

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 12054 of 2008(O&M)

Date of decision : 30.06.2015

Manjit Singh

..... Petitioner

versus

Union of India and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Rajeev Anand, Advocate for the petitioner.
Mr. Pawan Kumar Longia, Senior Panel Counsel for
UOI.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

By this writ petition the petitioner has challenged the action of the respondents in making a deduction of Rs.2,76, 406/- from his retiral benefits.

The petitioner was working as a Commandant in the Border Security Force (B.S.F.). On 21.10.2003 he was promoted and transferred from Delhi to Baikunthpur in West Bengal to take charge of the 8th Battalion of the B.S.F. as Commandant. However, within a month by an order dated 22.11.2003 some of the personnel of the said Battalion were sent to Pulwama in Jammu & Kashmir to take part in counter insurgency operation as per order Annexure P-1. In terms of

the policy of the Government , to permit officers posted to disturbed areas to retain the accommodation allotted to them at their earlier place of posting, the petitioner also applied for permission to retain the accommodation which had been allotted to him at Delhi as a Second-in-Commandant (for the period that he remained posted in the disturbed area). By letter Annexure P-3 dated 16.01.2004 the respondents permitted him to retain the accommodation allotted to him at Delhi. Thereafter the petitioner was transferred to Abohar on 05.07.2005 and subsequently vacated the accommodation allotted to him at Delhi. However, just before he was to retire on 30.06.2006 the respondents decided that since he had been transferred to West Bengal from Delhi, he should have applied for accommodation at his place of posting and may have been permitted to retain that accommodation on his shifting to Jammu & Kashmir but he could not have been permitted to retain the accommodation in his previous place of posting viz. Delhi and ordered recovery of Rs. 2,76,406/- as penal rent from his retiral dues.

Learned counsel for the petitioner has made a twofold argument. His first argument is that when the petitioner applied for permission to retain the accommodation at Delhi, that letter was forwarded by the Sector, Head Quarters of the BSF in Jammu & Kashmir who well knew that the petitioner had shifted from Baikunthpur. As per him the respondents are now disentitled from claiming that the petitioner had wrongfully retained the said accommodation.

The second argument of learned counsel for the petitioner is

that the petitioner was transferred and joined at West Bengal on 21.10.2003. Within a month of his joining and during the period when he was lawfully entitled to retain the Delhi accommodation(on transfer), he was transferred to the disturbed area of Pulwama. Till that time the petitioner had neither settled down nor had even got a chance to apply for any accommodation at Baikunthpur and before he could settle down he was sent to the disturbed area of Pulwama in Jammu & Kashmir where he served and when that tenure was over, he duly vacated the accommodation at Delhi. As per him in these circumstances it is most inequitable for the respondents to have recovered penal rent amounting to Rs. 2,76,406/- from his retiral benefits.

Learned counsel for Union of India has, however, argued that on transfer to West Bengal the petitioner had the right to apply for an accommodation over there. Thereafter on transfer to Jammu & Kashmir he would have been entitled to retain the accommodation in West Bengal but he could not be permitted to retain the accommodation at Delhi.

I am afraid that this technicalistic argument will not prevail. In the first place if the respondents had advised the petitioner that he would not be allowed to retain the accommodation at Delhi and should apply at Baikunthpur it would have been a different thing. They not only did not advise the petitioner; they sanctioned the retention of the Delhi accommodation. In these circumstances it is hard to come to the conclusion that they would now have a right to turn around and

claim that the petitioner unauthorisedly retained the accommodation. This Court has to take notice of the fact that the petitioner joined on 21.10.2003 at Baikunhpur in West Bengal on his promotion as Commandant. He was in the process of taking over the command and settling down when within a month he was again transferred to Pulwama in Jammu & Kashmir and in the circumstances he can hardly be blamed for not applying for accommodation at Baikunthpur. Had he stayed in Baikunthpur for a significant period of time it may have been different but it is very difficult to expect that a person should settle in completely within one month on his transfer from Delhi to West Bengal. It is also not disputed that as per letter Annexure P-2 all personnel who are transferred to a disturbed area can retain the Government accommodation allotted to them. Learned counsel for the respondent has again argued that in the application moved by the petitioner he should have mentioned the fact that he had been transferred to Baikunthpur for one month during his transition from Delhi to Pulwama. In the first place it is not as if the respondents did not know this fact. The petitioner had not opted voluntarily to go from Baikunthpur to Pulwama but had been transferred by the respondents themselves. As noticed above it was for the respondents to have told the petitioner in no uncertain terms that he could get accommodation in Baikunthpur and retain that during his posting at Pulwama. Had this been done and even if thereafter the petitioner had not vacated the Delhi accommodation it may have made out a case for recovery of penal rent but the present is a case where the respondents by order

Annexure P-3 specifically permitted the petitioner to retain the accommodation. It is not a case where the petitioner was even in a position to mislead the respondents. Rather his application was forwarded by the Head Quarters. In these circumstances the action of the respondents in making the recovery of penal rent amounting to Rs. 2, 76, 406/- from the retiral benefits of the petitioner has to be held illegal. It is accordingly quashed. It is not disputed that the petitioner retired as far back as 2006. In the circumstances the respondents are directed to refund to the petitioner the amount recovered from him along with interest at the rate of 8% p.a. within a period of two months from the date of receipt of a certified copy of this order. Since these are retiral dues, in case the payment is not made within the aforesaid period of two months the petitioner would be entitled to interest at the rate of 10% p.a. from the date of deduction till the date of payment.

Petition stands disposed of.

Since the main case has been decided, the Civil Misc. Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

June 30, 2015
sunita