

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

LPA No. 1809 of 2015 (O&M)

DATE OF DECISION : 23.12.2015

Union of India and others

.... APPELLANTS

Versus

Manjit Singh and another

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present : Mr. Vivek Singla, Advocate,
for the appellants.

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SATISH KUMAR MITTAL, J.

This intra-court appeal under Clause X of the Letters Patent has been filed against the order dated 30.06.2015 passed by the learned Single Judge in CWP No. 12054 of 2008 filed by Manjit Singh (respondent No.1 herein), a retired Commandant of the Border Security Force (B.S.F.), whereby the action of the appellants in making the recovery of penal rent amounting to ₹ 2,76,406/- from the retiral benefits of respondent No.1 has been held to be illegal and the appellants have been directed to refund the said amount to respondent No.1 along with interest at the rate of 8%per annum within a period of two months from the date of receipt of a certified copy of the order.

There is delay of 141 days in filing this appeal. Though in the application (CM No. 3901-LPA of 2015) filed by the appellants for condonation of delay, no sufficient explanation has been given for filing the

appeal beyond the period of limitation, yet in the interest of justice, we have heard learned counsel for the appellants and have gone through the impugned order passed by the learned Single Judge.

In the present case, the issue to be decided is as to whether in the facts and circumstances of the case, the appellants were justified in making a deduction of ₹ 2,76,406/- from the retiral benefits of respondent No.1, being penal rent for occupying a Government allotted residential accommodation at Delhi.

Undisputedly, in the year 2003, respondent No.1 was working as a Commandant in the B.S.F. at Delhi. During his posting at Delhi, he was allotted a Government residential accommodation at Delhi itself. Vide order dated 19.06.2003, respondent No.1 was transferred to Baikunthpur, Jalpaiguri (West Bengal). Accordingly, he was relieved from Delhi on 19.09.2003 and thereafter, he joined his duties at Baikunthpur, Jalpaiguri (West Bengal) on 21.10.2003, but he did not shift his family, as he was to vacate the accommodation at Delhi after the requisite period of one month of his joining at Baikunthpur, Jalpaiguri (West Bengal). In the meanwhile, within a period of one month, vide order dated 22.11.2003, he was transferred to Pulwama in Jammu & Kashmir, a disturbed area. Thereafter, in terms of the policy of the appellants to permit officers posted in disturbed areas to retain the accommodation allotted to them at their earlier place of posting, respondent No.1 made a written request for retention of Government accommodation at Delhi. His request was accepted and he was allowed to retain the accommodation at Delhi during the period he remains posted in the disturbed area. Subsequently, after his transfer from Pulwama

in Jammu & Kashmir, he vacated the accommodation allotted to him at Delhi. After his retirement, the appellants found that respondent No.1 was not entitled to retain the Government accommodation at Delhi, because from Delhi, he was transferred to Baikunthpur, Jalpaiguri (West Bengal), and thereafter to Pulwama in Jammu & Kashmir. Therefore, he could take Government accommodation at Baikunthpur, Jalpaiguri (West Bengal) and retain the same, but he could not be allowed to retain the accommodation at Delhi. On this account, a sum of ₹ 2,76,406/- was deducted from the retiral benefits of respondent No.1, as penal rent for retaining the Government accommodation at Delhi. This action of the appellants was challenged by respondent No.1 by filing CWP No. 12054 of 2008, which has been held to be illegal by the learned Single Judge vide the impugned order; and the direction, as mentioned in the earlier part of this order, has been issued.

After hearing learned counsel for the appellants and keeping in view the aforesaid facts and circumstances of the case, we are not inclined to interfere with the impugned order passed by the learned Single Judge.

Only it has been argued by learned counsel for the appellants that under the rules and regulations, after his transfer from Baikunthpur, Jalpaiguri (West Bengal) to Pulwama in Jammu & Kashmir, respondent No.1 was not entitled to retain the Government accommodation at Delhi. He could retain the accommodation only at Baikunthpur, Jalpaiguri (West Bengal).

We do not find any substance in the aforesaid argument. It has not been disputed that the appellants themselves had allowed respondent No.1 to retain Government accommodation at Delhi, on the request made by

respondent No.1. Thus, respondent No.1 was actually allowed to retain the accommodation at Delhi by an order validly passed by the authorities at that time. The fact remains that during the period in question, respondent No.1 was retaining only one Government accommodation, i.e. at Delhi. Undisputedly, he was not allotted any accommodation at Baikunthpur, Jalpaiguri (West Bengal), nor he retained any such accommodation after his transfer to Pulwama in Jammu & Kashmir. If that is so, it is not a case of retaining double Government accommodations. Being a Commandant, he was entitled for one accommodation, which he was already having at Delhi. Merely because of some technical flaw here and there, penal rent could not have been recovered from the retiral benefits of respondent No.1, after his retirement, particularly when he was legally permitted by the competent authority to retain the accommodation at Delhi.

We are of the opinion that in the present case, the authorities under the B.S.F. have not fairly dealt with its officer, who neither done any wrong nor played any fraud while retaining the accommodation at Delhi. Therefore, in these facts and circumstances, the learned Single Judge has rightly set aside the action of the appellants, which was apparently unreasonable and unjustified.

No merit. Dismissed.

(SATISH KUMAR MITTAL)
JUDGE

December 23, 2015
ndj

(SHEKHER DHAWAN)
JUDGE