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

+ W.P.(C) 8412/2016

PRAHLAD RAY BALAI

..... Petitioner

Through : Dr. Vijendra Mahndiya and Ms.
Pallavi Awasthi, Advs.

versus

UNION OF INDIA AND ORS

..... Respondents

Through : Ms. Meera Bhatia, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE PRATHIBA M. SINGH

ORDER

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15.05.2017

The petitioner has prayed for grant of House Rent Allowance for the period from 14th April, 2015 till today.

The petitioner is a Sub-Inspector in the Central Industrial Security Force. From 1st April, 2015, the petitioner stands posted at Airport Security Group (ASG) at Jodhpur, Rajasthan.

The petitioner had applied for and was given outliving permission without House Rent Allowance vide letter dated 16th July, 2015, for a period of 6 months.

After six months, the petitioner had applied for outliving permission with House Rent Allowance, which was rejected vide letter dated 17th October, 2015.

As per the respondents, House Rent Allowance was granted as per rank wise seniority maintained separately. This was to maintain ceiling of

45% stipulated in rule 61 of the Central Industrial Security Force Rules, 2001.

Petitioner was not found to be covered and eligible as per rank wise seniority as the quota was already allotted. In fact only one inspector was eligible.

The issue raised in the present writ petition is covered by two decisions of this court in ***W.P.(C) No. 5407/2015, Avijit Das v. Union of India and Ors.*** decided on 27th May, 2015 and ***W.P.(C) No. 272/2016, Mahaveer Singh v. Union of India and Another*** decided on 15th January, 2016.

Decision in the case of ***Avijit Das (supra)*** refers to an earlier decision of a Division Bench of this court in ***W.P.(C) No.1712/2006, Inspector Jaspal Singh Mann v. Union of India and Ors.*** decided on 23rd May, 2008 interpreting Rules 61 of the Central Industrial Security Force Rules 2001.

In paragraph No. 2 of ***Avijit Das (supra)***, it was observed as noted:

“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 being sanctioned and thereafter paid house rent allowance.”

And thereafter the following observations from ***Inspector Jaspal Singh Maan*** were quoted :

“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 competent 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 paramilitary 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.”

In Avijit Das (supra), the Division Bench thereafter held :-

“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 payments 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.”

Ratio in the case of ***Mahaveer Singh (supra)*** is similar.

This being the position, we should allow the present writ petition as it has not been shown that the petitioner herein was ever provided with government accommodation. The petitioner had sought and was given outliving permission vide order dated 16th July, 2015 for 6 months. Thereafter, the permission as noticed above was declined but no official government accommodation in the form of barrack or family accommodation was provided. The respondents are unable to show any letter/communication allotting or providing barrack or family accommodation to the petitioner

The petitioner would accordingly be paid the House Rent Allowance with the arrears within a period of four months from the date of receipt of this order and in case, there is a delay beyond four months, the petitioner would be entitled to simple interest @ 8% per annum from four months hereinafter till the date of payment.

No order as to costs.

Dasti.

SANJIV KHANNA, J

PRATHIBA M. SINGH, J

MAY 15, 2017/dk