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

+ **W.P.(C) 6085/2017**

ARVIND JATAV

..... Petitioner

Through: Dr.Vijendra Mahndiyan with
Ms.Pallavi Awasthi, Advocate.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr.Ajay Digpaul, CGSC with
Ms.Madhuri Dhingra, Advocate for
R1 to R3.

+
DEVENDRA SINGH

W.P.(C) 6242/2017

..... Petitioner

Through: Dr.Vijendra Mahndiyan with
Ms.Pallavi Awasthi, Advocate.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr.Ajay Digpaul, CGSC with
Ms.Madhuri Dhingra, Advocate for
R1 to R3.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE SANJEEV NARULA

ORDER
13.11.2018

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Dr. S. Muralidhar, J.:

1. The issue in both these petitions is a common one. It concerns the non-

grant of House Rent Allowance (HRA) to the Petitioners, who are working as Sub Inspectors with the Central Industrial Security Force (CISF).

2. As far as Mr.Arvind Jatav the Petitioner in W.P.(C) 6085 of 2017 is concerned, he was transferred from CISF unit to ASG Delhi by a movement order dated 15th June 2016. On 8th June 2016 he made an application for grant of HRA along with his family at Delhi. He was earlier living in Varanasi in a Government accommodation.

3. After joining duties at New Delhi, Mr. Jatav made an application dated 22nd June 2016 for grant of living with the family in outside accommodation with HRA. According to him he was verbally allowed to live out of the campus without HRA. Mr. Jatav took a premises on rent at New Delhi near the Palam Apartment Brijwasan. He also shifted his family to the said accommodation. According to Mr.Jatav he is entitled for HRA from 5th August 2016, i.e. the date after he surrendered the Government accommodation in Varanasi but he has not been granted the HRA by the Respondents.

4. As far as Devendra Singh the Petitioner in W.P.(C) 6242 of 2017 is concerned he was transferred from Ahmedabad to ASG Delhi by movement order dated 17th July 2016. He made an application on 27th May 2016 regarding allotment of family accommodation or be granted out living permission with family with/ without HRA. He gave another application on 13th July 2016 for grant of out living permission with HRA. He took premises at Raj Nagar Part-2, Palam on rent and shifted his family there.

According to Mr. Devendra Singh he was sanctioned HRA only with effect from 4th June 2017 whereas he was entitled to HRA from 13th July 2016 itself. So his petition is for the grant of HRA for the period 13th July 2016 to 25th April 2017.

5. Both Petitioners rely on the earlier judgement of this Court in (*Inspector Jaspal Singh Mann v. Union of India (2009) ILR 1 Del 165* and the judgment dated 30th August 2017 in W.P.(C) 6720 of 2016 (*Anand Kumar v. Union of India & Ors.*).

6. In *Jaspal Singh Mann (supra)* the Court interpreted Rule 61 of the CISF Rules, 2001 which reads as under:

“61. Free accommodation. - (1) Normally, the undertaking where the Force has been deputed shall provide accommodation in the township itself to all supervisory officers and at the rate of 45 per cent married and 55 per cent unmarried or as amended by the Central Government from time to time, to the enrolled members of the Force.

(2) The accommodation to the enrolled member of the Force shall be rent-free but where such facilities are not available they shall get house rent allowance in lieu thereof as applicable to other central government employees.

(3) The members of the Force shall also get compensation in lieu of married accommodation in terms of orders issued by the Government from time to time in this respect. The compensation shall be payable to that percentage of members of the Force who are entitled to get married accommodation minus those members of the Force who are allotted accommodation by the Undertaking.

(4) Supervisory officer of the Force who is provided

accommodation by the Public Sector Undertakings or allotted accommodation by Directorate of Estate will pay licence fee to the Public Sector Undertakings at the rates as applicable to their own employees or the licence fee as fixed by the Central Government for general pool accommodation from time to time with reference to plinth area of accommodation as the case may be.”

7. The Court in *Jaspal Singh Mann* (*supra*) observed in para 12 as under: page 58

“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 component 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.”

8. It was further observed in para 17 as under: page 61

“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 failing 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.”

9. Consequently in the said batch of petitions a mandamus was issued to the Respondents to pay HRA to the Petitioner in lieu of family accommodation from the date from which the Petitioners became entitled to claim such family accommodation and Rule 61 was accordingly laid down to imply that “such entitlement would be within the parameters of the said rule,” The Court is informed that the Special Leave Petition filed against the decision of this Court in **Jaspal Singh Mann** (*supra*) was dismissed by the Supreme Court.

10. As far as the decision in **Anand Kumar** (*supra*) is concerned the facts

are more or less identical. There again pending grant of permission for living in outside accommodation, the Petitioner was not granted either married or unmarried accommodation. The Respondents sought to justify the non-grant of accommodation by stating that the enrolled members who were junior and did not come within the first 45% of the married accommodation and 55% of the unmarried category as per the seniority list maintained would not be granted HRA even if they were not provided official accommodation.

11. Relying on the earlier decisions including that of **Jaspal Singh Mann** (supra) this Court negative the above plea and stated that irrespective of the seniority if a Government employee is not provided the accommodation to which he was entitled, he cannot be deprived of the HRA. Additionally this Court in **Anand Kumar** (supra) observed in paras 10 and 11 as under:

“10. Learned counsel for the respondents had drawn our attention to the last sentence of paragraph 17 in **Jaspal Singh Mann** (supra) to urge that in the present case, the petitioner was paid compensation in the form of Family Accommodation Allowance. We do not agree for the said sentence has been misread and misunderstood. The Division Bench has held that where an enrolled officer, who was entitled to married accommodation was provided with unmarried accommodation, then he would be paid compensation in the form of Family Accommodation Allowance. This Allowance would be in addition to accommodation of the unmarried category which was provided. This proposition would be true and correct only when the enrolled officer wants to occupy the said accommodation i.e. the unmarried accommodation. However, in the present case, the petitioner had not occupied the unmarried accommodation and, therefore, would not be covered by the qualified interpretation of Rule 61.

11. 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. Any such direction would and must be complied. 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, to disqualify the enrolled officer from HRA.”

12. Consequently, the prayer of the Petitioner Anand Kumar was allowed and he was held entitled to HRA from the date he assumed duties in Delhi till he was provided with a family accommodation.

13. The Court is informed that the Respondents had filed SLP against the aforementioned decision which is still pending in the Supreme Court. However, significantly no stay of the decision has been granted in the said SLP.

14. Resultantly, position is that there are two decisions of this Court in ***Jaspal Singh Mann*** and ***Anand Kumar*** which govern the position in this aspect.

15. Factually in both these petitions the Respondents do not deny the fact that neither of the Petitioners have been allotted the family accommodation to which they are entitled. It is also not disputed that they had not been granted the HRA for the period claimed by them. Consequently this Court has no hesitation, following the decisions in ***Jaspal Singh Mann*** (*supra*) and ***Anand Kumar*** (*supra*) in allowing the prayers in each of these writ

petitions and issue the following directions. As far as Arvind Jatav the Petitioner in W.P.(C) 6085 of 2017 is concerned the Respondents will pay to him HRA for the period from 5th August 2016 to 24th April 2017 the period during which he was serving at CISF IGI Airport New Delhi within a period of eight weeks from today. Any payment already made by the Respondents towards family accommodation allowance will be adjusted. Consequently the order dated 15th December 2016 and a letter dated 23rd December 2016 issued by the Respondents rejecting his plea are hereby set aside. If the arrears of HRA are not paid within the time stipulated, the Petitioner would be entitled to simple interest for 9% per annum for the period of such non-payment.

16. As far as Devendra Singh the Petitioner in W.P.(C) 6242 of 2017 is concerned the Respondents will pay to him the HRA i.e. due to him for the period 13th July 2016 to 24th April 2017 within a period of eight weeks and a failure to pay such arrears within the time stipulated will make the Respondents liable to pay simple interest of 9% per annum for the period of such non-payment beyond that period. Any payment already made by the Respondents towards family accommodation allowance will be adjusted. The writ petitions are disposed of accordingly.

S.MURALIDHAR, J.

SANJEEV NARULA, J.

NOVEMBER 13, 2018

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