

\$~30

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 2889/2019, CM Appl. No. 13439/2019**
PANKAJ KUMAR

..... Petitioner

Through Mr.A.K.Trivedi, Advocate.

versus

THE ESTATE OFFICER AND ANR.

..... Respondent

Through Mr.Manir Dogra, Senior
Govt.Counsel with Mr.Dhruv Pande,
Advocate.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

25.03.2019

%

This writ petition is filed with the following prayers:

“(a) Quash and set aside the impugned Order dated 29/01/2019 passed by Ld District & Session Judge, New Delhi in PPA NO.186/2016 and Order dated 15/07/2014 passed by Ld Estate Officer, Station Headquarters, Delhi Cantt.

(b) Direct the respondents to allow the petitioner to retain the present Govt. Accommodation OR in the event it is required to be vacated, the petitioner may be allotted an alternate Govt Accommodation.

(c) Restrain the Respondents from charging any damage rent from the petitioner.

(d) Issue a writ of Mandamus/Certiorari or any other writ or directions or orders as may be deemed just and proper in the facts and circumstances of the case.”

The brief facts of the case as alleged are as under:

“the petitioner on 04/02/2004 was appointed as Chowkidar (Khansama) in the Military Engineering Service, which was a non industrial post and the petitioner was posted in the office of Garrison Engineer (East) Delhi Cantt-10.

On 03/01/2005 the petitioner was allotted a Government accommodation i.e. Quarter No. P-10/3, Uri Enclave (Type-II), Delhi Cantt -10.

On 9th November 2013 the petitioner was posted on

promotion to the post of Lower Division Clerk From GE (East) to HQ CWE (P), Delhi Cantt. The transfer of the petitioner was within Delhi Cantt to Delhi Cantt and is covered under SRO 308/78.

The respondents No.2 issued a letter No.202/6/A/P-10/3/UE/Q5 dated 7th April 2014 and the same was duly replied by the petitioner.

On 26th April,2014 respondent no.2 cancelled the allotment of the Petitioner wef 20th November 2013 on the ground neither the petitioner nor the unit of the petitioner informed to the respondents regarding the posting of the petitioner.

On 13th May 2004 the respondent no. 1 issued a show cause notice under section 4 of The Public Premises (Eviction of Unauthorized Occupants) Act, 1971, in which the respondent states that the petitioner was allotted house No. P-10/3, Uri Enclave (Type - II), Delhi Cantt-10. Further stated that neither the petitioner nor the unit of the petitioner informed to the respondents regarding the posting of the petitioner.

On 23rd May 2014 and 14th June 2014, the petitioner filed the reply of show cause notice dated 13th May 2004 under section 4 of The Public Premises (Eviction of Unauthorized Occupants) Act,1971. The petitioner had further requested to the respondents for not evicting from the allotted government accommodation keeping in view his parents sickness and school going children as well to save him from financial hardship. The petitioner further submitted even if so not allowed at least to provide him alternate accommodation;

as per para 17 of QMG's Branch letter dated 3rd May 2005, it will be the responsibility of the CWE/GE at the station to inform the Station Headquarters (Allotting/Evicting Authority) of any developments affecting entitlements to key personnel quarter i.e. on transfer, retirement, resignation or death of the individual or where the individual otherwise ceases to be eligible for allotment of key personnel quarters.

It is relevant to say on the subject of allotment of Govt. MD ACCN:MES KEY PERN, HQ Chief Engineer, Delhi Zone vide its letter/order dated 02/04/2002 conveyed the clarification issued by QMG Branch(Quarter Master General Branch) that once accommodation has been allotted to defence civilian persons, they will not normally be asked to vacate it but if exigencies of the services so

demands, they will be shifted to alternate accommodation appropriate to their status. It is submitted the MES Key Personnel Qtrs are being controlled by the Military Engineering service for the purpose of allotment and upon their recommendation only, the Station HQs, Delhi Cantt issue order of allotment. The cadre controlling authority of the petitioner recommended the case of the petitioner for regularization of QTR No.P-10/3, Uri Enclave, Delhi Cantt from key personnel accn to General Pool Accn vide letter dated 21/06/2014 and 26/06/2014 to enable the petitioner to retain the said accn. but no decision was taken and communicated by the Estate Officer.

The petitioner again represented vide his representation dated 28/07/2016 which has also been recommended by the cadre controlling authority of the petitioner for regularization of the said Qtr allotted and occupied by the petitioner but till date no final decision has been taken and the Estate Officer issued notice U/S-4 of the PPE Act.

The Ld Estate Officer passed an order by which the petitioner has been declared as an unauthorized occupant of the Qtr and the petitioner has been asked to vacate the Govt. Accn by passing an order of eviction against the petitioner without considering the fact that it was the duty of the CWE/GE under whom the civilian personnel are serving to intimate the Station Commander, Station HQs regarding posting/Transfer and in the present case the department has not intimated the Stn HQ regarding posting of the petitioner and due to this reason, the Station HQs has issued an Order U/S-4 of PPE Act 1971 which is clear from the Impugned show cause notice and order of eviction, therefore the petitioner is being punished for no fault on his part.

Aggrieved by the order of the Estate Officer, the petitioner filed an appeal U/S-9 of PPE Act before Ld District & Session Judge, New Delhi, in which the notices were issued and the respondents have filed their counter reply.

Ld Distt. & Session Judge on 29.01.2019 dismissed the appeal of the petitioner which is under challenge in this writ petition.”

It is submitted by the learned counsel for the petitioner that in similar cases too, on the transfer of an officer from key personnel post to some other unit in the same station the accommodation allotted to

the official as a key personnel has been allowed to be retained by him/her and/or such accommodation was converted to general pool accommodation.

Heard.

The letter dated 03.05.2005 of the Department bearing no.42179/Policy (Qtr.) notes:

“11.Additions/Deletion in the list of Tradesmen Identified as MES Key Personnel. in the wake of exigencies of services, CWE/GE concerned may take up case with the station Commander for addition/deletion in the list of tradesmen identified as MES Key personnel. Additions/deletions could be proposed in the following eventualities

(a) Deletions

*(I) When individual is **posted/transferred** out of the unit/establishment.*

(II) When individual is ineffective.

(III) When individual is retired/died/dismissed/removed/terminated from the services.

(b) Additions

(I) When individual is posted in and his/her services are required for performing key personnel duties.

(II) To fill up the existing vacancies.

Retention/ Vacation of key Personnel Accn.

14. The key personnel are allotted accn on priority for specific purpose in each station. It is like an 'Appointment House' and hence has to be vacated on priority, so that the same can be re-allotted. The retention of key personnel quarter by an individual not posted on the strength of key personnel staff is contrary to the basic concept of having constructed key personnel quarter. This has to be curbed scrupulously. For retention/vacation of accn, the following rules shall apply:-

(a)-(c)xxxxx

(d) In case of posting of an individual occupying key personnel quarter to other units in the same station or other station, key personal accn held by him will be vacated within 10 days from the date of SOS.

(e) xxxxxx”

Further the letter of allotment dated 03.06.2005 of this very Government accommodation allotted to the petitioner notes:

*“6. On **posting out**, retirement, death of the allottee he/she and his/her unit will inform this Headquarters the occurrence before the indl move/retirement or within ten day of his death positively. **In case the conditions mentioned in para 2 above are acceptable you may please take over the accn within ten days of issue of this letter.**”*

Thus this accommodation was allotted to the petitioner only on a condition mentioned in para 6 of the letter of allotment dated 03.06.2005 viz. *if he is posted out, he shall inform the Headquarters and would move within 10 days*. This condition was accepted by the petitioner at the time of allotment and now he cannot be allowed to backtrack. Admittedly the petitioner is promoted as LDC, hence is not entitled to keep such accommodation, per allotment letter dated 03.06.2005. Even per policy dated 03.05.2005 the petitioner is not entitle to retain the accommodation he is holding.

I have perused the impugned orders. Each and every contention of the petitioner has been dealt with by the Estate Officer as also by the learned District Judge. Thus considering the conditions imposed by allotment letter dated 03.06.2005; the policy dated 03.05.2005, which is still in operation, no case is made out for allowing of this writ petition. The petition stands dismissed. Pending application if any, also stands disposed of in terms of above.

Order *dasti*.

YOGESH KHANNA, J

MARCH 25, 2019/DU