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

% *Date of Decision : May 26, 2015*

+ **W.P.(C) 5301/2015**

SAMSEN PAT Petitioner
Represented by: Dr.Vijendra Mahndiyan,
Advocate with Ms.Pallavi Awasthi,
Advocate

versus

UNION OF INDIA & ORS Respondents
Represented by: Mr.Sarat Chandra, Advocate for R-1
to R-3

W.P.(C) 5362/2015

ASHA KANTA KERKETTA Petitioner
Represented by: Dr.Vijendra Mahndiyan,
Advocate with Ms.Pallavi Awasthi,
Advocate

versus

UNION OF INDIA & ANR Respondents
Represented by: Mr.Sarat Chandra, Advocate
for R-1 & R-2

W.P.(C) 5456/2015

JOSHI NELESH KUMAR Petitioner
Represented by: Dr.Vijendra Mahndiyan,
Advocate with Ms.Pallavi Awasthi,
Advocate

versus

UNION OF INDIA & ANR. Respondents

Represented by: Mr.Rakesh Kumar, Advocate with
Mr.Gulam Mohd.Asstt.Commandant,
CISF

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

CM No.9582/2015 & CM No.9583/2015 in WP (C) No.5301/2015
CM No.9678/2015 in WP (C) No.5362/2015
CM No.9816/2015 & CM No.9817/2015 in WP (C) No.5456/2015

Allowed subject to just exceptions.

WP (C) Nos.5301/2015, 5362/2015 & 5456/2015

1. Learned counsel who appears for the respondents on advance copy of the writ petition being filed says that the facts pleaded in the writ petition are correct. Thus, with consent of learned counsel for the parties we proceed to decide the three captioned writ petitions.
2. The petitioners are enrolled members of the Force of CISF. All of them sought permission to live out of the campus with family and were granted the necessary permission. None of them was provided with Government accommodation. The claim of all is for being sanctioned and thereafter paid house rent allowance.
3. In the decision dated May 23, 2008 deciding W.P.(C) No.1712/2006 Inspector Jaspal Singh Maan Vs. UOI & Ors., taking note that Inspector Jaspal Singh Maan was an enrolled member of CISF, the Division Bench of this Court took note of Rule 61 of the CISF Rules, 2001 which covered the field of providing 'Free Accommodation' to the members of the Force and opined that sub-Rule 2 thereof clearly envisaged that either rent free accommodation would be made available and if not, in lieu thereof, house

rent allowance as applicable to employees of Central Government would be paid. The Division Bench noted that CISF was relying upon its Office Memorandums under which some monetary compensation in lieu of rent free accommodation was to be paid.

4. The Division Bench noted that House Rent Allowance was not in the nature of a concession but formed a component of the salary payable and for which the Division Bench noted the recommendations made by the various Pay Commissions and the decisions of the Supreme Court reported as 2008 (1) SCC 586 UOI Vs. Dineshan K.K., 1995 Supp. (4) SCC 633 Director Central Plantation Crop Research Institute Vs. M.Purushothaman & Ors. and 2002 (3) SCC 302 State of Karnataka & Anr. Vs. Mangalore University Non-Teaching Employees Association. The Division Bench harmonized sub-Rule 2 and sub-Rule 3 of Rule 61 of the CISF Rules, 2001 to hold as under:-

“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 paramilitary 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.”

5. The writ petitions are disposed of issuing a mandamus to the respondents that for such period the petitioners were granted outdoor

residence permission they would be paid house rent allowance if no official accommodation was made available and while making the payment of house rent allowance the compensation (in terms of money) paid as per sub-Rule 3 of Rule 61 of the CISF Rules, 2001 shall be adjusted. The payment shall be made within 4 months from today and if not paid within 4 months shall be paid with simple interest @ 8% per annum reckoned from 4 months hereinafter till date of payment.

6. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

MAY 26, 2015
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