

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

% *Date of decision: November 09, 2017*

+ W.P.(C) 2806/2017, CM No. 12223/2017

SANJAY KUMAR CHOUDHARY

..... Petitioner

Through: Mr. P. Sureshan, Adv.

versus

UNION OF INDIA & ORS

..... Respondent

Through: Mr. Vivek Goyal, Adv. with Mr.
Sanjay Kumar, Inspector/CISF

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE V. KAMESWAR RAO

G.S.SISTANI, J. (ORAL)

CM No. 12223/2017

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 2806/2017

Rule DB.

1. This is a petition under Article 226 of the Constitution of India. The petitioner seeks a writ of mandamus and a declaration that Rule 61 of the Central Industrial Security Force Rules, 2001 is ultra virus to the Constitution of India as it gives power to the respondents to treat the Force members discriminatorily. Writ of mandamus is also sought commanding the respondents to grant permission to the petitioner to live outside the campus by obtaining a rented accommodation within the close radius of campus and to pay HRA and TPT from the date petitioner joined the CISF Unit of ASG Bangalore from 3rd May, 2016 till 24th February, 2017. Prayer made at 'd' in this writ petition is not pressed.

2. The necessary facts, which are required to be noticed for disposal of this Writ Petition are that the petitioner was working as an Inspector with the CISF and has been transferred at various units from time to time. The grievance of the petitioner is that despite non availability of family accommodation in the campus, permission has not been granted to the petitioner to live outside the campus on rent and consequently HRA is not being paid to him.

3. Counsel for the petitioner submits that to decline the HRA, reliance is placed on Rule 61, which he seeks to challenge. Counsel for the petitioner further submits that the present case is fully covered by the decision rendered by a Coordinate Bench of this Court in the case of **Anand Kumar v. Union of India and Ors Writ Petition (Civil) No. 6720/2016 decided on 30th August, 2017**. Reliance is placed on paragraphs 13, 14, 15 and 16, which read as under:-

13. On the question whether the respondents had sufficient married accommodation, to which the petitioner was entitled, in the township or provided by the Undertaking where the petitioner was posted, we have the letter dated 11th May, 2016, written by the Assistant Commandant/Administration, CISF Unit, International Airport, New Delhi. Letter in terms states that no government family accommodation was available in the unit and the personnel of the unit were being granted outliving permission with HRA as per their seniority in lieu of government accommodation. Seniority would be given only after reporting physically in the unit and applying for the same. The petitioner in paragraph (xii) of the writ petition has relied upon the said communication and stated that he had got this information after he was given transfer/movement order on 7th May,

2016 and had sent the communication seeking allotment of family accommodation. The respondents in the counter affidavit have not denied

the aforesaid assertion and stated that paragraph (xii) of the writ petition needs no reply being a matter of record.

14. The factual position which emerges, therefore, is that the respondents were unable to provide family accommodation to the petitioner when he was posted at the International Airport, New Delhi. The petitioner, therefore, had to hire family accommodation at his own expense and was staying outside with his family. The petitioner was denied HRA only on the ground that he was not within the first 45% of the enrolled officers as per the seniority list maintained by them, for this was the mandate and requirement of sub-rule (1) to Rule 61. The said stand of the respondents in view of the reasoning and ratio in Jaspal Singh Mann (supra) is unacceptable and fallacious.

15. In view of the aforesaid discussion, we hold that the petitioner would be entitled to HRA from the date he assumed duties in Delhi at the International Airport on 28th May, 2016 till 30th June, 2017.

16. The arrears would be paid within a period of three months from the date a copy of this order is received by the respondents. While making payment of arrears, the respondents would be entitled to adjust the compensatory allowance i.e. Family Accommodation Allowance, if any, paid to the petitioner. In case payment is not made within the aforesaid period of three months from the date on which a copy of this order is received, the respondents would be liable to pay interest @ 8% per annum from the date of this order till payment is made.”

4. During the course of hearing, it is not disputed that the judgment in the case of **Anand Kumar (supra)** has been complied with. Accordingly, in view of the detail reasoning of this Court in the case of **Anand Kumar (supra)**, the present writ petition is allowed. The petitioner would be paid arrears for the period 3rd May, 2016 till 24th February, 2017 within a period of

three months from the date of receipt of copy of this order by the respondents. We make it clear, if the arrears are not released within the time granted, the petitioner would be entitled to interest @ 8% per annum from the date of this order till payment is made. The writ petition is disposed of. No costs.

G.S.SISTANI, J

V. KAMESWAR RAO, J

NOVEMBER 09, 2017/ak

