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

% *Date of Judgment: 26.02.2019*

+ W.P. (C) 11415/2017

SHAIKH ABDUL KHALIK & ANR Petitioners

Through: Mr.Sureshan, Advocate.

versus

DIRECTOR GENERAL & ORS. Respondents

Through: Mr.Jaswinder Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI
HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

1. The present petition has been filed assailing the order dated 07.10.2016 passed by the respondents directing petitioner no.1 to await his turn for grant of HRA as well as to declare Rule 61 of the CISF Rule, 2001 as ultra vires and a direction to grant HRA to the petitioner no.1 along with Transport Allowance (TPT) from July 2016 to 30.06.2017 and HRA and Transport Allowance to petitioner no.2 for the period June, 2016 to May, 2017.
2. The facts relevant for the present petition are, that the first petitioner was appointed as Constable GD with the CISF on 01.04.2001 while the second petitioner who is the wife of petitioner no.1, was appointed

as lady Constable GD on 16.06.2007. After the marriage of the parties in 2009, they were posted at various units of CISF and lastly they were posted to CISF unit, IGI Airport, New Delhi vide order dated 15.06.2016. Both the petitioners assumed their duties at Delhi *w.e.f.* July, 2016.

3. Petitioners sought permission on 22.09.2016 from the concerned authority to live outside the unit as no family accommodation was available within the campus of the unit at IGI Airport. Petitioners claim in their petition that there was no response to the said letter and they were neither provided with Government Accommodation nor were they given outliving permission with HRA. The petitioners, therefore, on their own rented an accommodation and the Rent Deed dated 02.08.2016 has been placed on record. It is pleaded that vide letter dated 07.10.2016, the concerned authority informed petitioner no.1 that no HRA with outliving permission would be given to him as only 45% of the personnel were entitled to such benefit and he was lower in the seniority for grant of such a benefit. It is this order which is impugned by the petitioners.
4. Insofar as the petitioner no.2 is concerned, it is pleaded that vide letter dated 19.05.2017 outliving permission with HRA was granted to her and from this date she has been granted the HRA, but the respondents have failed to give HRA for the period June, 2016 to May, 2017.
5. The present petition lays claim to grant of HRA & TPT to petitioner no.1 for the period July, 2016 to 30.06.2017 and to petitioner no.2 from June, 2016 to May, 2017.

6. The main ground pleaded in the petition is that the case of the petitioners is squarely covered by the judgment of the Division Bench of this court in *Inspector (Ex.) Jaspal Singh Mann vs. Union of India & Ors.*, 2009 ILR 1 Delhi 165 and this judgment has been followed by this court in several other writ petitions, filed by other personnel of the CISF. Copies of the judgments have been filed on the record of this court. It is pleaded that Rule 61 which is being relied upon by the respondent to deny HRA benefit to the petitioners is ultra vires the Constitution of India, as it violates Articles 14, 19 and 21 of the Constitution of India.
7. Respondents filed a counter affidavit opposing the petition. It is averred that the petitioners had reported to CISF unit, IGI Airport on 25.07.2016 at New Delhi. They had submitted an application for grant of outliving permission with HRA, which was entered in the seniority register meant for grant of HRA. As per the seniority, petitioner no.2 has been granted HRA and TPT allowance *w.e.f.* 21.05.2017, however, petitioner no.1 is at serial no.23 and will get HRA only when his turn comes. It is further pleaded that to streamline the process, 45% people are granted outliving permission with HRA in lieu of family accommodation and the seniority list is operated for the same. It is also pleaded that IGI Airport is a highly sensitive unit, therefore, service requirement is that personnel stay within or around the campus. If more and more personnel reside far away from the units, it would be difficult to call them in case of emergency. Thus, it is not in the interest of the organization that large number of force members are given outliving permission with HRA.

8. It is denied in the counter affidavit that Rule 61 is ultra vires the Constitution of India and it is emphasized that the respondents are scrupulously following the seniority list for grant of HRA. It is denied that the judgments passed by this court and relied upon by the petitioners have not been followed.
9. The petitioners have filed a rejoinder to the counter affidavit. They have reiterated the contents of the writ petition. In the rejoinder, the petitioners have relied upon recent judgment of coordinate bench of this court in the case of *Arvind Jatav vs. Union of India & Ors.*, W.P. (C) No.6085/2017 decided on 13.11.2018 and pleaded that the said judgment is yet another judgment in the series, wherein following the judgment of *Jaspal Singh Mann v. Union of India*, (2009) ILR 1 Del 165, this court has allowed a similar relief to the petitioners therein and granted the HRA along with interest, if the payment is not made in the time stipulated.
10. Learned counsel for the petitioners has while arguing contended that the case of the petitioners is squarely covered by the decision of the Coordinate Bench in the case of *Inspector (Ex.) Jaspal Singh Mann vs. Union of India & Ors.* He has also contended that subsequent to the said judgment, several writ petitions have been allowed by different Benches of this court placing reliance of the judgment *Inspector (Ex.) Jaspal Singh Mann* (supra). Argument is that the issues raised in the present case are exactly those decided in these judgments and there is no reason why the same relief should not be granted to the petitioners, once those judgments have been implemented by the respondents. Learned counsel also contends that

it is only logical that if the respondents are not in position to allot a government accommodation to the petitioners, to which they are entitled, then they must provide outliving permission with HRA. He further argued that admittedly no family accommodation being provided. Rule 61 (2) enables them to seek HRA as applicable to the central government employees. Attention of this court is also brought to a recent judgment of this court decided on 13.11.2018 in the case of *Arvind Jatav vs. Union of India & Ors.*, W.P. (C) 6085/2017, where a similar relief has been granted to the petitioners therein. Argument also is that pursuant to the order dated 21.08.2015 passed in Writ Petition (C) No.7920/2015, *Pardeep Kumar vs. Union of India & Anr.*, the respondents have themselves issued a Circular No. 1 of 2016 which stipulates that where permission for outliving has been granted without HRA, it shall be incumbent upon the Unit to pay HRA to all such personnel.

11. *Per contra*, learned counsel for the respondents has argued that there is paucity of family accommodation, therefore, every member of the Force cannot be allotted government accommodation. The respondents in lieu thereof give outliving permission with HRA to such an employee who is not allotted government accommodation. He submits that however, there is a percentage which is fixed upto which the outliving permission with HRA can be given and for this purpose a seniority register is maintained and on that basis alone, within fixed percentage of 45% outliving permission with HRA is granted. He contends that since petitioner no.1 was lower in the seniority, he was not granted outliving permission and HRA.

However, petitioner no.2 was granted the benefit *w.e.f.* 21.05.2017 as per her seniority position. Rule 61 of the CISF Rule, 2001 has been relied upon and it is argued that the action of the respondents is in accordance with rules and, therefore, cannot be faulted with.

12. We have heard the learned counsels for the parties and examined their respective contentions as well as perused the pleadings and the judgments relied upon by them. No other argument has been pressed or argued by either side except for those mentioned above.
13. Undisputed fact is that the petitioners were posted at Delhi in 2016 and joined their duties *w.e.f.* July, 2016. It is also undisputed that on 22.09.2016, they sought permission to live outside campus as no family accommodation was available within the CISF unit, IGI Airport. The respondents have essentially relied on Rule 61 of CISF Rule, 2001 to deny the benefit claimed by the petitioners and their defence is that outliving permission with HRA can be granted only as per seniority position as maintained in the seniority register and there is fixed percentage of 45% upto which this permission can be granted. For ready reference, we reproduce the rule as below:

“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.”

14. The aforesaid rule as pointed out by the learned counsel for the petitioners had come up for consideration for the first time in W.P. (C) No.1712/2016 *Inspector (Ex.) Jaspal Singh Mann vs. Union of India & Ors.* decided on 23.05.2008. The petitioner therein was Sub-Inspector in CISF and was transferred to CISF Unit, IGI Airport, New Delhi in 2005. He was not provided a government accommodation. Although he was granted outliving permission, but it was without payment of HRA. Aggrieved with the denial of HRA, he filed a petition in this court seeking direction to the respondents to grant him either government accommodation or HRA in lieu thereof and also sought quashing of Rule 61. Respondents had taken a stand that name of the petitioner was low in the seniority for grant of the benefit as maintained in the seniority register. Having examined the facts and circumstances of the as well as Rule 61, the Coordinate Bench had held that normally the enrolled member of the force would be

provided with accommodation at the place of posting, however, where accommodation was not available, they would be paid HRA in lieu thereof as applicable to other central government employees. It was also held that HRA was a compensatory allowance as compensation in lieu of accommodation. It was meant to compensate for the amenities to which an employee is entitled but cannot be provided for due to paucity or in other reason. It was observed that in fact HRA was a component of total salary and, therefore, formed part of condition of service of an employee. Service personnel of CISF and other CPOs are posted at different station but due to paucity of government accommodation, they have to live outside the campus and pay rents and therefore, HRA ought to be paid. Division Bench was of the view that transfer or posting is an incident of service of these Forces personnel and the operation of Rule 61 as interpreted by the respondents would give rise to a situation where grant of accommodation or HRA was being made dependent on where a person was posted and this would be discrimination and would violate Article 14 of the Constitution of India. The court was conscious of the fact that it was not possible, on every place of posting, to accommodate everybody in the family accommodation and, therefore, it held that while there can be a cut off percentage or a quota for allotting government accommodation and the employee cannot make grievance in respect of that but to apply percentage and making seniority list for grant of HRA in lieu of government accommodation would be a wrong interpretation of the Rule. The court therefore concluded, that if Rule 61 (1) and 61 (3) would be read together, the

only conclusion would be that if there is no house available for allotment to an officer at a particular station, he would be entitled to HRA and any other reading of the Rule would be in the teeth of Article 14 of the Constitution of India.

15. Relevant portions of the said judgments are extracted hereunder :

“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.”

16. Following these judgments, several other writ petitions involving the same issues were decided by this court as under :

- (a) *Avijit Das vs. Union of India & Ors.*, W.P. (C) 5407/2015 ;
- (b) *Anand Kumar vs. Union of India & Ors.*, W.P. (C) 6720/2016 ;
- (c) *Sanjay Kumar vs. Union of India & Ors.*, W.P. (C) 8164/2016 ;
- (d) *Arvind Jatav vs. Union of India & Ors.*, W.P. (C) 6085/2017 ;
- (e) *Devendra Singh vs. Union of India & Ors.*, W.P. (C) 6242/2017.

In all these petitions, a mandamus was issued to the respondent to pay HRA to the petitioners in lieu of the family accommodation from the date, they become entitled to such claim and Rule 61 (1) and 61 (3) were, accordingly, interpreted in a harmonious manner.

17. It is also relevant to mention that while in all these cases including that of *Jaspal Singh Mann* (supra), this court had negated the plea of the respondent and had ruled that irrespective of the seniority of the government employee, if he is not provided accommodation to which he was entitled, he cannot be deprived of HRA, in the case of *Anand Kumar* (supra) and an additional issue was also decided by the Coordinate Bench, which we reproduce below :

“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."

18. The prayer made in *Anand Kumar* (supra) was allowed and he was held entitle to HRA from the date he assumed duties in Delhi and till he was provided with family accommodation. This further fortifies that HRA cannot be denied if suitable government accommodation is not allotted to an employee.
19. In the present case, we find that there is no denial by the respondents that neither of the petitioners have been allotted family accommodation and it is also not denied that they were actually entitled to the accommodation of being posted to Delhi. The defence raised in the present petition by the respondents based on Rule 61 and lower seniority position can be of no avail to them as this stand stands negated in earlier judgments.
20. We find no reason to differ with the several decisions of this court, therefore, in view of the ratio of these judgments, we find the stand of

the respondents herein to be unacceptable and misplaced. The contention of the learned counsel for the petitioners that the present case is squarely covered by the various judgment of this court is, therefore, correct and the present writ petition deserves to be allowed.

21. We, thus, allow the present writ petition and quash and set aside the impugned order dated 07.10.2016. A direction is issued to the respondents to pay to the petitioners HRA and TPT for the respective periods as claimed by them in the writ petition, within a period of 8 weeks from today. If the payments as directed are not made within the time stipulated, the petitioners would be entitled to simple interest @ 9% per annum from the date of the judgment till the actual payment. No order as to costs.

JYOTI SINGH, J

G. S. SISTANI, J.

FEBRUARY 26, 2018

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