

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

% ***Date of Order: April 12, 2018***

+ **W.P.(C) 3228/2008 & CM 29714/2016**

HAMENDRA NATH SHARMAPetitioner

Through: Mr. U. Srivastava, Advocate

Versus

UNION OF INDIA & ORS.Respondents

Through: Mr. Bhagwan Swarup Shukla,
CGSC & Mr. Kamaldeep, Advocates for
respondent No.1

Mr. Bijoy Kumar Pradhan, Mr. Madhav Smita
Bora & Mr. Vineet Ranjan, Advocates for
respondent No.2

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Upon retirement of petitioner on 31st August, 2006, he was intimated about pensionary benefits by fourth respondent vide Communication of 17th August, 2006 (*Annexure-P-12*). As per the aforesaid Communication of 17th August, 2006 (*Annexure-P-12*), ₹2,97,693/- was payable to petitioner as gratuity. According to petitioner, a sum of ₹2,05,813/- has been deducted by fourth respondent from petitioner's retiral dues.

2. Respondent-*Union of India* in its counter affidavit has asserted that the deduction from the retiral dues of petitioner was made, as petitioner was declared as unauthorized occupant by Directorate of Estate on 28th

September, 2004. As per aforesaid order of 28th September, 2004, the allotment of General Pool Residential Accommodation to petitioner was cancelled on account of unauthorized sub-letting of the said accommodation and damages were imposed upon petitioner.

3. Learned counsel for petitioner has drawn attention of this Court to Estate Officer's order of 19th December, 2005 (*Annexure P-10*) to submit that the allegation levelled against petitioner of sub-letting the premises allotted to him, does not stand proved and the matter was remanded back. It is the case of petitioner that on 18th August, 2006, another official accommodation was allotted to him vide Communication of 18th August, 2016 (*Annexure-11*).

4. The stand taken by respondent-*Union of India* in the counter affidavit is that the Estate Officer under the *Allotment of Government Residences (General Pool in Delhi) Rules, 1963*, is not vested with the power to decide about sub-letting.

5. At this stage, learned counsel for petitioner points out that the order of 19th December, 2005 (*Annexure P-10*) of the Estate Officer, has not been challenged by respondents and since it has attained finality, therefore, respondents are precluded from deducting ₹2 lacs odd from the gratuity payable to petitioner.

6. Upon hearing and on perusal of the material on record, I find that the Cancellation Order of 28th September, 2004 (*Annexure-I to the counter affidavit*) with regard to Government accommodation allotted to petitioner, was appealable and infact, an appeal was filed by petitioner before the Estate Officer, which was allowed vide order of 19th December, 2005 (*Annexure P-10*), which has attained finality.

7. Vide order of 19th December, 2005 (*Annexure P-10*) the Estate Officer has held that sub-letting of the official residential accommodation in question does not stand proved. In such a situation, reliance placed upon the *Allotment of Government Residences (General Pool in Delhi) Rules, 1963* is of no avail as the cancellation order of 28th September, 2004 stands annulled vide order of 19th December, 2005. Thus, no justification remains for deducting ₹2 lacs odd from the gratuity of petitioner.

8. In view of the aforesaid, first respondent is directed to refund the amount of ₹2,05,813/- deducted from petitioner's retiral benefits with interest @ 6% *per annum* thereon, which shall be payable from January, 2006 till the date of refund of the deducted amount. Needful be done within a period of six weeks, failing which interest @ 8% *per annum* shall be payable by first respondent to petitioner from the date of default, till the date of payment.

9. With aforesaid directions, this petition and the application are disposed of.

(SUNIL GAUR)
JUDGE

APRIL 12, 2018
r/s