

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

% **Reserved on: November 17, 2022**

Pronounced on: December 16, 2022

(i) + **W.P.(C) 11083/2019**

PRAVEEN YADAV AND ORS.

(ii)+ **W.P.(C) 3370/2020**

GAURAV SINGH AND ORS. Petitioners

Through: Mr.Ankur Chhibber &
Mr.Anshuman Mehrotra,
Advocates

Versus

UNION OF INDIA AND ORS. Respondents

Through: Mr.Bhagwan Swarup Shukla,
CGSC & Mr. Vikrant, Mr. Sarvan
Kumar, Mr. Sanjeev Uniyal & Mr.
Dhawal Uniyal, Advocates
Mr. Paramveer Singh, AC (Law)
BSF

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT

SURESH KUMAR KAIT, J

1. The nine petitioners in the above captioned first petition [W.P.(C) 11083/2019] are group Officers in Grade-A in the Border Security Force ('BSF') and are holding posts in the rank of Assistant Commandant, Deputy Commandant and Second-in-Command.

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2. It is averred in the petition [W.P.(C) 11083/2019] that BSF is entrusted with the responsibility to guard the Borders of the Indian Territory, sensitive LWE areas, North East and other parts to maintain law and order and for this, a large of the force is deployed in far flung locations where there is no proper infrastructure or accommodation for the families. Despite construction of the family accommodations, petitioners and other similarly situated officers are still not provided with the Government accommodation at the place where they are posted or the locations where the separated family accommodations have been constructed. The petitioners and similarly situated personnel, therefore, face problems in keeping their families at the place of their postings; especially at the border or difficult areas where there is lack of basic education and medical facilities.

3. According to petitioners, in the year 1999 the Government of India had approved construction of separate family accommodations with the purpose that if the Officer is not getting accommodation at the place of his posting, he shall be entitled to a separate family accommodation, at various locations where the BSF has constructed houses, by paying 10% of the standard rent. Further, despite the aforesaid position, the petitioners and other similarly situated persons are not provided Government Accommodation nor they are being paid House Rent Allowance for keeping their families at different locations. However, based upon the representations of the petitioners and similarly situated persons, the competent authority under the Seventh Pay Commission recommended that the personnel of the uniformed services can keep their families at any

location and they would be paid HRA for the same. However, the aforesaid recommendations were confined to the Personnel Below Officer Rank ('PBOR') but denied to the Group-A officers. Thereafter, respondents issued the OM order dated 31.07.2017.

4. Aggrieved against the aforesaid order dated 31.07.2017, petitioners preferred a Representation dated 07.11.2017 praying for grant of similar benefit as has been granted to the PBORs, which was forwarded to the Ministry of Home Affairs for consideration. However, vide Signal dated 15.03.2018 the same was rejected by the MHA. Vide this petition, petitioners have challenged the aforesaid OM dated 31.07.2017 as well as Signal dated 15.03.2018 passed by the MHA; to the extent it is confined to the PBORs with the prayer to include petitioners and similarly situated personnel for grant of HRA.

5. The nine petitioners in the above captioned second petition [W.P.(C) 3370/2020] are also Group-A Officers, holding the rank of Assistant Commandant in Central Reserve Police Force ('CRPF'). Petitioners have averred that under the service conditions and entitlement and by virtue of Guidelines dated 30.11.2015, petitioners are entitled to allotment of Government accommodation in their particular office based upon their entitlement. Since the number of officers entitled for Government accommodation is higher than the accommodation available in the location, the respondents grant outliving permission with HRA to the officers after obtaining a No Accommodation Certificate ('NAC') from the Directorate of Estate. The petitioners have averred that not everyone in the unit is entitled to get NAC and only the HRA of the

location, where group centre is located, is provided if one has the rented accommodation and rent agreement. As large numbers of personnel are not in a position to keep their families in their group centre due to social and language problem, many of them keep their families in different places other than their group centre where good medical and education facilities are available. However, according to petitioners, they are not being paid HRA for keeping their families at different locations. A proposal was, therefore, made to the Competent Authority to permit the petitioners and similarly situated personnel to keep their families at any location and be paid HRA for the same. According to petitioners, the Competent Authority under the Seventh Pay Commission accepted the aforesaid proposal in respect of PBOR but denied the same to Group- A Officers like the petitioners. Thereafter, respondents issued OM dated 07.07.2017 and also order dated 31.07.2017 with regard to grant of HRA. Petitioner further claims that another OM dated 31.01.2020 incorporating the provisions of HRA in respect of PBORs but excluding the Officers, was again issued by the respondents. Aggrieved by the OMs dated 31.07.2017 and 31.01.2020 issued by the respondents to the extent that it only grants benefit of HRA to PBORs only, the present petition has been filed with the prayer to extend it to Officers also.

6. Since the grounds urged and relief sought in the above captioned two petitions are similar, therefore, with the consent of learned counsel for the parties, these were heard together and are being disposed of by this common judgment.

7. Learned counsel appearing on behalf of petitioners contended

before us that while issuing the aforesaid OMs, the respondents have failed to appreciate the nature of duties and place of postings of petitioners, which on occasions do not even have basic amenities to keep their families, including children, with them and so, the respondents cannot deny grant of HRA for the place where petitioners and such like officers keep their families. Attention of this Court was drawn to Clauses-8.7.23, 8.7.24, 8.7.26 of the Seventh Pay Commission to submit that the competent authority itself was of the view that the personnel of uniformed services are always unique and, therefore, it cannot be accepted that the benefit of HRA can be restricted to the PBOR. Learned counsel submitted that in a somewhat similar situation, this Court in decision in ***Dev Sharma, Dy. Comdt. of ITBP Vs. UOI & Anr.*** 2019 SCC OnLine Del 6797 has struck down the different age of superannuation from Constables to Commandants and DIG to DG, for being violative of Article 14 and Article 16 of the Constitution of India. Learned counsel also submitted that if the benefit of HRA has been extended to the PBORs, the Officers deployed in paramilitary forces also work under the same conditions and so, the benefit of HRA cannot be denied to the Officers. Lastly, learned counsel for petitioner submitted that the OMs dated 31.07.2017 and 31.01.2020 deserve to be set aside to the extent that benefit of HRA be also extended to the Officers irrespective wherever their families reside.

8. To the contrary, learned Central Government Standing Counsel ('CGSC') submitted that the representation filed by the petitioners seeking grant of HRA was considered in the light Office Memorandum No. II-270 12/35/CF-3396486/20 17-PF-I dated 31.07.2017 issued by the

Government of India, Ministry of Home Affair, Police-II Division (PF-I Desk) and Signal No. P.I-1I2017 dated 08.09.2017 in respect of Seventh Pay Commission issued by the DIG (Adm) Dte. CRPF and under other provisions of law. It was submitted that the respondents have only implemented the recommendations of the Seventh Pay Commission, which is a policy decision under the instructions of Government of India. Learned CGSC next submitted that the Seventh Pay Commission recommended relaxation of HRA norms only in respect of PBORs.

9. Further submitted that in terms of Rule 41 of CRPF Rules, 1955, all members of the Force, other than the officers, who are required to reside at or near the place of their duty for the proper discharge of duty, shall be provided with rent free accommodation or house rent allowance in lieu thereof, limited to the actual amount or house rent paid by the member concerned subject to a maximum of 10 percent of pay and subject to the condition that the accommodation is conveniently near to the premises in which their regular duties have to be performed.

10. Learned CGSC submitted that vide OM No.II.27012/35/CF-3396486/2017-PF-I dated 31.07.2017, the Ministry of Home Affairs has sanctioned provision of compensation for housing to PBORs who are not provided with rent free accommodation or sanctioned HRA in accordance with Ministry of Finance OM No.2/5/2017-E-II(B) Dated 7.07.2017 and thereby, all the existing orders for grant of Compensation in Lieu of Quarters ('CILQ') and Family Accommodation Allowance (FAA) to CAPF personnel stood superseded. Lastly, it was submitted that the Officers of the force are allowed to keep their families at some safe

location at Group Centers or alike places where proper education & health facilities are available and they are not entitled to get separate family accommodation at any location as per their choice as no such provision exists in the existing rule and thus, these petition deserve to be dismissed.

11. In rebuttal, learned counsel for petitioners submitted that petitioners are entitled to Government Accommodation. However, they are posted in field areas, so their families have to live at their declared GC but also since high number of officers are there than the accommodations available in the attached GC, the respondents are granting outliving permission subject to issuance of 'No Accommodation Certificate' by the Directorate of Estates. But the Officers are granted HRA of the location where their group is located; whereas subsequent to recommendations of the Seventh Pay Commission PBORs, who are posted in the field areas and are carrying similar duties as the petitioners, are paid HRA for keeping their families at any location as per their convenience. Thus, respondents cannot be permitted to keep double standards/yardsticks for employees in the same force and posted in the same area.

12. To buttress his arguments, learned counsel for petitioners relied upon decision of Supreme Court in the case of ***Prem Chand Somchand Shah Vs. Union of India*** 1991 (2) SCC 48 to submit that right of equality implies to similarly situated persons and they have to be treated alike both in privileges conferred and liabilities imposed. Reliance was also placed upon decision of this Court in ***Govind Kumar Srivastava v Union of India and Ors.*** 2019 SCC OnLine Del 6425 to submit that respondents refusal to grant HRA benefit to the petitioners and such like Officer is not

only discriminatory but violative of Article 14 of Constitution of India. Lastly, learned counsel for petitioners submitted that the arbitrary action of respondents, discriminating by creating a class within class, deserves to be set aside.

13. The submissions advanced by both the sides were heard at length and upon perusal of the material placed on record we find that Office Memorandum dated 31.07.2017 notes as under:-

“Consequent upon the acceptance of the recommendations of the 7th Central Pay Commission by the Government vide Ministry of Finance’s Resolution No. 11-1/2016-IC dated 6th July, 2017, the President is pleased to sanction provision of compensation for housing to Personnel Below Officer Rank (PBORs) of Central Armed Police Forces (CAPFs), Assam Rifles and NSG, who are not provided with rent free accommodation or sanctioned HRA in accordance with Ministry of Finance OM No.2/5/2017-E.II (B) dated 7th July, 2017.....”

14. Further the respondents vide Signal dated 15.03.2018 notified as under:-

“FROM ADM-II. PROVISION OF COMPENSATION FOR HOUSING TO THE OFFICERS OF CAPFs ON THE LINES OF COMPENSATION SANCTIONED TO PBORs. REF YOUR L/ NO.IGA/ ADMMISC/ 2017/2350-51 DTD 13TH OCT 2017. A PROPOSAL FOR ALLOWING BSF OFFICERS TO DRAW HOUSE RENT ALLOWANCES AS GIVEN TO PBORs VIDE MHA OM NO.II.27012/35/CF-3396486/ 2017/PF-I DTD 31ST JULY 2018 WAS MOOTED WITH MHA. IN TURN MHA HAS INTIMATED

*THAT THE PROPOSAL HAS BEEN EXAMINED
IN THE MINISTRY IN CONSULTATION WITH
MINISTRY OF FINANCE (DEPTT OF EXPDR)
HAS NOT BEEN AGREED TO. FOR INFO AND
N/ACTION///BT”*

15. Pertinently, the aforesaid Office Memorandum dated 31.07.2017 and Signal dated 15.03.2018 were passed after recommendations of the Seventh Pay Commission, which are noted as under:-

“Analysis and Recommendations

8.7.23 There is no doubt personnel of uniformed services are unique in several ways. They are required to stay in the field for long periods of time, away from families. Even in non-field stations (Peace stations), a minimum strength is required to be maintained in the barracks for quick deployment at short notice.

8.7.24 It is noted by the Commission that there was a time when these personnel could leave their families in villages and go for field postings. However, times have changed. Many of these PBORs have working spouses and harbour legitimate expectations if raising their children in urban areas.

8.7.25 With the AME percentage being limited, personnel takes turns to fit into the AME percentage. An employee who is married but is less than 25 years of age is not entitled for AME at all, and therefore cannot avail CILQ. In the current context the provisions of AME as well as the stipulated of minimum 25 years of age to occupy these establishment are outdated and needs revisiting.

8.7.26 It is felt that the service rendered by

PBORs of uniformed services needs to be recognized and their housing provisions simplified. The Commission, in the interactions it has had with the men on the ground at all field locations it has visited, has seen firsthand that the lack of proper housing compensation is a source of discontentment among these employees.”

16. The afore-noted commendation of the Seventh Pay Commission acknowledging the services of uniformed services regarding HRA is highly appreciated. We are also in consent with the view that they are required to stay in the fields, far off from all necessary amenities while leaving their families behind. We, while holding the Chair as the Judges of this Court as well as normal civilians, respect their will power to stay away from their families. Interestingly though the competent authority of Seventh Pay Commission also recognized the lack of proper compensation and need of paying HRA to these employees, we fail to understand why the Commission only thought of giving parity to the PBORs of CAPF at par with PBORs of Defence Forces; while leaving behind the proposal of extending the same benefit to the Coy Commanders (officers of the level of Assistant Commandants/ Deputy Commandants) under examination. It is a strange anomaly which is sought to be corrected in this petition.

17. Even in the counter affidavit filed on behalf of respondents and during the course of arguments, no such submission was made by learned CGSC appearing on behalf of respondents that the proposal of extending the same benefit to the Coy Commanders/ Officers of Group A was under consideration. To the contrary, the stand of respondents is that the impugned Signal has been passed in compliance of the recommendations

of the Seventh Pay Commission. We are unable to find any reason as to why officers belonging to the rank of Officers / Coy Commanders or PBROs, should not be granted similar benefit more so as the factum of their serving at far off locations has been recognized and it cannot be differentiated on cadre basis. We fail to understand why such policy decisions discriminating within the force should be permitted to continue, especially to the officers of the force who spend their lives serving the nation.

18. We have gone through the decision in Supreme Court in ***Prem Chand (Supra)*** relied upon by the petitioners and find that the said case relates to benefits of flexibilities in imports given to Export Houses and though the facts of the case are distinguishable and not applicable to the present case, however, there is no dispute qua the settled position that the right to equality guaranteed under Article 14 ensures equality amongst equals and its aim is to protect persons- similarly placed against discriminatory treatment. We have also gone through the decision of this Court in ***Govind Kumar Srivastava (Supra)*** relied upon by the petitioners, which pertains to grant of pro-rata pension only to the Commissioned Officers of the Defence Services and not to non-Commissioned Officers/PBORs and this Court held that such denial of pro-rata pension to them is violative of Article 14 of the Constitution. In ***Dev Sharma (Supra)*** this Court while dealing with the case of retirement age of members of the Central and Allied Forces held that element of discrimination of retirement age must be done away with.

19. Applying the ratio of law settled in various decisions to these

petitions, we find that respondents cannot be permitted to take discriminatory view for personnel of different forces deployed in common areas for grant of HRA. Accordingly, the Signal dated 15.03.2018 and letter 22.03.2018, rejecting petitioners' request for grant of HRA, are hereby set aside. The impugned Office Memorandum No. II-270 12/35/CF- 3396486/20 17-PF-I dated 31.07.2017 issued by the Government of India, Ministry of Home Affair, Police-II Division (PF-I Desk) and the Signal No. P.I-1I2017 dated 08.09.2017 in respect of Seventh Pay Commission issued by the DIG (Adm) Dte. CRPF, are hereby partly set aside with direction to the respondents that the benefit of HRA shall not be confined to only PBORs but shall be extended to all the personnel of the Forces irrespective of their rank, as per their entitlement. Further, respondents are directed to take necessary steps within six weeks of this judgment, in consultation with the Ministry of Home Affairs as well as Ministry of Finance, to grant benefit of HRA to the petitioners and similarly situate personnel w.e.f. passing of this judgment.

20. In view of the above, these petitions are accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

(SAURABH BANERJEE)
JUDGE

DECEMBER 16, 2022

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