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

+ **W.P.(C) 7497/2017**

NAWAL KISHORE YADAV

..... Petitioner

Through: Mr Nikhil Jain and Mr Satya Prakash,
Advocates.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr Vikas Mahajan, CGSC with Mr
S.S. Rai, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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28.08.2017

CM No. 30932/2017

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 7497/2017 and CM No. 30931/2017

3. The petitioner has filed the present petition, *inter alia*, impugning a letter dated 14.08.2017 issued by the Assistant Director of Estates cancelling the allotment of government accommodation in favour of the petitioner. The said allotment was cancelled pursuant to the Office Memorandum dated 24.05.2016, which clarified the policy regarding concessional retention of accommodation. The petitioner has also challenged the said Office Memorandum as *ultra vires* Article 14 of the Constitution of India.

4. Briefly stated, the relevant facts are that the petitioner - who is an officer of Border Security Force (BSF) - was posted at the Frontier Headquarter, BSF, North Bengal, Kadamtala, District Darjeeling, West

Bengal. On 10.02.2010, while posted in West Bengal, he was selected for deputation with National Security Guard (NSG) for a period of five years. Accordingly, he was relieved from the Frontier Headquarters of BSF and joined NSG at Manesar, Haryana.

5. On 31.12.2014, the petitioner was posted at NSG Headquarters at Palam, New Delhi and by virtue of his posting, he was allotted General Pool Residential Accommodation (GPRA) – Flat No. C-105, Sarojini Nagar, New Delhi.

6. After the petitioner's deputation with the NSG was over, he was relieved on 28.02.2015 and was repatriated to his parent organisation. And, he joined BSF Sector Headquarter, BSF, Silchar, Assam on 06.05.2015.

7. In the meanwhile, pursuant to the communication dated 29.06.2015, the petitioner was permitted to retain GPRA till 30.06.2016, which was subsequently extended to 30.06.2018 by a letter dated 10.05.2016.

8. Since the area of Sarojini Nagar is being re-developed, the petitioner was served with a notice dated 11.05.2017 calling upon the petitioner to bid for another accommodation of a similar type.

9. Thereafter, the petitioner was issued a letter dated 14.08.2017 (which is impugned herein) cancelling the allotment of GPRA in his favour and instructing the petitioner to vacate the same by 01.09.2017.

10. It is the petitioner's case that since he is posted to the North-East Region of this country, is entitled to retain the accommodation in terms of the respondent's policy dated 07.09.1998 and 15.09.1998.

11. The relevant extract of the said policy dated 07.09.1998 is set out below:-

“Guidelines for retention/allotment of alternate accommodation to the Central Govt. Employees and officers of All India Services posted to the state of Assam, Meghalaya, Manipur, Nagaland, Tripura, Arunachal Pradesh, Mizoram, Sikkim, Andaman & Nicobar Islands and Lakshadweep were reviewed by the Cabinet Committee on Accommodation in its meeting held on 16.7.98 and based on the decision taken, following orders are issued:-

1. Civilian Central Government employees serving in the States of Assam, Meghalaya, Manipur, Nagaland, Tripura, Arunachal Pradesh, Mizoram, Sikkim and Union Territory of Andaman & Nicobar Islands and Lakshadweep
 - (i) The Officers, who are posted to the aforesaid States/UTs and who desire to keep their families at the last place of posting will be eligible to retain entitled type of accommodation, on payment of flat rate/normal licence fee.
 - (ii) It is the responsibility of the officer concerned to intimate to the Directorate of Estate, the date of relinquishment of charge immediately prior to the posting to the North-East Region and the date of joining at the new station.
 - (iii) The request for retention of accommodation should reach the Dte. Of Estates within one month of relinquishment of the charge at the last station of posting.
 - (iv) The concession of retention of Govt. accommodation would also be admissible if the Govt. servant is transferred from one State to another in the NE Region.

- (v) The orders are applicable only in case the officers are posted to Central Govt. offices, offices of the Union Territories and these orders will not be applicable in cases where officers are posted to Public Sector Undertakings/Autonomous Bodies etc.
- (vi) Retention of Govt. accommodation shall also be admissible to those officers who owns houses at the last place of their posting."

12. The aforesaid policy to permit retention of accommodation was also extended to officers posted to the State of Jammu & Kashmir by the circular dated 15.09.1998. The relevant extract of the said circular is set out below:-

“The undersigned is directed to say that the question of retention of general pool accommodation at the last place of posting by Central Civil Service officers posted to Jammu & Kashmir had been engaging attention of Govt for sometime in the past. The matter has been considered by the CCA in its meeting held on 16.7.98 and the following decisions has been taken:-

- (a) Posting to Jammu and Kashmir may be treated at par with that of posting to North-East-Region.
- (b) Retention of general pool residential accommodation on posting to J&K, shall be governed as per the provisions of this Dte "OM" No. 12035/31/96-Pol.II dated 7.9.1998
- (c) The above concession will also be admissible, if the Govt servant is transferred from J&K State to any State in the North-Eastern region, Sikkim, A&N Islands and Lakshadweep and vice versa.
- (d) The facility of retention of Govt accommodation

on posting to J&K State shall be permissible upto 30/06/1999 and further extension shall be considered after necessary review.

(e) These orders shall be effective from 16.7.1998.”

13. In terms of the aforesaid policy, the Central Government employees who are posted to the North-Eastern States (Assam, Meghalaya, Manipur, Nagaland, Tripura, Arunachal Pradesh, Mizoram, Sikkim) or the Union Territory of Andaman and Nicobar Islands and Lakshadweep or the State of Jammu and Kashmir, are entitled to retain the government accommodation in Delhi up to a specified period. It is the petitioner’s case that he is also entitled to retain the accommodation in terms of the aforesaid policy.

14. The aforesaid policies have been subsequently clarified by the Office Memorandum dated 24.05.2016. The relevant extract of which reads as under:-

“2. It is clarified that the facility of concessional retention of GPRA at the last place of posting for Central Government employees is permitted only when the allottee of GPRA is transferred to NER, Sikkim, Andaman & Nicobar Islands, Lakshadweep and to the state of J&K from other places and is not permitted to the Central government employees who are repatriated back to his/her parent office in NER, Sikkim, Andaman & Nicobar Islands, Lakshadweep and to the State of J&K on completion of their deputation from other places.”

15. It is apparent from the plain reading of the aforesaid clarification that a distinction is sought to be drawn between the Central Government employees, who were posted from Delhi to the specified stations (North-East States; Andaman and Nicobar and Lakshadweep/State of Jammu and

Kashmir) and employees that were posted from those States to Delhi on deputation. The aforesaid classification cannot be termed as violative of Article 14 of the Constitution of India as it has a reasonable nexus with the objects of the said policy. Plainly, the object of the policy is to ensure that families of those officers who are posted from Delhi to the specified states, which are considered as difficult territories; are not disturbed. This is so because the officers may have some reluctance to move their families to those places. However, this question would not arise in the case of officers who were already posted with their parent organisations in those states and thereafter, were posted to Delhi on deputation. For such officers, posting on being repatriated is effectively going back and, therefore, the respondent has clarified that in such cases, retention of GPRA would not be permissible.

16. This Court is not called upon to examine the merits of the policy as the same is not justifiable. It has been held in several decisions that the Court while exercising powers under Article 226 of the Constitution of India will not interfere with policy matters unless it is found that the policy is capricious, discriminatory, arbitrary and unreasonable. The issue whether the policy is unreasonable would have to be tested on the anvil of *wednesbury* principle; that is, no sensible person would possibly have formed this view. Clearly, in this case, none of those grounds are established and thus, this Court is of the view that no interference is warranted.

17. Having stated the above, it is seen that the petitioner is been granted only fourteen days time to vacate the accommodation. This does not appear reasonable; more so as the petitioner was earlier informed that he had been

permitted to retain GPRA till 30.06.2018.

18. In the circumstances, this Court is of the view that at least a period of three months must be granted to the petitioner to vacate the accommodation in question, as is provided to other officers who demit their office. However, in this case, it is not possible to provide the said period because accommodation in question is required to be demolished by 30.09.2017. In the circumstances, it would be apposite if the petitioner is permitted to retain the accommodation till 30.09.2017, without further levy of any damages and penal charges. It is so directed.

19. The petition and the application are disposed of with the aforesaid observations.

20. Order *dasti* under signature of Court Master.

VIBHU BAKHRU, J

AUGUST 28, 2017
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