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

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W.P.(C) 3292/2017

PRAHLAD RAM

..... Petitioner

Through: Mr.P.Sureshan, Advocate.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr.Arun Bhardwaj, CGSC with
Mr.Nikhil Bhardwaj, Mr.Shashwat
Sharma & Mr.Prateek Rai, Advocates
along with Mr.A.S.Samyal, Asstt.
Comdt. CISF.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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13.11.2018

CM APPL. 14365/2017 (Exemption)

1. Exemptions allowed, subject to all just exceptions.

W.P.(C) 3292/2017 & CM APPL. 14363/2017 (Stay)

2. The short point in the present petition is whether the Respondents were justified in withdrawing the house rent allowance (HRA) to which the Petitioner is eligible on the ground that he had refused to occupy the quarters allotted to him.

3. The admitted facts are that the Petitioner is a Head Constable with the CISF. He has been posted as CGBS Unit, New Delhi on 18th May 2015. By

an order dated 3rd September 2016 (wrongly typed as 3rd September 2015) issued by the CISF, the Petitioner and certain other Constables and Head Constables were allotted quarters. As far as the Petitioner is concerned he was allotted H-341 at Sriniwaspuri which admittedly is a type-1 quarter.

4. It is not in dispute that the grade pay of the Petitioner is Rs.2800 and he is eligible for type-2 quarter the size of which is 54 sq.mtrs. (unit area main) whereas the quarter that has been allotted to the Petitioner is of 25 sq.mtrs.

5. Learned counsel for the Petitioner has drawn attention of the Court to the relevant rules in relation to the grant of HRA and the clarification issued by the OM dated 22nd October 1990. *Inter alia* it provides as under:

“(iv) Refusal by a Government servant of a quarter of a different class from that for which he is eligible shall not constitute refusal for the purpose of these orders unless he has the option to apply for accommodation of a class next below the one to which he is entitled- by virtue of his emoluments and he refuses such accommodation when allotted on the basis of his application.”

6. In the present case where the Petitioner has been allotted type-1 quarter instead of type-2 quarter to which he was entitled, his refusal to occupy such quarter could not be considered as making him ineligible for HRA. The Respondents had to show that an option was given to the Petitioner “applied for accommodation of a class next below the one to which he was entitled.” There is nothing in the counter-affidavit filed by the Respondents to indicate that any such option was given. The Petitioner had in fact pointed out to the Respondents that since he has two grown up children, the type-1 accommodation was not suitable for his purposes apart from the fact that he

was entitled to a larger accommodation.

7. In the reply filed by the Respondents while not disputing any of the above facts it is contended that only a limited accommodation is provided to the CISF by the CPWD and, therefore, they are not in a position to offer to all the eligible employees the quarters to which they are entitled. The specific averment in this regard reads thus:

“(vi) That the contents of para No. 3(vi) of writ petition are wrong and the same are denied. It is not possible to allot a specifying type of quarter to the concerned person because CPWD has not allotted sufficient specific quarter to CISF. Thus, the contents of para under reply are accordingly denied.”

8. Learned counsel for the Respondents submitted that many of the other persons similarly placed as the Petitioner separately have accommodation allotted to them and those who had refused had their HRAs cancelled. The fact that the Petitioner is entitled to a larger accommodation than the one allotted to him is an admitted fact. His refusal to occupy such accommodation, therefore, cannot disentitle him from continuing to receive HRA particularly since there is nothing on record to show that he has been informed of any option to apply for any accommodation of the next below type.

9. Consequently, the Court is satisfied that as far as the Petitioner is concerned there is no justification in cancelling his HRA because he refused the accommodation allotted to him of type-1 category.

10. In that view of the matter the impugned order dated 5th November 2016

issued by the Respondents cancelling the Petitioner's HRA is hereby quashed *qua* the Petitioner. The consequential orders will now be passed by the Respondents within a period of four weeks from today.

11. The petition is allowed in the above terms. The pending application also stands disposed of.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

NOVEMBER 13, 2018

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