned above, indicating therein the category of employees, their scales of pay, the orders under which the concession has been allowed and whether the concession has had the concurrence of the Ministry of Finance and other relevant details.

8. From a careful reading of the contents of O.M. No. 12-11/60-ACC-I, dated 02.03.1960, it can be easily gathered that as far as the Ministry of Housing and Works, Government of India, is concerned, it brought out the said Office Memorandum, upon review of its earlier policy, with regard to providing of rent free accommodation.

9. It may also be noted that in the light of the recommendations of the Second Pay Commission and, having obtained concurrence of the Ministry of Finance, Government of India, the Ministry of Housing and Works, Government of India, issued the said Office Memorandum stating that wherever it is necessary for efficient discharge of duties to permit an employee to live on or near the premises, where he works, he should be provided with a Government residence, but the residence should be rent free or on rent, which should be recovered at reduced rates only, if the nature of his duties or conditions under which an employee has to perform are such that a higher scale of pay or special pay, etc., would be granted, but for the concession of rent free accommodation or recovery of house rent at reduced rates. By issuing the O.M. No. 12-11/60-ACC-I, dated 02.03.1960, the Ministry of Housing and Works, Government of India, requested the Ministry of Home Affairs, Government of India, to review the policy for rent free accommodation or accommodation to be provided at reduced rate.

10. By order, dated 29.07.2011, passed in O.A. No. 311/2010, the learned Tribunal, while dismissing the O.A. No. 311/2010, has upheld the O.M. No. 12-11/60-ACC-I, dated 02.03.1960. It however, transpires that while learned Tribunal reproduced and took into account the first paragraph of the said Office Memorandum, which contained the decision of the Ministry of Housing and Works, Government of India, the learned Tribunal did not take into account and appears to have, inadvertently, omitted to note that in terms of the said Office Memorandum, an exercise was required to be undertaken by the Ministry of Home Affairs, Government of India, with regard to the providing of rent free accommodation or accommodation at reduced rate.

11. The learned Tribunal, we find, has not tried to find out if, in terms of the decision, which was taken by the Ministry of Housing and Works, Government of India, the Ministry of Home Affairs, Government of India, had undertaken any exercise and issued appropriate orders in their behalf. Without this exercise having been carried out, no recovery of fees from an employee, who had been enjoying rent free accommodation, was legally possible nor was it possible for the Ministry of Home Affairs, Government of India, or any of its functionary or its statutory authorities, to recover licence fee or recover any rent from the employees, who had been enjoying the benefit of rent free accommodation.

12. The petitioners, in the present cases, are, admittedly, a few of those persons, who have been enjoying the benefit of rent free accommodation or accommodation at reduced rate in terms of the decision conveyed by the Ministry of External Affairs, Government of India, by letter No. F.2 (19) NEFA/58, dated 27.08.1958, which reads as under :-

No. F2(19) NEFA/58
GOVERNMENT OF INDIA
MINISTRY OF EXTERNAL AFFAIRS.
REF. DELHI (30), the 27th August, 1958

To

The Adviser to the Government of Assam,
Shillong.

Subject: Sanction of rent free accommodation for the ministerial and other civilian staff of Assam Rifles Battalion.

Reference: No. AR/ENG/41-56/105 dated 22.5.58

Sir,

I am directed to refer to your above quoted letter on the subject mentioned above, and to convey the sanction of the Govt. of India to your proposal in that letter for grant of rent free accommodation for the ministerial and other civilian staff of Assam Rifles battalion.

2. Formal expenditure sanction may kindly be issued by your consultation with the Financial Adviser, NEFA.

Yours faithfully,
Sd/-XXX

H.S.Jagad
Under Secretary (FA)
Copy to the Financial Adviser, NEFA, Shillong.

2. A copy of the note recorded by the F.A. on the Ministry's file on the subject is enclosed herewith for record.

(H S Jagad)

Confidential: U/O No. 1344-CT dt. 7/9

13. On a query made by us, nothing could be submitted, on behalf of the respondents, to show that the letter, dated 27.08.1958, aforesaid has been rescinded, cancelled, revoked, withdrawn or superseded by any subsequent letter issued by the Ministry of External Affairs, Government of India. Consequently, so long as no exercise in terms of the decision, which the Ministry of Housing and Works, Government of India, conveyed by the O.M. No. 12-11/60-ACC-I, dated 02.03.1960, is carried out by the Ministry of Home Affairs, Government of India, the petitioners cannot be deprived of rent free accommodation or accommodation at reduced rate, as the case may be. As this aspect of the matter needs re-examination and this requires determination of disputed questions of fact, it is the learned Tribunal, which, we find, is the appropriate Tribunal, where these questions shall be determined and decided.

14. Thus, the impugned order, dated 29.07.2011, passed by the learned Tribunal, in O.A. No. 311/ 2010, cannot be sustained and as long as the decision, so reached, on 09.07.2011, by the learned Tribunal, remains in force, none of the petitioners can be granted the reliefs, which they have sought for.

15. Situated thus, we are of the considered view that the order, dated 29.07.2011, passed by the learned Tribunal needs to be set aside and the O. A. No. 311/2010 needs to be remanded to the learned Tribunal for its adjudication afresh after taking into account the complete contents of the Office Memorandum No. 12-11/60-ACC-I, dated 02.03.1960, issued by the Ministry of Housing, Government of India.

16. In the result and for the foregoing reasons, the order, dated 29.07.2011, passed, in O.A. No. 311/2010, by the learned Tribunal, is hereby set aside and the O.A. aforementioned is remanded to the learned Tribunal for its decision in accordance with law keeping in view the observations made in the preceding par

agraphs of this judgment and order. Until the time the learned Tribunal, upon hearing the parties concerned, take a decision in the matter, the operation of the impugned orders, dated 14.01.2010 and 21.06.2010, shall remain suspended so far as the petitioners of the present three writ petitions are concerned.

17. In order to enable the learned Tribunal expeditiously dispose of the O.A. No. 311/2010, we direct the writ petitioners in WP(C) No. 6249/2011, shall appear in the learned Tribunal, on 22.03.2012, for further necessary orders to be passed by the learned Tribunal.

18. Furnish a copy of this order to the learned Central Government Counsel.

19. While deciding the O.A. No. 311/2010, the learned Tribunal shall also determine if SR 317 B-12 is applicable to the employees of the Assam Rifles in the North East Regions or not.

20. With the above observations and directions, this writ petitions stand disposed of.

21. No orders as to costs.