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

+ W.P.(C) 7479/2016

SUDHIR KUMAR SINGH

..... Petitioner

Through

Dr. Vijendra Mahndiyan, Mr. Puneet
Kumar and Ms. Pallavi Awasthi,
Advs.

versus

UNION OF INDIA & ANR.

..... Respondents

Through

Mr. Nawal Kishore Jha, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

ANIL KUMAR CHAWLA, J

The petitioner Sudhir Kumar Singh, who is a member of Central Industrial Security Force (CISF), has filed the present writ petition seeking directions for release/refund of Transport Allowance, with interest, for the period from 17.2.2014 to 10.10.2014.

2. The petitioner was posted at CISF Unit IGI Airport, New Delhi. From 29.6.2012 to 15.8.2013 he lived in unit line after which he applied for, and was granted, out living permission/outdoor residence permission for a period of six months, i.e. from 17.8.2013 to 16.2.2014. Petitioner was also paid the Transport Allowance during such period. With effect from 11.10.2014, the petitioner had become entitled to the grant of House Rent Allowance (HRA) on account of his seniority. Thus the respondents started granting the petitioner HRA and Transport Allowance, as per the policy of the respondents.

3. There is no dispute as regards the entitlement and the payment of HRA to the petitioner. The dispute relates to payment of Transport Allowance. The payment made towards Transport Allowance from 17.2.2014 to 10.10.2014 was recovered from the petitioner on the premise that during such period, the petitioner had stayed/resided in an accommodation outside the unit line, without permission.

4. Whether the petitioner could be denied transport allowance, on the premise of his having overstayed/resided in an accommodation for which no explicit extension granted by the respondent, is the only question for consideration before us.

5. We have considered the rival contentions of the parties.

6. Undisputedly, the petitioner was granted outliving permission/outdoor residence permission w.e.f. 17.8.2013 to 16.2.2014 and during such period, the petitioner was paid the Transport Allowance. The petitioner states that he had applied for the extension of the out living permission beyond 16.2.2014 vide application dated 10.2.2014, but this assertion is denied by the respondents in the counter affidavit. This would not to our mind, be the determining and overriding factor. The respondents on their part did not initiate any action for the alleged over-stay. It is not that the respondents ever took any adverse view for the period of over stay in the outside accommodation. By implication the petitioner was allowed to stay. Transport Allowance is paid to an employee, when he does not use the official transport. It is an admitted position that the petitioner did not use and avail the official transport facility for the subject period. Denial of Transport Allowance, merely on the premise that during the subject period, the out living permission was not extended is an excessively technical

approach and unwarranted. It is adding and introducing a new condition which is not stipulated and stated in the applicable Rules or Office memorandum.

7. The payment of Transport Allowance is governed by the Ministry of Finance, Department of Expenditure Office Memorandum No.21(2)/2008-E-II (B) dated 29.8.2008 and Office Memorandum No. 21(8)/2010-E-II (B) dated 1.8.2012. The Office Memorandum dated 29.8.2008 stipulates that the Transport Allowance shall not be admissible to employees who have been provided government transport facility. It is equally not the case of the respondents that they had offered government transport to the petitioner, but, he refused. In the given circumstances, we are of the considered view that the Transport Allowance cannot be denied to the petitioner.

8. In view of the foregoing, the writ petition is allowed and the respondents are directed to pay/release the Transport Allowance to the petitioner for the period from 17.2.2014 to 10.10.2014, within a period of two months from the date of receipt of the copy of this order. In case, Transport Allowance is paid within the said period, the respondents would not be liable to pay interest. However, if payment is made beyond the period of two months from the date of receipt of copy of this order, the respondents would be liable to pay interest @8% p.a. from the date of receipt of copy of this order, till payment is made. No order as to costs.

ANIL KUMAR CHAWLA, J

SANJIV KHANNA, J

APRIL 24, 2017/rc