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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Judgment: 26th February, 2019

+ W.P.(C).11425/2017

MANORANJAN BISWAS

..... Petitioner

Through: Mr. P. Sureshan, Advocate

Versus

DIG CISF & ORS

..... Respondents

Through Ms. Shiva Lakshmi, CGSC with Mr. Jitendra Kumar Tripathi, Advocate along with Inspector Sanjay Kumar, CISF

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

1. This is a petition under Article 226 of the Constitution filed by the petitioner. The petitioner has *inter alia* prayed that the letter bearing no.424 dated 25.07.2016, whereby the House Rent Allowance (for short 'HRA') benefit of the petitioner was cancelled, be set aside and declared as illegal and arbitrary. A writ of *mandamus* is sought to restore the HRA benefit to the petitioner from May, 2016 to March, 2017.
2. The brief facts which are required to be noticed for the disposal of the present writ petition are that the petitioner is serving as a Constable in CISF Unit, IGI Airport, New Delhi. The last posting of the petitioner is at the IGI Airport. The petitioner was occupying a private

accommodation. However, by a communication dated 02.04.2016, a Government accommodation from CISF Pool was offered to the petitioner. The petitioner thereafter informed the respondent that as his daughter was studying in a school which was near the accommodation which he was occupying, he would not be interested in the accommodation which was offered to him at Dwarka. The petitioner was given another extension of 10 days to occupy the accommodation offered by a communication dated 02.05.2016, which was also not accepted by the petitioner, which resulted in cancellation of the Government quarter and the HRA, by a communication dated 25.07.2016, which we reproduce below:

“OFFICE OF THE DY INSPECTOR GENERAL
CENTRAL INDUSTRIAL SECURITY FORCE
(MINISTRY OF HOME AFFAIRS)

Dated: 25/07/2016

Sub: CANCELLATION OF GOVERNMENT QUARTER
& HRA: REG.

CISF No.944521555 CT/GD Manoranjan Biswas of B Coy was allotted Govt. Quarter No.D-36 at Sec.16B Dwarka and informed him to occupy the said Quarter up to 10.05.2016 vide this office letter No.483 dated 02.05.2016 but the said individual not occupy the quarter. Hence the allotted quarter and sanctioned HRA is hereby cancelled w.e.f. **10.05.2016**. It is also requested that an electricity charges as per normal rate @ Rs.120 for the period of 03 months total Rs.360 recover from the individual and sent to this office by means of Bank Draft in favour of AC/DDO, CISF Unit GBS Mahipalpur, New Delhi, SBI-Sr. Branch, New Delhi Code No.7687 at the earliest for further remittance to BSES please.

2. Further Family Accommodation Allowance (FAA) will be continued soon after cancellation of HRA of the aforesaid personnel.

3. This has the approval of competent authority.

Sd/-

Copy to:

01. The I/C Accts : for information and needful action.
CISF Jaisalmer House, New Delhi.

Distribution:

01.CISF No.944521555 : Through concerned Coy Comdr. with
CT/GD Manoranjan Biswas proper receipt and send
B-Coy acknowledgment copy.”

3. The cancellation of the HRA has led to the filing of the present writ petition.
4. Learned counsel for the petitioner submits that having regard to the fact that the daughter of the petitioner was studying in a school near the private accommodation, it was not possible for him to accept the Government accommodation, as he was finding it extremely difficult to send the child 27 km. away from the Government accommodation and it was not possible for him to change the school, mid-session.
5. The learned counsel for the respondent has opposed this petition. Reliance is placed on the HRA and CCA General Rules and Orders, more particularly, Chapter 4 with the heading ***‘THOSE OCCUPYING OR REFUSING GOVERNMENT ACCOMMODATION NOT ELIGIBLE FOR HOUSE RENT ALLOWANCE’***. Relevant paragraph relied upon by the counsel for the respondent is reproduced below:

“4....

(b)(i) The allowance shall not be admissible to those who occupy accommodation provided by Government or those to whom accommodation has been offered by Government but who have refused it. In the latter case the allowance will not be admissible for the period for which a Government servant is debarred from further allotment of Government accommodation under the allotment rules applicable to him.

(ii) The House Rent Allowance drawn by a Government servant, who accepts allotment of Government accommodation, shall be stopped from the date of occupation, or from the eighth day after the date of allotment of Government accommodation, whichever is earlier. In case of refusal of allotment of Government accommodation, House Rent Allowance shall cease to be admissible from the date of allotment of Government accommodation. In case of surrender of Government accommodation, the House Rent Allowance, if otherwise admissible, will be payable from the date of such surrender.

Note.- In the case of surrender of Government accommodation, the House Rent Allowance, if otherwise admissible, will be payable from the date from which ‘no accommodation certificate’ is issued by the accommodation controlling authority.”

It is argued that if the Government accommodation is allotted but the employee refuses the same, HRA cannot be given.

6. In response to the submission made by the learned counsel for the respondent, Mr. P. Sureshan learned counsel for the petitioner has drawn our attention to the heading *‘Review of demand and availability of General Pool Accommodation controlled by the Directorate of*

Estates'. He submits that this paragraph would be applicable to the petitioner as the petitioner is living in Delhi. No other points/grounds were argued before us by either parties.

7. We have heard the learned counsels for the parties and considered their rival submissions.
8. The basic facts which we have detailed hereinabove are not in dispute. The counsel for the respondent has relied on HRA and CCA General Rules and Orders in Chapter 4, more particularly Rules (b)(i) and (ii) reproduced hereinabove. The contention of the counsel for the respondent is that the aim, objective and purpose of offering the Government accommodation to the Force personnel is to discourage their living far away from the place of duty and also to ensure their presence at the time of emergency. She submitted that the endeavor generally is to provide Government accommodation, but due to paucity of the accommodation the personnel have to hire private accommodations and on their doing so they become entitled to claim HRA. She further submits that in a case where an accommodation is offered, but is refused by the employee, the HRA cannot be granted and the Rule position is very clear on this aspect. We find force in the submission made by the learned counsel for the respondent. We have examined the Rules cited before us by either side and are of the view that it is Rule 4(b)(ii) which would apply to the case of the petitioner. A bare perusal of Rule 4(b)(ii) shows that when the Government Servant accepts an allotment of Government accommodation, the HRA stops from the date of occupation or from the eighth day after the date of allotment date, whichever is earlier. The Rule further

stipulates that in case of refusal of the allotment of Government accommodation by the Government Servant, the HRA will cease to be admissible from the date of allotment. This Rule uniformly applies to all Government Servants, with no exception. We do not find any reason to relax this Rule or make any exception in the case of the petitioner as it is an undisputed fact that he was offered an accommodation which he refused to accept. We, therefore, do not find that the stand of the respondent is unreasonable or arbitrary. We find no merit in the contention of the petitioner and therefore, we cannot allow his prayers in the writ petition for grant of HRA for the period from May, 2016 to March, 2017.

9. At this stage, learned counsel for the petitioner has placed reliance on paragraph (viii) of the writ petition to show that relaxation has been given in the cases of Head Constable Shri Ashok Kumar, Constable Dashrath Singh and Constable Raju Pandey. Counsel for the respondent has denied that any relaxation has been given. We have no reason to disbelieve the stand taken by the counsel for the respondent, although there is no specific denial, qua these three cases.
10. While we see no infirmity or illegality in the letter dated 25.07.2016, issued by the respondent, however in case a representation is made by the petitioner, the same would be considered sympathetically and in the light of the instances provided by the petitioner in paragraph (viii) of the writ petition. We make it clear that in case such a relaxation has been given to similarly situated individuals, relaxation would be given to the petitioner as well. As far as the HRA for two months from 30.04.2017 to June, 2017 is concerned, the counsel for respondents, on

instructions, submits that HRA will be given to the petitioner for these two months within a period of six weeks from today.

11. With these directions, the writ petition stands disposed of.

G.S.SISTANI, J.

JYOTI SINGH, J.

FEBRUARY 26, 2019

pst

