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

\# **CNR No. DLHC010554632024**

\+ CONT.CAS(C) 1366/2024

SH VEER SAIN .....Petitioner

Through: Mr. M.D. Jangra, Advocate.

versus

SH. SURENDER SINGH AND OTHERS .....Respondents

Through: Mr. Deepak Thukral, AAG with Ms. Noopur Singhal and Mr. Ajay Pratap Singh, Advocates.

\# **CNR No. DLHC010211082019**

\+ W.P.(C) 4739/2019, CM APPL. 21082/2019

SH. VEER SAIN .....Petitioner

Through: Mr. M.D. Jangra, Advocate.

versus

M/S HARYANA ROADWAYS, DELHI AND ORS. .....Respondents

Through: Mr. Deepak Thukral, AAG with Ms. Noopur Singhal and Mr. Ajay Pratap Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **13.08.2026**

W.P.(C) 4739/2019

The Controversy

1. The Petitioner is a Conductor with Haryana Roadways. While serving at the Delhi Depot, he was allotted Flat No. 506, Block-A, Haryana Government Housing Complex, Shalimar Bagh, Delhi, by an Office Order

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dated 13th April, 2015. He occupied the flat with his family, and corresponding House Rent Allowance ["*HRA*"] was deducted from his salary. The allotment and deduction of HRA are not in dispute.

2. The controversy arose after the Petitioner was transferred from Delhi to Gurugram. He continued to occupy the flat and was eventually called upon to pay INR 11,00,800/- towards penal rent for the period from 1st December, 2017 to 31st December, 2018. The Petitioner does not dispute his continued occupation. What he contests is the Respondents' decision to treat such occupation as unauthorised overstay attracting penal rent of this magnitude. The controversy, therefore, turns not merely on whether the permissible period of retention had expired, but also on whether the penal-rent regime under the governing Rules was applicable to the circumstances of his case.

Factual Background

3. In November 2017, the Petitioner was transferred from the Delhi Depot to the Gurugram Depot. He joined there on 23rd November, 2017. The joining order granted him joining time from 15th November, 2017 to 22nd November, 2017 and directed him to report for duty at Gurugram. He continued, however, to occupy the Shalimar Bagh flat with his family.

4. The posting at Gurugram did not last long. The Petitioner was transferred back to the Delhi Depot and joined there on 30th November, 2018. The return transfer order records that "*no TA/DA and joining time*" would be admissible, as the transfer was against a "*vacant post*". Thus, from his joining at Gurugram to his return to the Delhi Depot, the Petitioner remained posted away from the Delhi Depot for approximately one year.

5. The first formal action was taken by the House Allotment Committee

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vide Memo No. 1117 dated 6th December, 2018. The Memo required the Petitioner to vacate Flat No. A-506 and demanded INR 9,80,800/- towards licence fee and penal rent up to November 2018. The Memo proceeded on the basis that the Petitioner had been transferred from Delhi to the Faridabad Depot and that he was entitled to retain the accommodation only for two months from the date of transfer. It accordingly treated his continued occupation thereafter as unauthorised and cancelled the allotment.

6. The amount of INR 9,80,800/- was arrived at on the basis of the DFR-5 calculation by applying the prescribed penal-rent multipliers to the normal licence fee of INR 400/- per month. The calculation allowed the first two months after transfer at the normal rate, followed by penal rent at 50 times the licence fee for February 2018, 100 times for March 2018, 200 times for April 2018 and 300 times for the period from May to November 2018. This resulted in a demand of INR 9,80,800/- up to 30th November, 2018. The calculation further provided for recovery at INR 1,20,000/- per month if the Petitioner did not vacate the accommodation.

7. Thereafter, Order No. 5966/EA/ECC dated 22nd January, 2019 was issued by the General Manager, Haryana Roadways, Delhi. The order required the Petitioner to vacate the accommodation and directed recovery of INR 11,00,800/- towards penal rent for the period from 1st December, 2017 to 31st December, 2018, at the rate of 60% of his monthly salary. The amount comprised the aforesaid demand of INR 9,80,800/- up to 30th November, 2018 and a further penal-rent charge of INR 1,20,000/- for December 2018.

8. Order No. 4869/ECC dated 1st February, 2019 was thereafter issued in response to the Petitioner's application dated 22nd January, 2019 regarding

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deduction of House Rent and licence fee. This communication referred to Order No. 5966/EA/ECC dated 22nd January, 2019 and reiterated that the penal amount of INR 11,00,800/- was to be recovered from the Petitioner's salary at the rate of 60% per month. It further called upon the Petitioner to get the accommodation re-allotted in his name, stating that House Rent and licence fee would thereafter be deducted from his salary.

9. The Petitioner challenged the aforesaid communications in W.P.(C) 1781/2019 before this Court, seeking, *inter alia*, a declaration that the said action was illegal, arbitrary and unjustified. By order dated 28th February, 2019, this Court disposed of W.P.(C) 1781/2019 by directing the Respondents to treat the writ petition as the Petitioner's representation and to take a '*lenient view*'. Liberty was reserved to the Petitioner to challenge the decision so taken before the appropriate forum.

10. In compliance with the aforesaid order, the General Manager, Haryana Roadways, Delhi issued Memo No. 7341 dated 28th March, 2019, upon consideration of the Petitioner's representation, and maintained the view that the Petitioner's allotment had stood cancelled upon his transfer and that the penal-rent liability was justified. It, however, reduced the monthly recovery from 60% of the Petitioner's salary to INR 10,000/- and directed that the HRA payments be adjusted against the penal rent. The order did not interfere with the cancellation of the allotment or set aside the underlying liability of INR 11,00,800/- towards penal rent.

11. The present petition challenges all four aforesaid actions: (i) Memo No. 1117 dated 6th December, 2018; (ii) Order No. 5966/EA/ECC dated 22nd January, 2019; (iii) Order No. 4869/ECC dated 1st February, 2019; and (iv) Memo No. 7341 dated 28th March, 2019.

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Contentions

12. Mr. M.D. Jangra, counsel for the Petitioner, places considerable emphasis on the fact that Delhi and Gurugram are both within the National Capital Region ["*NCR*"]. He argues that the movement was, in substance, a local posting. Reliance is also placed on the continued deduction of HRA and other charges, the absence of any timely direction to vacate, and the subsequent policy dated 20th July, 2021 under which officers posted in Haryana districts forming part of the NCR receive first preference in allotment of houses at Shalimar Bagh. The Petitioner has also produced instances of allotments to persons serving in NCR districts.

13. Mr. Deepak Thukral, AAG for the Respondents, resists this construction. Delhi and Gurugram, he points out, are separate stations in different States, with separate Drawing and Disbursing Officers and different HRA arrangements. The Petitioner's salary after transfer was drawn at Gurugram. The later policy relied upon by him deals with preference in allotment and does not determine whether a transfer made in 2017 was a local transfer. Further, the documents produced by the Petitioner concern officers or employees belonging to different cadres and cannot found a claim of parity.

Analysis

14. The Court is unable to accept the Petitioner's contention that his transfer from Delhi to Gurugram was a local transfer merely because both places fall within the NCR.

15. The governing provisions are contained in the Haryana Civil Services (Allowances to Government Employees) Rules, 2016 ["*2016 Rules*"]. The Rules came into force on 19th July, 2016 and ordinarily apply to Haryana

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Government employees. The fact that the allotment itself preceded the Rules is therefore immaterial. The event which gave rise to the present liability was the transfer in 2017. The Finance Department continues to publish the 2016 Rules as part of the applicable Haryana Civil Services Rules.

16. Rule 47 allows a Government employee transferred to another station to retain Government accommodation for two months, with a further two months available on the stipulated medical or educational grounds upon approval. On expiry of the permissible period, Note 1 treats the allotment as cancelled and attracts Rule 48. Rule 48 prescribes penal rent at fifty, one hundred, two hundred and thereafter three hundred times the normal licence fee, depending upon the duration of the overstay.

17. Nothing placed before the Court supports the proposition that all places falling within the NCR constitute one "*station*" for the purposes of Rule 47. The geographical proximity of Gurugram to Delhi may matter when the practical circumstances are considered, but it does not alter the legal character of the transfer. The 2021 policy takes the Petitioner no further. It was issued years after the transfer, deals with preference in future allotment, and speaks specifically of officers posted in Haryana districts falling within the NCR. It neither retrospectively preserves the Petitioner's 2015 allotment nor supplies a definition of "*station*" for Rule 47. The individual allotments produced with the Rejoinder suffer from the same difficulty. No equality claim can be founded merely by placing side by side allotments made under different circumstances to persons belonging to other services or cadres.

18. The TA/DA submission rests on a document that does not bear the weight placed upon it. The return transfer order relied upon concerns the

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Petitioner's transfer back from Gurugram to Delhi. It records that no TA/DA or joining time would be admissible because that transfer was made against a vacant post. It says nothing about the character of the earlier transfer from Delhi to Gurugram. The document, therefore, cannot support the contention that the posting at Gurugram was merely a local transfer.

19. In the opinion of the Court, upon expiry of the permissible period of retention, the Petitioner's continued occupation attracted Rules 47 and 48. The allotment stood cancelled by operation of the Rules upon expiry of that period. The subsequent quantification of liability did not render the cancellation of the allotment retrospective.

20. What remains is whether the Respondents were justified in treating that liability as inexorable. The Rules themselves preserve a power of relaxation where their operation causes undue hardship in a particular case. That aspect was not considered.

21. The same statutory scheme which prescribes the consequence of overstay expressly reserves a power to mitigate its operation in an appropriate case. Rule 5 vests the power of relaxation in the Finance Department. Note 2 permits relaxation where application of a rule "*causes undue hardship in any particular case*", so that the matter may be dealt with in a "*just and equitable manner*". A statutory rule cannot be administered by enforcing its prescribed consequence while ignoring a power of relaxation which forms part of the same scheme.

22. The circumstances, in the Court's view, called for consideration under Rule 5. The Petitioner is a Group 'C' Conductor. His posting at Gurugram followed a departmental transfer and he joined there as directed. Approximately a year later, he was transferred back to Delhi and had

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rejoined the Delhi Depot on 30th November, 2018. The demand contained in Memo No. 1117 dated 6th December, 2018 came after his return to Delhi. The memo also proceeded on the erroneous factual premise that his transfer had been to Faridabad, whereas it was admittedly to Gurugram. The financial consequence was substantial. Against a normal licence fee of INR 400/- per month, application of the prescribed multipliers produced a demand of INR 9,80,800/- up to 30th November, 2018. With INR 1,20,000/- added for December 2018, the amount rose to INR 11,00,800/-.

23. The record also discloses circumstances relevant to the question whether the penal rates should operate without consideration of relaxation. Throughout his posting at Gurugram, the Petitioner remained in the same quarter and continued to bear the electricity and water charges. The HRA and licence fee continued to be deducted from his salary. The speaking authority did not reject that part of his case. On the contrary, it found that the HRA payments for the relevant period had not been accounted for and directed that they be adjusted against the penal rent. None of this authorised the Petitioner to retain the quarter after the permissible period had expired, nor could it prevent the Respondents from invoking Rules 47 and 48. These circumstances are, however, relevant to the more limited question of undue hardship under Rule 5.

24. Rule 5 permits the Finance Department to relax the requirements of the Rules where their operation causes undue hardship in a particular case, to the extent necessary for dealing with that case in a just and equitable manner. In the circumstances noticed above, the Court is of the view that the Petitioner's case warranted consideration under Rule 5. Whether those circumstances ultimately justify relaxation, and if so, to what extent, is a

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matter for the competent authority to determine.

25. This approach finds support in the decision of the Division Bench of this Court in ***R.D. Sagar v. UOI & Anr.***[1]. There, the Court noted that, though in terms of the applicable rules the allotment stood cancelled and the petitioner was liable to pay penal rent and damages, the Government nevertheless possessed the power to relax the rules. The Court took note of the fact that the petitioner had been transferred to Calcutta in exigency of service, had not been provided accommodation there, and had been re-transferred to Delhi within fourteen months. In view of such circumstances and the onerous liability arising from the penal rent and damages, the Court directed the Government to consider exercising its power of relaxation. The decision, however, did not treat hardship, by itself, as sufficient to warrant relaxation of the applicable rules. In the present case too, the Court is not itself granting any relaxation or waiving the Petitioner's liability; the direction is confined to requiring the competent authority to consider, in accordance with Rule 5, whether the circumstances warrant such relaxation.

26. The Petitioner's reliance on ***State of Punjab & Ors. v. Rafiq Masih***[2] is misplaced. That decision was concerned with recovery of monetary benefits which had been paid to employees in excess of their entitlement on account of a mistake committed by the employer. The Court held that the principles laid down therein apply where the excess payment was made by the employer and the employee was not responsible for the mistake. The present case stands on a different footing, as the demand towards penal rent arises from unauthorised retention of Government accommodation under the

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[1] 1998 (47) DRJ 783.
[2] (2015) 4 SCC 334.

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applicable Rules and is not a recovery of excess monetary benefits paid to the Petitioner. The Petitioner's Group 'C' status may be relevant to the question of undue hardship under Rule 5, but does not, by itself, apply ***Rafiq Masih***.

27. The petition is accordingly disposed of in the following terms:

(i) The contention that the Petitioner's transfer from Delhi to Gurugram did not attract Rule 47 merely because both places fall within the NCR is rejected. The finding that the Petitioner retained the government accommodation beyond the permissible period is not disturbed.

(ii) The impugned Memo No. 1117 dated 6th December, 2018, Order No. 5966/EA/ECC dated 22nd January, 2019, Order No. 4869/ECC dated 1st February, 2019 and Memo No. 7341 dated 28th March, 2019 are set aside to the limited extent that they determine or seek to enforce the Petitioner's liability towards penal rent without consideration of the power of relaxation under Rule 5 of the 2016 Rules.

(iii) Within two weeks from today, the concerned Department shall place the Petitioner's case, together with his representation(s) and a copy of this order, before the Finance Department, Government of Haryana. The Finance Department shall consider the case under Rule 5, Note 2 and pass a reasoned order within eight weeks thereafter, after affording the Petitioner an opportunity to place a brief written representation on the question of relaxation.

(iv) While doing so, the Finance Department shall consider separately the period attributable to the Petitioner's transfer to Gurugram and the period, if any, for which he continued in occupation after his re-transfer to Delhi. It shall have regard, among other relevant circumstances, to the duration of the

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Gurugram posting, the Petitioner's service status, the magnitude of the penal multiplier in relation to the normal licence fee, his re-transfer to Delhi before the principal recovery proceedings commenced, and the contemporaneous treatment of the accommodation in his salary account.

(v) No coercive recovery towards penal rent shall be made until the Finance Department takes its decision. Any sum already recovered shall be given full credit in the fresh determination. If the amount already recovered exceeds the liability finally determined, the excess shall be refunded within four weeks of that determination, without interest.

(vi) Any subsequent demands founded upon the same continuing calculation, including those issued during the pendency of this petition, shall abide by the decision so taken. This direction does not confer upon the Petitioner any right to retain government accommodation contrary to the applicable allotment rules.

(vii) Considering that the Petitioner has been residing in the premises with his family for several years and has continued to occupy the same accommodation since his re-transfer to Delhi, any direction for immediate vacation would cause disruption. If the Petitioner wishes to continue occupying the premises, he shall, within four weeks from today, apply for re-allotment of the accommodation presently occupied by him. Such application shall be considered on its own merits, having regard, *inter alia*, to the Petitioner's seniority and the applicable order of preference under policy. Until such application is considered and a decision thereon is communicated to the Petitioner, no coercive steps shall be taken to evict him from the premises. If the accommodation is not re-allotted to the Petitioner, he shall vacate and hand over peaceful possession within four weeks of

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communication of such decision.

28. The writ petition is allowed to the limited extent indicated above. Pending applications shall also stand disposed of.

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29. The contempt petition arises from the order dated 8th May, 2024 passed in CM APPL.27231/2024. While issuing notice in the application, the Court directed the Respondents "*not to precipitate the said letters till the next date of hearing*". The application itself had sought, *inter alia*, stay of the monthly recovery, restraint against issuance of further letters requiring the Petitioner to vacate the accommodation and a direction concerning HRA. The interim order, however, was confined to the direction extracted above.

30. The grievance in the contempt petition is directed principally against Memo No. 555-57 dated 1st August, 2024. The communication referred to the Petitioner's continued occupation of the accommodation and requested the concerned authorities to initiate action for recovery. Its endorsement also requested the General Manager, Haryana Roadways, Delhi to make recovery from the Petitioner.

31. The substantive dispute has, in any event, been decided by the order rendered today in W.P.(C) 4739/2019. The contempt petition is, accordingly, closed. This Court expresses no approval of the demand or of the observations contained in the communication dated 1st August, 2024. The consequences thereof, as also any recovery founded upon it, shall be governed by the directions issued in W.P.(C) 4739/2019.

SANJEEV NARULA, J

AUGUST 13, 2026/*nk*

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