

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 3344 of 2021

1. Gajadhar Singh S/o Shri Kanwal Singh Aged About 55 Years Working As Head Constable GD No. 943440332 Posted At Central Industrial Security Force 2nd BR Dhurwa District Ranchi Jharkhand.

---Petitioner(s)

Versus

1. Central Industrial Security Force Through Directorate General, Central Industrial Security Force, Block No, CGO Complex, Lodhi Road, New Delhi 110003.
2. Director General, Central Industrial Security Force Unit BSP Bhilai, District Durg Chhattisgarh.
3. Sr. Commandant, Central Industrial Security Force 2nd R.B. Ranchi Jharkhand.

---Respondents

For Petitioner	:	Shri B.L. Sahu, Advocate.
For Respondents	:	Shri Ramakant Mishra, Asst. Solicitor General along with Shri Amit Tirkey, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

07.07.2021

1. The grievance of the petitioner in the present writ petition is the action on the part of the respondents in recovering an amount of Rs.1,12,320/- as penal rent for the government quarter which the petitioner has retained at district Durg beyond the period the petitioner was transferred from Bhilai, District Durg (Chhattisgarh).
2. It is a case where the petitioner was working as a Constable under the respondents and was posted at CISF unit at Bhilai Steel Plant, Bhilai, District Durg. He was also allotted a government quarter while posted at Bhilai. Subsequently the petitioner got transferred to Jorhat (Assam) on 31.03.2016. The petitioner during the said period had applied for retention of the said quarter enabling his children to pursue their studies at Bhilai.

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The said request of the petitioner was acceded and he was permitted to retain the said quarter till 01.02.2017. The petitioner however continued to retain the quarter even beyond that period and subsequently he got transferred from Jorhat to Ranchi (Jharkhand). Even then the petitioner continued retaining the said quarter at Bhilai and ultimately he evicted the quarter on 16.04.2019. That now the respondents have decided to recover penal rent from the petitioner for the period after 01.02.2017 to 16.04.2019 amounting to Rs.1,12,320/-.

3. Perusal of pleadings would show that the request of the petitioner for exemption of penal rent have all been rejected by the respondents at all level in the past. Undoubtedly in the instant case the petitioner had got an extension for retention of quarter only uptill 01.02.2017 and beyond that the petitioner was not granted any extension. The fact that he did not get an extension would suggest that the petitioner knew that for the period that he does not have any extension to retain the quarter he will have to pay the market rent or penal rent, as the case may be, and knowingly the petitioner had retained the said quarter for a further period of more than two years.
4. Perusal of records would show that the petitioner never made any efforts beyond 01.02.2017 for retention of the quarter nor has he approached any court of law seeking for a direction to the respondents to permit the petitioner to retain the quarter beyond 01.02.2017. In the given factual backdrop if the respondents have initiated recovery of penal/market rent from the petitioner, the same under any circumstances cannot be said to be either illegal or contrary.

5. However, what needs to be considered and appreciated is the fact that the petitioner belongs to a Armed Force and is posted at sensitive areas and it is not always possible for the petitioner and his nature of duties to take along with him his family at all the places where he is transferred to. Another fact which needs appreciation is the fact that the petitioner's children were undergoing their studies at High School level during the relevant period. It was also not advisable at that point of time for shifting of the students at High School level from one place to another. That would have also adversely affected the educational front of the students.
6. Recently the Division Bench of Delhi High Court had an occasion of deciding a matter of similar nature in case of Pramod Kumar Vs. Union of India & Others, WPC No.6512 of 2015, decided on 15.07.2016, wherein referring to judgment of Single Bench, which was put to test before the Division Bench, in paragraphs 7 to 12 held as under:
 - “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 aforesaid 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."
7. Given the aforesaid judgment of Division Bench of the High Court of Delhi, this court at this juncture would like the petitioner's case to be reconsidered by the respondents so far as charging of penal rent is concerned. Let the petitioner therefore make a fresh representation to the respondent No.2 who has earlier rejected the request of the petitioner, and the respondent No.2 in turn shall consider the claim of the petitioner

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sympathetically taking into consideration the aforesaid factual backdrop and also the contents that the petitioner would be making in his representation only so far as charging the penal rent the respondent may consider charging the petitioner at a rate other than penal rent if the Rules permits or if the Respondent no.2 has any discretionary powers under the law. Upon petitioner's making fresh representation, the respondents are expected to take a decision at the earliest preferably within a period of 60 days from the date of receipt of representation.

8. The writ petition accordingly stands disposed of.

Sd/-
(P. Sam Koshy)
Judge

inder