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

WRIT PETITION (CIVIL) No. 6720/2016

Date of decision: 30th August, 2017

ANAND KUMAR ..... Petitioner

Through Mr. P. Sureshan, Advocate.

Versus

UNION OF INDIA AND ORS. ..... Respondents

Through Mr. Dev P. Bharadwaj, CGSC with Ms. Satya Prakash Singh and Ms. Anubha Bhardwaj, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (ORAL):

Anand Kumar, an Inspector in the Central Industrial Security Force was posted at the International Airport at Delhi on 28th May, 2016.

2. On 28th May, 2016, the petitioner made an application for outliving permission with House Rent Allowance (HRA, for short), which was entered at Sr. No.489 of the HRA Seniority Register maintained by the respondent Force.

3. The respondents vide communication dated 27th June, 2017 rejected this request made by the petitioner, observing that as per Rule 61 of the Central Industrial Security Force Rules, 2001, (Rules for short) only 45% of the members of the force, by seniority, in the rank

of Inspector could be granted outliving permission with HRA. of Court cases, 573 members were staying outside with HRA and, therefore, no outliving permission could be granted.

4. The respondents in the said rejection letter dated 27th June, 2016 have relied upon Rule 61 of the Rules, 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.
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> (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.
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> (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.
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> (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."

5. The aforesaid Rule had come up for consideratic interpretation in W.P. (C) No.1712/2006, ***Inspector/Exe. Jaspal Singh Mann Vs. Union of India & Ors.***, decided on 23rd May, 2008. Interpreting sub-rule (1) to Rule 61, it was held that normally supervisory officers shall be provided accommodation in the township. However, the enrolled members, like the petitioner, to the extent of 45% married and 55% unmarried would be also provided accommodation in the township. This percentage could be amended by the Central Government from time to time. Sub-rule (2) was interpreted to mean that accommodation to the enrolled members of the Force would be rent free. However, where accommodation facility was not available, the enrolled members of the Force would be paid HRA in lieu thereof as applicable to other Central Government employees. This implies that the enrolled members of the Force, would be entitled to HRA at the rate applicable to the Central Government employees if it was not possible to allot them accommodation.

6. Sub-rule (3) was a cause of confusion, being ambiguous. The respondents had claimed that the members of the Force would get compensation in lieu of married accommodation in terms of the orders issued by the Government from time to time in this respect. Further, as per sub-rule (3), compensation would be payable to that percentage of the members of the Force, who were entitled to get married accommodation minus those members of the Force, who were allotted accommodation by the respondents or the Undertaking where the members of the Force were posted. The respondents had then placed reliance upon the percentage specified in sub-rule (1) to submit that only 45% and 55% of the married and unmarried enrolled members as

per seniority were entitled to HRA in case they were not p married or unmarried accommodation by the Force or the Undertaking where they were posted. The enrolled members who were junior and did not come within the first 45% of married and 55% of unmarried category as per the seniority list maintained, would not be granted HRA even if they were not provided official accommodation by the Force or by the Undertaking where they were posted.

7. The Division Bench considered the said contention and felt that this would violate Article 14 of the Constitution. It was observed that HRA was a not a bounty or a concession but forms a component of the total salary and was a condition of service. HRA was paid as a compensatory allowance in lieu of the accommodation which the employer was unable to provide. Personnel in the Central Armed Police Forces get posted at different stations and have to be provided and given official accommodation. In case they cannot be provided with accommodation due to shortage, HRA would be paid. Reference was made to the decisions in ***Union of India Vs. Dineshan K.K.*** (2008) 1 SCC 586, ***Director, Central Plantation Crops Research Institute, Kesaragod & Ors. Vs. M. Purushothaman & Ors.*** 1995 Supp (4) SCC 633 and ***State of Karnataka & Anr. Vs. Mangalore University Non-teaching Employees' Association & Ors.*** (2002) 3 SCC 302 . Thereafter, the Division bench in ***Jaspal Singh Mann*** (supra) held:-

> "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 para-military 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."

8. Thus the categorical finding was that the interpretation so placed would make Rule 61 discriminatory and hit by Article 14 as it had no rational or nexus with the objects sought to be achieved relating to grant of HRA. The interpretation would lead to unnecessary representations and pressures by the enrolled officers for being posted at places where they would be entitled to HRA. It would result in a discriminatory practice as personnel who were identically

situated would not be provided with accommodation, and yet HRA. Accordingly, the following direction was issued:-

> "A writ of mandamus is issued directing the respondents to pay to the petitioner the HRA in lieu of a family accommodation from the date the petitioner became entitled to claim such family accommodation and Rule 61 of the said Rules is accordingly read down to imply that such entitlement would be within the parameters of the said Rules. A reading down of such rule is permissible so as to uphold the said Rule as the alternative would be to quash the rule as violative of the Constitution of India and an interpretation which would sustain the rule and yet make it not arbitrary or discriminatory by reading down the same will be course of action which would be appropriate. The arrears be paid to the petitioner within a period of three (3) months from today."

9. Above paragraph of the aforesaid decision reads down Rule 61 in a manner to imply that where the respondents were unable to provide family accommodation within the township to the enrolled personnel, they would be entitled to HRA. The ratio of 45% and 55% in the case of married and unmarried officers specified in sub-rule (1) to Rule 61 would apply in case there was sufficient accommodation available in the township of the Force or the Undertaking where the officer was posted. This was the only manner in which Rule 61 could be sustained.

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 ent 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. The respondents vide OM dated 31st July, 2017 have with effect from July 2017 accepted and agreed to pay HRA as per the applicable rates to all personnel below the officer grade in the armed police force where they have not been provided with family accommodation. This OM grants HRA even in cases where barrack accommodation is provided.

13. On the question whether the respondents had sufficient number of accommodation, to which the petitioner was entitled, in the township or provided by the Undertaking where the petitioner was posted, we have the letter dated 11th May, 2016, written by the Assistant Commandant/Administration, CISF Unit, International Airport, New Delhi. Letter in terms states that no government family accommodation was available in the unit and the personnel of the unit were being granted outliving permission with HRA as per their seniority in lieu of government accommodation. Seniority would be given only after reporting physically in the unit and applying for the same. The petitioner in paragraph (xii) of the writ petition has relied upon the said communication and stated that he had got this information after he was given transfer/movement order on 7th May, 2016 and had sent the communication seeking allotment of family accommodation. The respondents in the counter affidavit have not denied the aforesaid assertion and stated that paragraph (xii) of the writ petition needs no reply being a matter of record.

14. The factual position which emerges, therefore, is that the respondents were unable to provide family accommodation to the petitioner when he was posted at the International Airport, New Delhi. The petitioner, therefore, had to hire family accommodation at his own expense and was staying outside with his family. The petitioner was denied HRA only on the ground that he was not within the first 45% of the enrolled officers as per the seniority list maintained by them, for this was the mandate and requirement of sub-rule (1) to Rule 61. The said stand of the respondents in view of the reasoning and ratio in ***Jaspal Singh Mann*** (supra) is unacceptable and fallacious.

15. In view of the aforesaid discussion, we hold that the pe would be entitled to HRA from the date he assumed duties in Delhi at the International Airport on 28th May, 2016 till 30th June, 2017.

16. The arrears would be paid within a period of three months from the date a copy of this order is received by the respondents. While making payment of arrears, the respondents would be entitled to adjust the compensatory allowance i.e. Family Accommodation Allowance, if any, paid to the petitioner. In case payment is not made within the aforesaid period of three months from the date on which a copy of this order is received, the respondents would be liable to pay interest @ 8% per annum from the date of this order till payment is made.

The writ petition is disposed of. In the facts of the present case, there would be no order as to costs.

SANJIV KHANNA, J.

NAVIN CHAWLA, J.

AUGUST 30, 2017
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