

NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WPS No. 4915 of 2021**

Santosh Singh, S/o Late Chandradev Singh, Aged About 50 Years Working As Head Constable No. 921400484, R/o K.S.T.P.P. Korba, Post Jamnipali District Korba Chhattisgarh

**---- Petitioner**

**Versus**

1. Union Of India Through Home Secretary, Ministry Of Home Affairs, New Delhi 110001
2. Director General Central Industrial Security Force, Fhqs, Cgo, Complex, Block-13, Lodhi Road, New Delhi 110003
3. Director General Central Industrial Security Force, Unit Csi, Airport Mumbai 400099
4. Commandant Central Industrial Security Force Unit K.S.T.P.P. Korba, Post Jamnipali District Korba Chhattisgarh 495450

**---- Respondents**

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| For Petitioner  | : | Mr. Arvind Kumar Dubey, Advocate |
| For Respondents | : | Mr. Rajkumar Gupta, Advocate     |

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**Hon'ble Shri Justice P. Sam Koshy**

**Order on Board**

**15/09/2021**

1. The challenge in the present writ petition is to the memo dated 28.08.2021 issued by the respondent No.4 whereby the petitioner has been asked to submit his explanation as to under what authority of law is he retaining the respondents-company quarter at the CISF unit ASG, Mumbai and why the penal rent for the unauthorized occupation should not be recovered.
2. The facts of the case in brief is that the petitioner herein is a Head Constable working in the CISF. Initially he was posted at the Mumbai Airport till July, 2018 when the petitioner was transferred from Mumbai

to Korba. While he was posted at the Mumbai Airport, the petitioner was permitted to avail the government accommodation under the respondents where the petitioner was staying along with his family. After the transfer to Korba, Chhattisgarh on 16.07.2018 the petitioner joined his services at Korba, however he retained his family at Mumbai as his children were pursuing their studies. The petitioner was initially permitted to retain the government accommodation till the end of the then Academic Session i.e. March-April, 2019. However, the petitioner did not vacate the quarter and continued occupation of the same. Since then the petitioner has been charged of the penal rent which is being deducted from the monthly salary payable.

3. Subsequently, the petitioner filed a fresh writ petition i.e. WPS No. 666/2020 before this Court in respect of the penal rent which was being charged from the petitioner. This High Court on 06.02.2020 had entertained the writ petition and has also granted the interim protection to the petitioner to the extent of staying the further recovery of penal rent till March, 2020. In spite of the interim protection given to the petitioner till March, 2020, he still continued and is presently also in continuation of the occupation of the said government accommodation at Mumbai. Therefore the respondents have now issued the impugned notice Annexure P/1 dated 28.08.2021 seeking an explanation from the petitioner as to why the penal rent should not be charged from the petitioner to the tune of Rs.7,23,760/-.
4. It goes without saying that the allotment of the quarter and the retention of the quarter are all in terms of the Quarter Allotment Rules governing the field. An employee of the Department is entitled for a

government accommodation as long as he is posted at a particular station. The moment an employee is transferred, terminated or retired, he is required to vacate the government accommodation within a stipulated period of time. The Rules governing the field specifically provide for the consequences that would follow in case if the quarter is not vacated within the stipulated period of time.

5. In the instant case, from the pleadings it stands admitted that the petitioner stood transferred from Mumbai to Korba, Chhattisgarh on 16.07.2018. The petitioner complied with the order of transfer joined the services at Korba. Since his children were undertaking their education, the petitioner moved an application for retention of the government accommodation till the academic session is over, which in all fairness was accepted by the Department and he was granted extension till March, 2019. However, the petitioner did not vacate the quarter even after the academic session of 2019 was over. The petitioner with wide open eyes was fully aware of the consequences of retaining the quarter beyond the extended period permitted by the respondents, continued to retain his family there at Mumbai itself and got further admission of his children to continue their study at Mumbai. It is then that the Department had initiated deduction of penal rent from the salary. This was also challenged by the petitioner by way of a writ petition before this Court vide WPS No. 666/2020 and considering the hard realities this Court had stayed the charging of penal rent till March, 2020. This by itself goes to show that the petitioner by all means should have vacated the government accommodation by March, 2020, which the petitioner has not done. The petitioner did not

take any steps for availing an alternative private accommodation at Mumbai itself if the petitioner intended to continue to retain his family there. Knowingly the petitioner continued with the accommodation that was not allotted to him beyond March, 2019. That, now when the impugned notice has been issued, the petitioner has again come to this Court seeking for further relief and extension of retain of the quarter.

6. If the allotment of quarters are guided by Rules and guidelines, the petitioner cannot escape from the guidelines and the Rules and the provisions of those Rules. If at all if there can be any relaxation granted , the same can only be granted by the authorities concerned not by the Court, particularly in exercise of the writ jurisdiction of this Court. Moreover, in the case of the petitioner the discretionary writ jurisdiction has already been exercised while entertaining the writ petition WPS No. 666/2020, where there is already an interim protection of 06.02.2020 asking the respondents to restrain from making further recovery of penal rent till March, 2020.
7. All these period i.e. from March, 2019 till March, 2020 India was not inflicted with the COVID-19 Pandemic and it is only from March, 2020 that a situation for imposition of Lock-down had arisen. The petitioner had ample time in his possession for locating for an alternative accommodation before March, 2020 itself as the interim protection granted by this Court also was till March, 2020. The petitioner has now moved this writ petition on the solitary ground that in between the Pandemic and the Lock-down was there and the petitioner could not think of shifting his family to an alternative arrangement. All these are

factual matrix which have cropped up post March, 2020, whereas the petitioner had sufficient time and opportunity for making a suitable alternative arrangement prior to March, 2020 itself, which he did not take. Now the petitioner is trying to take advantage of the unfortunate pandemic situation which ruled the country for the next 1½ years. The petitioner cannot be permitted to retain a government accommodation beyond a particular stipulated period, which in the instant case was further extended by the respondents themselves till March, 2019 and at the intervention of this Court in WPS No. 666/2020 it has been extended till March, 2020.

8. This Court in exercise of its power under Article 226 has got only the discretionary power. The discretionary power also cannot under any circumstances be in violation of the rules governing the field. The only factor which this Court could have taken was sympathetic consideration, which the Department itself at the first instance had considered by permitting the petitioner to retain the quarter till March, 2019. Thereafter this Court had also shown its discretion in restraining the respondents from charging the penal rent till March, 2020. That, as such exercise of discretionary power cannot be repeated for the same person for the same quarter again and again.
9. One should also not lose sight of the fact that upon the petitioner having been transferred from Mumbai to Korba, there would also be someone else who must have been posted at Mumbai and he must have also taken his family. The Department would require to provide an accommodation to the person who is presently posted at Mumbai in place of the petitioner and in the event if the Department fails to

provide them an official accommodation, the Department faces the additional economic burden of providing HRA to the said incumbent who has joined the Mumbai unit of CISF. That for all these reasons this Court does not find any strong case made out by the petitioner calling for an interference with the impugned notice (Annexure P/1) dated 28.08.2021.

10. Another reason for this Court being reluctant to entertain the impugned notice is the fact that it is only a notice seeking explanation from the petitioner. In case if the petitioner is able to submit justifiable grounds to the authorities concerned through his explanation and is also able to convince the authorities and if the authorities have got the power to relax the charging of penal rent. It is expected that the authorities would take an appropriate decision on its own merits taking into consideration the contents of the response that the petitioner would be submitting to the impugned notice.
11. With the aforesaid observations, the present writ petition stands disposed of.

Sd/-  
**(P. Sam Koshy)**  
**Judge**

*Ved*