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

+ **W.P.(C) 9101/2017**

B. S. MAAN

.....Petitioner

Through: **Ms. Pallavi Awasthi, Advocate**

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: **Ms. Saroj Bidawat, SPC**

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

22.05.2025

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C. HARI SHANKAR, J.

1. Of the various prayers contained in this writ petition filed by the petitioner, only three prayers, namely prayer (a), prayer (b) and prayer (c) survive for consideration. Prayer (a) challenges an order dated 12 September 2017 whereby, consequent to a decision to recover, from the petitioner, an amount of ₹ 4,05,996/-, the petitioner was directed to deposit the said amount in the Government Current Account No. 31113524542 of CISF Unit NLC Barsingsar, Branch NLPL Basingsar, Branch Code 09814. Prayer (b) seeks a mandamus to the respondent to refund an amount of ₹ 53,429/- already recovered from the petitioner and prayer (c) seeks a direction to the respondent to pay, to



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the petitioner, HRA¹ for the period 21 November 2015 to 30 April 2017.

2. We may first deal with prayer (c).

3. The petitioner joined the CISF as a Constable on 23 February 1987. By an office order dated 7 June 2008 issued by the CISF, the petitioner, who was posted at the CCIL, Tughlakabad was granted outliving permission with HRA, as the petitioner was married with a family and there was no family accommodation available at Tughlakabad. He, therefore, continued living outside his office permission and drawing HRA. There is no dispute about the fact that the respondents have disbursed HRA to the petitioner till 21 November 2015. The claim of the petitioner in the present writ petition is for payment of HRA for the period 21 November 2015 to 30 April 2017.

4. On 28 February 2009, the petitioner was removed from service. After unsuccessfully challenging the decision of removal in appeal and revision, the petitioner filed WP (C) 3824/2010 before this Court, which was allowed by judgment dated 24 September 2014, quashing the order of removal of the petitioner and directing that he be reinstated in service. The petitioner was, therefore, reinstated by order dated 9 November 2015 and rejoined on 21 November 2015. He was immediately posted on rejoining with effect from 21 November 2015 at CISF 5th R Battalion, Ghaziabad.

¹ House Rent Allowance



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5. It is an undisputed position that there is no order, akin to the order of 7 June 2008, granting outliving permission to the petitioner with HRA *after* he was posted on 21 November 2015 at Ghaziabad.

6. On 22 July 2016, the petitioner was transferred to NLC, Barsingsar, Bikaner. He applied for permission to continue to retain his living accommodation in Delhi even while he was posted at Bikaner citing the education of his son. By order dated 31 August 2016, issued by the CISF, the petitioner was allowed to retain the quarter in his occupation at Delhi till the end of his academic year. Though Ms. Awasthi, learned Counsel for the petitioner, sought to interpret this permission as outliving permission with HRA, we are unable to sustain the contention. Clearly, the import of the order dated 31 August 2016 was only that, even during the currency of the petitioner's posting at Bikaner, he could continue to retain his living accommodation at Delhi.

7. When we perceive the trajectory of the petitioner's posting *vis-à-vis* his accommodation status, it is seen that

- (i) till 21 November 2015, the petitioner's posting was at Tughlakabad, during which period, in terms of Office Order dated 7 June 2008 as well as the order passed by the Supreme Court on 16 October 2015, the petitioner was paid HRA as there was no family accommodation available in Tughlakabad,
- (ii) from 21 November 2015 till 22 July 2016, the petitioner was posted at Ghaziabad,



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- (iii) on 31 November 2015 itself, the petitioner had applied for family accommodation at Ghaziabad, and
- (iv) the respondents were admittedly not in a position to grant family accommodation to the petitioner at Ghaziabad.

8. In that view of the matter, we see no reason why the petitioner would not be entitled, during his posting at Ghaziabad, to the same entitlement, which was extended to him during his posting at Tughlakabad i.e. HRA, in respect of outside accommodation which was in occupation by the petitioner.

9. After his posting at Barsingsar, Bikaner, the petitioner applied for permission to continue in his accommodation at Delhi. By order dated 31 August 2016, permission as sought was granted in view of the continuing education of the petitioner's son till the end of that academic year.

10. Accordingly, the petitioner's entitlement to stay in the Delhi accommodation with HRA would continue till 30 April 2017.

11. We, therefore, find substance in the petitioner's prayer for being granted HRA for the period 21 November 2015 till 30 April 2017.

12. Ms. Saroj Bidawat, appearing for the respondents, sought to contend that, during the said period, the petitioner was staying in barracks and was drawing barrack allowance.



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13. Ms. Bidawat has not been able to draw attention to any rule, instruction or policy by which a married officer of the CISF, for whom family accommodation was not available at the station of this posting, could be asked to stay in barracks and be given barrack allowance. The Supreme Court has held that the right to stay with one's family, and enjoy a meaningful family life, is a fundamental right, emanating from Article 21 of the Constitution of India.²

14. We do not find any such specific pleading in the counter-affidavit filed by way of response to the present writ petition either.

15. Nonetheless, we clarify that, in case the petitioner has drawn any barrack allowance, the said barrack allowance as drawn by the petitioner may be adjusted while releasing the arrears of HRA to which we have found the petitioner entitled for the period 21 November 2015 to 30 April 2017.

16. The second limb of the present writ petition pertains to the recovery order dated 1 August 2017, whereby an amount of ₹ 4,05,996/- was sought to be recovered from the petitioner.

17. The said amount is stated to represent payments towards cost of ration and transport allowance paid to the petitioner in excess during the period of 29 August 2008 to 20 November 2015 and 1 September

² 21. **Protection of life and personal liberty:** No person shall be deprived of his life or personal liberty except according to procedure established by law



2008 to 20 November 2015 respectively.

18. The aforesaid recovery is clearly impermissible in view of para 18 of the judgment of the Supreme Court in *State of Punjab v Rafiq Masih*³, which enumerates specific instances in which recovery is not permissible from categories of employees enumerated in S. Nos. (i) to (v):

“18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

³ (2015) 4 SCC 334



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19. Category (i) covers employees belonging to Class III and Class IV/Group C and Group D services. The post of Constable, in which the petitioner was posted at a relevant time was admittedly a Group C post. As such, the order dated 1 August 2017 was clearly illegal, as it sought to effect recoveries of alleged excess payment from a Group C employee.

20. Ms. Bidawat sought to contend that Category (iii) in para 18 of the decision in *Rafiq Masih* prohibited recovery only where excess payment was made in excess of five years before the order of recovery.

21. The contention is misplaced. The five categories of cases in para 18 of *Rafiq Masih* are five individual categories. No recovery is permissible from an officer who falls in any one or more of the said five categories. The proscription against recovery as envisaged in category (i) of para 18 is not subject to, or conditioned by, category (iii).

22. The only caveat to the aforesaid is to be found in the judgment of the Supreme Court in *High Court of Punjab and Haryana v Jagdev Singh*⁴, which pertains to recoveries under category (ii) in para 18 of *Jagdev Singh*, pertaining to officers who are due to retire within a year and permits such recoveries where the officer concerned has

⁴ (2016) 14 SCC 267



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given an undertaking agreeing to recovery of excess payment.

23. Category (ii) in para 18 of *Rafiq Masih* clearly applied to the case at hand.

24. As such, the order dated 1 August 2017 is also illegal and is accordingly quashed and set aside.

25. In case any amounts have been recovered from the petitioner pursuant to the order dated 1 August 2017 either before or after filing of the present writ petition, the said amount shall be repaid to the petitioner within a period of four weeks from today. Failure to do so shall entail interest on the said amount at the rate of 12% per annum till the date of repayment.

26. Accordingly, this writ petition is allowed in the following terms:

(i) The respondents would disburse, to the petitioner, HRA for the period 21 November 2015 to 30 April 2017.

(ii) In case any barrack allowance was paid to the petitioner during the said period, the respondents are at liberty to adjust the said allowance while paying HRA to the petitioner.

(iii) The order dated 1 August 2017 whereby the recovery of ₹ 4,05,996/- was directed against the petitioner is quashed and set aside.



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(iv) In case any amounts have been recovered from the petitioner pursuant to the said order, they shall be repaid to the petitioner within a period of four weeks from today.

(v) Payment to the petitioner in terms of the aforesaid directions, if not made within the afore-noted period of four weeks, shall entail interest at the rate of 12% per annum till the payments are made.

27. The writ petition stands allowed in the aforesaid terms with no order as to costs.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

MAY 22, 2025/ yg/an

Click here to check corrigendum, if any