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

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Date of Decision : July 15, 2016

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W.P.(C) 6512/2015

PRAMOD KUMAR

..... Petitioner

Represented by: Mr.K.K.Sharma, Advocate

versus

UNION OF INDIA & ORS

..... Respondents

Represented by: Mr.Vivek Goyal, CGSC with
Mr.Anirudh Shukla and Mr.Prabhakar
Srivastava, Advocates
Mr.Vijay Kumar, Pairvi Officer,
CRPF

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

1. Challenge in the writ petition is to the signal dated January 10, 2015 directing that ₹7,599/- per month with effect from June 01, 2013 be deducted from the salary of the petitioner till on August 01, 2014 he vacated government accommodation being Flat No.43, Block-04, Jharoda Kalan, New Delhi – 110072.
2. The result was that commencing from the salary payable in February for the month of January, 2015 onwards, deductions were made for two months in sum of ₹7,220/- and thereafter in sum of ₹8,663/- till when on July 10, 2015 while issuing notice in the writ petition a stay was granted in favour of the petitioner.
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 the flat in question was allotted to the petitioner for a period of three years or less if he was posted out. It is apparent that at that stage the department was contemplating petitioner's further tenure at Delhi for a period of three years. It is not in dispute that the petitioner has not availed of any other accommodation or has received HRA. Thus, the ratio of law declared in aforementioned decision squarely applies.

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. Noting that the petitioner has since vacated the flat, we quash the signal dated January 10, 2015 and direct that the respondent would only be

entitled to charge the normal license fee for the flat in question till it was retained by the petitioner and subject to adjusting the said license fee shall refund the excess deducted from the salary of the petitioner.

14. No costs.

CM No.11860/2015

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

JULY 15, 2016
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