

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WP (C) No.1712 of 2006

% Reserved on: 16.05.2008
Date of decision: 23.05.2008

INSPECTOR/EXE. JASPAL SINGH MANN ...PETITIONER
Through: Ms. Rekha Palli, Advocate.

Versus

UNION OF INDIA & ORS. ...RESPONDENTS
Through: Mr. Ashwani Bhardwaj,
Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE MOOL CHAND GARG

- | | | |
|----|--|-----|
| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be
reported in the Digest? | Yes |

SANJAY KISHAN KAUL, J.

1. The petitioner is aggrieved by the non-grant of either the rent free accommodation or the House Rent Allowance (for short 'HRA') only by reason of a decision of the respondents that such facility is extendable only to a certain percentage of persons on the strength of the cadre for a particular town.

2. The petitioner was selected as a Sub-Inspector/Exe. In the CISF in pursuance to a letter dated 1.9.1988. The initial pay of the petitioner was fixed at Rs.1,400.00 per month in the pay-scale of Rs.1400-40-1800 EB-50-2300 “plus usual allowances as admissible and sanctioned by the Central Government from time to time”. The letter also provided for the provisions of the Central Industrial Security Force Act, 1968 (hereinafter referred to as the said Act) and the Rules as also any other relevant rules and regulations which may be framed by the Central Government from time to time to apply to the petitioner.
3. The petitioner was transferred from the CISF Unit Civil Airport, Amritsar to CISF Unit IGI Airport, New Delhi vide order dated 29.3.2005 and the petitioner joined in May 2005. The petitioner was not being provided a Government family accommodation at Amritsar and thus was in receipt of HRA. The petitioner on his transfer to New Delhi made applications for allotment of family accommodation and requested that if no family accommodation is available he be given permission to stay in an accommodation with his family and be paid the HRA. The respondents informed the petitioner vide letter dated 12.7.2005 that no Government accommodation was available for him and that he would be given out-living permission but without payment of HRA. The out-

living permission was subject to various conditions including residing within eight kilometers of radius from the place of duty.

4. The petitioner was aggrieved by the aforesaid decision denying him the HRA and it resulted in the monthly loss of Rs.4,000.00 per month towards payment of rent and thus made a representation dated 5.8.2005 and 19.11.2005. The petitioner claims that he was orally informed that the benefit of family accommodation or HRA was admissible only for 45 per cent of the enrolled officers and since he did not fall within the quota of 45per cent as per his seniority on the date of his joining the Unit he is not entitled to either.
5. The petitioner has thereafter filed the present writ petition seeking a writ of mandamus directing the respondents to grant him either Government family accommodation or HRA in lieu thereof and also seeks quashing of Rule 61 of the Central Industrial Security Force Rules, 2001 (hereinafter referred to as the said Rules) which has been relied upon by the respondents to deny him the benefit.
6. In the counter affidavit the respondents have pleaded that the quota of HRA in the rank of Inspector has already exhausted and thus the request of the petitioner for grant of HRA in the new Unit was examined after the

petitioner reported in the Unit. The same is stated to be based on seniority and his name was entered in the register for the purposes of grant of HRA. It is stated that there was no quota for grant of HRA to the rank of Inspector. The respondents have relied upon Rule 61 of the said Rules referred to aforesaid, which reads as under:

“61. Free accommodation. – (1) Normally, the undertaking where the Force has been deputed shall provide accommodation in the township itself to all supervisory officers and at the rate of 45 per cent married and 55 per cent unmarried or as amended by the Central Government from time to time, to the enrolled members of the Force.

(2) The accommodation to the enrolled member of the Force shall be rent-free but where such facilities are not available they shall get house rent allowance in lieu thereof as applicable to other central government employees.

(3) The members of the Force shall also get compensation in lieu of married accommodation in terms of orders issued by the Government from time to time in this respect. The compensation shall be payable to that percentage of members of the Force who are entitled to get married accommodation minus those members of the Force who are allotted accommodation by the Undertaking.

(4) Supervisory officer of the Force who is provided accommodation by the Public Sector Undertakings or allotted accommodation by Directorate of Estate will pay licence fee to the Public Sector Undertakings at the rates as applicable to their own employees or the licence fee as fixed by the Central Government for general pool accommodation from time to time with reference to plinth area of accommodation as the case may be.”

7. A reading of the aforesaid Rule shows that the respondents Force is required to provide accommodation in the township itself to all the supervisory officers in the ratio of 45 per cent for married and 55 per cent for unmarried or as may be amended by the Central Government from time to time. Sub-rule 2 provides that the accommodation shall be rent-free but where such facilities are not available, the members would be entitled to get House Rent Allowance (HRA) in lieu thereof as applicable to other Central Government employees. Sub-rule 3 provides that the members of the force are also entitled to compensation in lieu of married accommodation in terms of orders issued by the Government from time to time and the compensation shall be payable to that percentage of members of Force who are entitled to get married accommodation minus (-) those members who have got accommodation by the Undertaking.
8. The respondents have also relied upon an order dated 27.11.1980 read with the order dated 30.3.2000 providing for compensation in lieu of rent-free accommodation for certain personnel. The office orders purport to state that the non-gazetted personnel of the CPOs are entitled to compensation in lieu of rent-free accommodation up to a certain percentage of the total

strength of personnel in different categories and such percentage may vary from organization to organization and from rank to rank. There have been upward revision of the percentage of eligible persons in various CPOs for grant of compensation. It is, thus, submitted that the respondents are well within their right to deny both the rent-free accommodation and the HRA to the petitioner.

9. Learned counsel for the petitioner in support of her contention referred to the judgement of the Supreme Court in Union of India Vs. Dineshan K.K. (2008) 1 SCC 586 which dealt with the apparent disparity and anomaly on account of the report of the Pay Commission of the different para-military forces. The High Court held that it would be unreasonable and discriminatory if pay-scale given to Radio Mechanics in CRPF and BSF were denied to the Radio Mechanics in Assam Rifles, when the qualifications and service requirements in all the three organizations were identical. The challenge to this order by the Government was rebutted by Supreme Court on the ground that such persons were performing identical functions in the different para-military forces.
10. Learned counsel also sought to draw strength from the judgement of the Supreme Court in Director, Central Plantation Crops Research Institute, Kesaragod & Ors. Vs.

M. Purushothaman & Ors. 1995 Supp (4) SCC 633 which

dealt with the concept of HRA in the following terms:

“8. HRA would be covered by the definition of compensatory allowance. It is compensation in lieu of accommodation. This definition itself further makes it clear that compensatory allowance is not to be used as a source of profit. It is given only to compensate for the amenities which are not available or provided to the employee. The moment, therefore, the amenities are provided or offered, the employee should cease to be in receipt of the compensation which is given for want of it. We with the Tribunal had perused the definition of ‘pay’ and “compensatory allowance” given in the Fundamental Rules before pronouncing that HRA is a part of the wages or pay and, therefore, cannot be disturbed.”

11. Similarly in State of Karnataka & Anr. Vs. Mangalore University Non-teaching Employees' Association & Ors.

(2002) 3 SCC 302 the Supreme Court observed in paragraph 9 as under:

“9. Before dealing with the argument based on Article 14, we may advert to the comment of the Division bench that the payment of HRA and CCA is not in the nature of concession as opined by the learned Single Judge. True, as pointed out by the Division Bench, HRA and CCA, which are components of total salary undoubtedly form part of conditions of service and it may not be accurate to describe them as concession. Probably, the learned Single Judge treated it as a concession for the reason that the benefit was being given over and above what was contemplated by the rules embodied in GO No.67 dated 4-5-1990. Be that as it may, the fact that HRA and CCA are part of conditions of service does not lead the respondents anywhere for the simple reason that the conditions of service can be unilaterally altered so long as such action is in conformity with legal and constitutional provisions. Ultimately, therefore, the issue turns on the question where Article 14 is violated for not extending the benefit of higher scale of allowances admissible to ‘C’

Class city employees or by withdrawing a benefit which was being given under the ad hoc orders issued from time to time.”

12. We have examined the rival contentions of the parties. The first aspect to be considered is the concept of the HRA itself. HRA is not in the nature of a concession but it forms a component of the total salary as part of condition of service. It is in the nature of a compensatory allowance in lieu of accommodation. Thus, the object is to compensate an employee for the amenities which are not available as provided to other employees. The service personnel of the CISF and other CPOs while posted in different stations are thus granted accommodation and in case of shortage of the same HRA is paid.
13. The operation of Rule 61 of the said Rules and its interpretation has given rise to a situation where the grant of such accommodation or HRA in lieu thereof is sought to be made dependent where a person is posted.
14. It is trite to say that the transfer or posting is an incident of service. The respondents post such persons at different stations according to their requirement and thus there cannot be any discrimination on the question of the grant of accommodation or HRA in lieu thereof on the basis of such station one is posted to. Thus, merely

because the petitioner comes to be posted at Delhi from Amritsar he cannot be deprived the HRA.

15. Another aspect to be noted is that in some of the para-military forces, 100 per cent of the force is being granted family accommodation or HRA in lieu thereof giving rise to discrimination between personnel of para-military forces and thus principles as laid down in Union of India Vs. Dineshan K.K. case (supra) would equally apply.
16. The appointment letter issued to the petitioner itself stated that allowances as admissible and sanctioned by the Central Government would apply and HRA is payable as per CCS (HRA) Rules as admitted by the respondents.
17. We fail to appreciate either the rationale or the basis for creating an artificial category of persons who would be disentitled to an accommodation or HRA. There can be percentages assigned between different categories of personnel for distribution of the accommodation available. This is a natural corollary of shortage of accommodation. The petitioner cannot make a grievance in respect of the same. However, if a personnel is not granted a family accommodation on account of his seniority being lower in his category of persons as per the percentage of distribution of family accommodation, HRA must follow. The rule as sought to be interpreted would imply that not only is there a percentage

distribution between different categories but the persons falling outside the ambit of consideration would be deprived even of the HRA. The only manner of reading the Rule which would sustain would be that Rule 61 of the said Rules would not entitle a person to claim family accommodation if in the percentage of distribution as per sub-rule 1 of Rule 61 of the said Rules, he is not of sufficient seniority but in that eventuality he is entitled to the HRA in lieu thereof as applicable to the Central Government employees. Sub-rule 2 of Rule 61 of the said Rules is unambiguous inasmuch as, it says that those who cannot be provided with a free accommodation because of the paucity of accommodation which has to be distributed in the ratio of 45 per cent : 55 per cent in case of married and unmarried officials, shall be provided HRA in lieu thereof. If Rule 61 (1) and Rule 61 (3) of the said Rules are read together, the only conclusion which can be derived is, that while there may be a situation where there may not be a house available for allotment to an officer posted at a particular station, he still would be entitled to HRA. However, in case where a person is entitled to married accommodation but is provided with unmarried accommodation, then he may also be entitled to compensation in lieu of married accommodation in

addition to the allotment of house available for unmarried category if he wants to occupy the said house.

18. Reading of Rule 61 of the said Rules in the manner as stated above would also imply, that the Government circulars on which much reliance has been placed upon by learned counsel for the respondents, i.e., the circulars dated 30.3.2000 and 27.11.1980, is misconceived inasmuch as, those circulars cannot override, the Statute, that is, Rule 61 (2) of the said Rules.
19. A contrary interpretation would make the Rule discriminatory and hit by Article 14 of the Constitution of India having no rational or nexus with the object sought to be served. It can hardly be the intent of the respondents that the grant of HRA is dependent on a chance factor as to where a person is posted. In fact, this may itself result in unnecessary representations and pressures by persons for being posted to places where they would be entitled to such an HRA as posting in other places may deprive them of this entitlement. Housing in most parts of the country is expensive and a large expense for a service personnel. The grant of such HRA, thus, cannot vary from town to town except to the extent that the amount of HRA would vary dependent on the classification of the town/city.

20. We also find it a discriminatory practice where personnel of other para-military forces who are identically situated may be getting an accommodation or HRA in lieu thereof for all the personnel posted in that station while such benefit is sought to be denied in other para-military services.
21. We are, thus, of the considered view that persons in the service of the respondents when posted to any station would be entitled to either accommodation or HRA in lieu thereof as per the Central Government norms, the value of reimbursement being dependent on the city where they are posted.
22. A writ of mandamus is issued directing the respondents to pay to the petitioner the HRA in lieu of a family accommodation from the date the petitioner became entitled to claim such family accommodation and Rule 61 of the said Rules is accordingly read down to imply that such entitlement would be within the parameters of the said Rules. A reading down of such rule is permissible so as to uphold the said Rule as the alternative would be to quash the rule as violative of the Constitution of India and an interpretation which would sustain the rule and yet make it not arbitrary or discriminatory by reading down the same will be course of action which would be

appropriate. The arrears be paid to the petitioner within a period of three (3) months from today.

23. The petition stands allowed in the aforesaid terms.

24. The petitioner shall also be entitled to costs quantified at Rs.5,000.00.

SANJAY KISHAN KAUL, J.

MAY 23, 2008
b'nesh

MOOL CHAND GARG, J.