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

+ W.P.(C) 3887/2017

GOMATHINAYAGAM M Petitioner

Through: Mr.P.Sureshan, Adv.

versus

UNION OF INDIA & ORS Respondents

Through: Mr.Manish Mohan, CGSC with
Ms.Manisha Saroha and Ms.Shivangi
Sinha, Advs.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **30.08.2017**

In view of our detailed order passed today in W.P. (C) No.6720/2016, *Anand Kumar Vs. Union of India & Ors.*, the present writ petition has to be allowed with the direction that the petitioner is entitled to House Rent Allowance (HRA) for the period between 17th July, 2016 and 30th June, 2017, when the petitioner was posted at the International Airport, Delhi.

2. The respondents in the counter affidavit have admitted that the CISF unit at the International Airport, Delhi did not have married accommodation.

3. This being the position, the prayer for grant of HRA, as held in *Anand Kumar* (supra), would be covered by the decision of the Division Bench of this High Court dated 23rd May, 2008 in W.P. (C)

No.1712/2006, *Inspector/Exe. Jaspal Singh Mann Vs. Union of India & Ors.*

4. In the present case, the petitioner had not occupied barrack or unmarried accommodation. He was denied outliving permission with HRA on account of the fact that he was not amongst the top 45% in the seniority list. The said denial was on account of the respondents' interpretation of Rule 61 of the Central Industrial Security Force Rules, 2001 (Rules for short). This interpretation of Rule 61 by the respondents has to be rejected in terms and ratio expounded in *Jaspal Singh Mann* (supra), holding that on conjoint and harmonious reading of sub-rule 1, 2 and 3, the percentage requirement would be only applicable in case family accommodation was available for the married enrolled members of the Force. In the present case, as family accommodation was not available in the township, or provided by the undertaking where the petitioner was posted, the petitioner would be entitled to HRA. This would be just and fair, as the petitioner had taken private accommodation on hire.

5. It is clarified that the aforesaid reasoning would not be construed as an observation or direction by the Court that the respondents, depending upon administrative requirements or exigencies of service, cannot direct a married enrolled officer to stay in the barrack, which is not a family accommodation. However, in such cases, HRA would be payable, as stay in the barrack is not an option or choice exercised by the enrolled officer, but a direction and command imposed. It would not be a voluntary act, disqualifying the enrolled officer from entitlement to HRA.

6. Accordingly, we allow the present writ petition with the direction that the respondents would pay HRA as applicable for the period 17th July, 2016 to 30th June, 2017 within a period of 3 months from the date a copy of this order is received by them.

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

In the facts of the present case, there would be no order as to costs.

SANJIV KHANNA, J

NAVIN CHAWLA, J

AUGUST 30, 2017
vp/ssn