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

+ W.P.(C) 6593/2016

VIMAL PRAKASH DUBEY

..... Petitioner

Represented by: Mr.Pradeep Dahiya, Advocate with
Mr.Amit Aggarwal, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Represented by: Mr.C.M.Goyal, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

% **01.08.2016**

CM No.27074/2016

Allowed subject to just exceptions.

W.P.(C) No.6593/2016

1. Challenge in the writ petition is to the order dated June 09, 2015 directing that from the petitioner as also other force personnel occupying a flat at the Jyoti Kunj Housing Complex at Dwarka damages will be recovered at the rate mentioned in the office order. The order passed pursuant thereto dated August 10, 2015 levying damages upon the petitioner in sum of ₹12,400/- per month on the ground that he was an unauthorized occupant of Quarter No.342 has also been challenged.

2. The result was that before the petitioner could approach this Court ₹43,400/- were deducted from the petitioner's salary. The petitioner claims refund of the said amount.

3. 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, the State of Jammu & Kashmir and in Left Wing Extremist areas. The reason is that these areas are not treated as family stations and thus the force personnel can retain the family at the accommodation which was allotted and was occupied by the family when the force personnel was posted at a peace station.

4. Regarding allotment being made for five years, suffice it to state that the five year period is stipulated in the Rule upon the understanding that the force personnel would remain at the place of posting for five years and would be transferred out. Needless to state at the transferred place official accommodation is provided. If not provided HRA is paid.

5. It is not in dispute that members of the CRPF are either entitled to a rent free accommodation (payment of a license fee) or HRA.

6. 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.

7. 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 and left wing extremist areas would be allowed to retain the family quarter till their actual posting lasts in said areas. Meaning thereby, as per the family 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 or left wing extremist areas was entitled to retain the family quarter till duration of posting in the State of Jammu & Kashmir or the North Eastern region or the left wing extremist areas.

8. 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 or the left wing extremist areas. However, it was indicated therein that separate instructions would be issued pertaining to the flats in Dwarka.

9. Dwarka area was excluded because CRPF employees stationed at Dwarka were having transport problems to reach the place of their work and the department was providing transport. In other words the flats at Dwarka were not treated as available for allotment under the general pool, but we need no further concerning said aspect of the matter because we are not concerned with a flat allotted at Dwarka except to note the reasoning in a decision dated February 25, 2015 allowing W.P.(C) No.1824/2015 Neeraj Kumar Singh Vs. UOI & Ors.

10. In said case Neeraj Kumar Singh had been allotted a flat in Dwarka and had been posted to the State of Jammu and Kashmir. The allotment was for four years. He served in Delhi for four years and was posted to the State of Jammu and Kashmir. Penal rent was sought to be deducted for the accommodation retained by him in Dwarka. Quashing the same reasons given in the decision dated February 25, 2015 are as under:-

“12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.”

11. In the instant case a flat No.324 in Jyoti Kunj Complex was allotted to the petitioner when he was posted with the 2nd Sig. Bn. CRPF stationed at Hyderabad but performing duty with the 124th Bn. CRPF stationed in Agartala. On March 31, 2010 the petitioner was posted at Delhi with the 1st Sig. Bn. CRPF. Withdrawing allotment of Quarter No.324, Quarter No.342 in the same complex was allotted to the petitioner. The petitioner was thereafter posted in Assam on October 12, 2013 with the 171 Bn. CRPF stationed at Dibrugarh and since then the petitioner is in Assam. It is not in dispute that the petitioner has not availed of any other accommodation or has received HRA. Thus, the law declared by the Division Bench of this Court in Neeraj Kumar Singh's case is squarely applicable to the case of the

petitioner.

12. Under the circumstances the question of charging any penal rent from the petitioner by treating him as an unauthorized occupant of the flat in question does not arise.

13. The writ petition is allowed quashing the order dated August 10, 2015 which is directed against the petitioner, noting that the order dated June 09, 2015 is general in nature. A mandamus is issued directing the respondents to refund to the petitioner the penal rent charged as damages. Normal license fee payable by the petitioner would be adjusted and the excess amount shall be refunded within 12 weeks. On the strength of the order dated August 10, 2015 the respondents shall effect no further recovery.

14. No costs.

CM No.27073/2016

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

PRATIBHA RANI, J.

AUGUST 01, 2016

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