

\$~14 & 15

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

+ **W.P.(C) 4556/2015**

KARTIK MAJHI

..... Petitioner

Represented by: Ms.Jyoti Singh, Sr.Advocate
instructed by Ms.Tinu Bajwa and
Mr.Dinesh Yadav, Advocates

versus

UNION OF INDIA AND ORS.

..... Respondents

Represented by: Ms.Monika Arora, Advocate with
Mr.Harsh Ahuja, Advocate for R-1 to
R-3

W.P.(C) 4558/2015

HURMAT KHAN

..... Petitioner

Represented by: Ms.Jyoti Singh, Sr.Advocate
instructed by Ms.Tinu Bajwa and
Mr.Dinesh Yadav, Advocates

versus

UNION OF INDIA AND ORS.

..... Respondents

Represented by: Ms.Monika Arora, Advocate with
Mr.Harsh Ahuja, Advocate for R-1 to
R-3

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

%

07.05.2015

1. Writ petitioner Hurmat Khan prays that the notice dated February 02,

2015 be quashed and a direction be issued to permit him to retain quarter No.124 allotted to him at Sector 16-B, Pocket II, Dwarka, New Delhi, popularly known Jyoti Kunj Complex till his postings lasts in a Left Wing Extremist Area in Odisha.

2. Petitioner Kartik Majhi prays that the notice dated July 09, 2014 be quashed and a direction be issued to permit him to retain quarter No.1018 Pocket II, Dwarka, New Delhi, popularly known Jyoti Kunj Complex till his postings lasts in a Left Wing Extremist Area in Odisha and that penal rent deducted from his salary from September, 2014 onwards be directed to be refunded.

3. Learned counsel who appears for the respondents on advance copy of the writ petitions being filed states that the facts pleaded in the writ petitions are correct.

4. It is not in dispute, and learned counsel for the respondents concedes, that the issue raised in the two writ petitions has been decided by this Court on February 25, 2015, when W.P.(C) No.1824/2015 Neeraj Kumar Singh Vs. UOI & Ors. was disposed of and the entitlement of CRPF personnel who were allotted accommodation at Jyoti Kunj Complex at Dwarka to continue to occupy the same till they were posted either in the State of Jammu and Kashmir or in the North Eastern Region of the country or in a Left Wing Extremist Area till they were allotted family accommodation in another complex from out of the General Pool Accommodation of CRPF was upheld.

5. The reason for the view taken has been recorded in the order dated February 25, 2015 and since we incorporate said reason in the present order, we incorporate the order dated February 25, 2015 in our decision. It reads as under:-

"1. Learned counsel appears for the respondents since advance copy of the writ petition was served and prays for disposal of the writ petition by placing reliance upon the latest policy decision dated January 19, 2015 issued by the Director General, CRPF on the subject of allotment and occupation of family accommodation at Sector-16-B, Pocket-2, Dwarka, New Delhi.

2. The petitioner is undoubtedly posted in the State of Jammu & Kashmir.

3. In the year 2006 a family accommodation was allotted to the petitioner at the Jyoti Kunj Complex at Dwarka, Sector 16-B, Pocket-2 since he was posted at Delhi. Being posted to the State of Jammu & Kashmir, the petitioner has been declared to be an unauthorized occupant of the family accommodation allotted to him at Dwarka and vide impugned order dated October 14, 2014 recovery of rent at penal rate has been directed against him.

4. It is not in dispute that family accommodation is provided to the force personnel of CRPF as per the CRPF Family Accommodation Rules, 2008. Under the Rules, vide Rule 25, a family accommodation allotted can be retained for the prescribed period of five years. But the same i.e. five year period is not to be applied to the force personnel posted in the North Eastern region of the country and the State of Jammu & Kashmir.

5. It is apparent that the policy has the underlying reasoning; of a force personnel being posted at a place for five years. For it would make a non-sense of the policy to post a person for more than five years at a place but restrict family accommodation being provided for only five years.

6. It appears that there was some problem in understanding the Rules, resulting in a circular being issued on April 28, 2009. It was clarified that CRPF personnel posted in the North Eastern region as well as in the State of Jammu & Kashmir would be allowed to retain the family quarter till their actual posting lasts in said areas. Meaning thereby, as per the family

4

accommodation Rules read with the policy guidelines dated July 28, 2009, a force personnel posted in the State of Jammu & Kashmir or the North Eastern region was entitled to retain the family quarter till duration of posting in the State of Jammu & Kashmir or the North Eastern region.

6. *On December 30, 2013, general guidelines were issued concerning family accommodation allotted to CRPF force personnel and as per para 7 thereof it was once again made clear that the period of allotment would be till posting lasts in the State of Jammu & Kashmir or the North Eastern region. However, it was indicated therein that separate instructions would be issued pertaining to the flats in Dwarka.*

7. *The separate instructions regarding allotment and right to retain the family accommodation in Dwarka has been issued on January 19, 2015, and this would be sufficient reason to quash the impugned order dated October 14, 2014 charging penal rent as also the eviction notice dated August 27, 2014 for the reason as of said dates the general pool accommodation Rules and the guidelines issued thereunder would govern the entitlement of the petitioner.*

8. *Concededly, being posted State of Jammu & Kashmir, the petitioner would be entitled to retain family accommodation allotted to him.*

9. *But we need to speak something more.*

10. *The policy dated January 19, 2015 requires that the maximum period of allotment would be four years inclusive of extension.*

11. *Now, there has to be a special reason to make separate guidelines for the family accommodation at Dwarka for the reason one cannot think of only a group of flats being subjected to a separate allotment and retention policy and the remainder under a general policy.*

12. *From the facts noted above it would be apparent that for family accommodation other than in Dwarka, a force personnel*

posted in the State of Jammu & Kashmir or the North Eastern region of the country would be entitled to retain the residential accommodation allotted in any city in India including Delhi before, till the officer completes the posting in the State of Jammu & Kashmir or the North Eastern region.

13. Though not expressly stated in the policy guidelines dated January 19, 2015, for the flats at Dwarka, a perusal thereof would evince that in Dwarka, CRPF has 816 quarters out of which 215 have specifically been earmarked for the 88th Mahila Battalion and 17 for the 135th Mahila Battalion and the 213th Mahila Battalion. 10 have been left in the discretionary quota of the Direction General for allotment on compassionate ground, 19 have been distributed for various prescribed purposes. 555 quarters have been reserved for allotment to CRPF officers on 'first-cum-first-serve' basis.

14. Though not stated in the policy, learned counsel for the respondents states that fixing maximum four years' duration period for retention of flats in Dwarka is that the Dwarka area in Delhi is isolated from the general city of Delhi and transport is made available to the officers to whom flats are allotted there. If a flat at Dwarka is retained by an officer not stationed at Delhi and he is allowed to retain the same for the benefit of his family, another force personnel would be required to be given a family accommodation elsewhere and this would create transport problem.

15. If this be so, the only way forward is to first allot a flat to a CRPF force personnel in a complex outside Dwarka where his family could shift till when the force personnel serves in the State of Jammu & Kashmir or the North Eastern region of the country and thereupon call upon the officer to vacate the quarter allotted in Dwarka.

16. To our mind, it would be arbitrary to let a force personnel retain the family accommodation allotted if the same is not in Dwarka area of Delhi till the officer serves in the State of Jammu & Kashmir or the North Eastern region but to require the officer to vacate the accommodation if family accommodation allotted in Dwarka.

17. *The fortuitous circumstances of the place where family accommodation is allotted coupled with the fortuitous circumstance of being attached at a particular office in Delhi resulting in a curtailment of the entitlement of the officer under the family accommodation Rules and general guidelines would be arbitrary.*

18. *We would commend to CRPF officers to issue a clarification removing the anomaly afore-noted. The best clarification would be that if a force personnel has been allotted residential accommodation in Dwarka when the force personnel was posted at Delhi, he would be entitled to retain the accommodation in Dwarka for his family on being posted in the State of Jammu & Kashmir or the North Eastern region of the country till alternative accommodation is made available for the family in Delhi. Once the alternative accommodation is made available the entitlement to retain the accommodation in Dwarka would automatically lapse.*

19. *Impugned order dated August 27, 2014 and October 14, 2014 are quashed.*

20. *It is declared that the petitioner would be entitled to retain the family accommodation at Dwarka at the normal license fee till he is serving in the State of Jammu & Kashmir, which period could be curtailed upon the petitioner being allotted a general pool accommodation by CRPF in any part of the city of Delhi."*

6. The writ petitions are allowed as prayed for. Notice dated February 02, 2015 imposing penal market rent upon petitioner Hurmat Khan is quashed. Mandamus is issued to the respondents to permit him to retain family quarter allotted to him at Jyoti Kunj Complex, Dwarka till he is posted in a Left Wing Extremist Area or till when an alternative family accommodation is allotted to him at Delhi; whichever date is earlier. Notice dated July 09, 2014 issued to petitioner Kartik Majhi is quashed. Mandamus

is issued to the respondents to permit him to retain family quarter allotted to him at Jyoti Kunj Complex, Dwarka till he is posted in a Left Wing Extremist Area or till when an alternative family accommodation is allotted to him at Delhi; whichever date is earlier. Excess amount charged from him with effect from September, 2014 is directed to be refunded within four week failing which the amount shall be paid with simple interest @ 9% per annum. For both writ petitioners normal license fee shall be charged.

7. No costs.

CM No.8264/2015 in W.P.(C) No.4556/2015

CM No.8266/2015 in W.P.(C) No.4558/2015

Dismissed as infructuous.


PRADEEP NANDRAJOG, J.


PRATIBHA RANI, J.

MAY 07, 2015

mamta