

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

Reserved on: 21st September, 2021
Date of decision: 05th October, 2021

+ **W.P.(C) 6501/2021 & CM APPL. 20399/2021 & 26188/2021**

194601 INDRA MOHAN EA(P)2 Petitioner
Through: Mr.Manoj Kr. Gupta &
Mr.Praveen Kumar Jha, Advs.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr.Vivek B Saharya, Sr. Panel
Counsel for UOI with Cdr. Vineet
Verma & Lt. Cdr. Vikrant Singh.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J

1. This petition has been filed by the petitioner praying for the following reliefs:

“13.1 A Writ in the nature of mandamus or any other appropriate writ, orders, directions quashing the Notice of Vacation which is discriminatory and also in contravention to the Principle of Natural Justice, and/or

13.2 Direct the Respondents to issue instructions so as to prevent any misuse of power by subordinate authority in granting extension of service accommodation discriminately within the ambit of policy;”

2. The learned counsel for the petitioner submits that the petitioner was enrolled in the Indian Navy as a Sailor as EA(P)2 on 31.07.2001. In

April 2019, the petitioner was transferred to the New Delhi station on compassionate grounds post-death of his new born child at INHS Kalyani in March 2018 and to look after his wife, who had been under severe trauma post the incident. The petitioner was allotted Government Accommodation, being Quarter No. SAHYADRI M-3/23 in Gurugram Bagh, for two years commencing from 12.04.2019 to 11.04.2021. On 27.04.2020, the petitioner was blessed with a baby girl, however, she had to be hospitalised for two months at BHDC and Civil Hospital due to Neonatal Sepsis and still, the growth of the baby was slow and she was under-weight. This had severely affected the emotional health of the petitioner's wife and she is suffering from post-partum depression. The petitioner asserts that the COVID-19 pandemic has further aggravated the situation by adding to the stress of existing domestic issues of the petitioner. The petitioner states that he himself is suffering from health issues in the form of PIVD C5-C6 (Cervical Spondylosis) for the last seven years and has lately been diagnosed with Beta Thalassemia Minor.

3. The learned counsel for the petitioner asserts that by a communication dated 29.01.2021, the case of the petitioner for retention of the quarter up to 31.07.2021 on compassionate grounds was recommended. He further asserts that on the said recommendation the petitioner was informed that his request for an extension of stay has been granted till 11.08.2021 vide QCM 02/21 dated 22.01.2021, however, he was later informed that vide QCM 03/21 dated 08.02.2021, his request has been accepted only till 31.05.2021.

4. The petitioner asserts that his request for retention of the quarter till 31.07.2021 was again recommended vide letter dated 17.05.2021, however, by a Notice dated 07.06.2021, the petitioner was asked to vacate the quarter by 07.06.2021, failing which suitable disciplinary action was threatened to be initiated against him. The petitioner, on 08.06.2021, replied to the Notice and prayed for permission to stay in the quarter till a confirmation is received on the status of his request for extension of stay. The petitioner further prayed that at least one week be granted to make necessary arrangements in case his request for extension of stay in the quarter is denied.

5. The respondents vide its letter dated 12.06.2021 informed the petitioner that his request for extension of stay in the quarter on medical grounds has not been granted vide QCM 10/21 dated 24.05.2021 and in view thereof, the petitioner was called upon to vacate the quarter by 21.06.2021.

6. The petitioner submitted a Redressal of Grievances (hereinafter referred to as 'RoG') on 17.06.2021 seeking extension of permission to retain the quarter till 31.01.2022, however, on 30.06.2021, an Eviction Notice was issued against the petitioner under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the 'Public Premises Act') calling upon him to show cause why an Eviction Order be not passed against him.

7. The petitioner replied to the above show cause notice on 06.07.2021 and filed the present petition seeking the above quoted relief.

8. Placing reliance on the Circular dated 03.02.2021, issued by the Ministry of Defence, Government of India, the learned counsel for the petitioner asserts that as the petitioner was occupying the quarter on the date of his retirement, which is 31.07.2021, he was entitled to a six-month extension to retain the quarter from the date of his retirement.

9. The learned counsel for the petitioner further submits that the RoG of the petitioner has still not been decided. He submits that there is no reason for not granting extension of retention of the quarter to the petitioner, making the same arbitrary.

10. He further submits that in response to an application under the Right to Information Act, 2005, the petitioner has now been informed that forty sailors have been granted extension of time to retain the quarter. He submits that the case of the petitioner is certainly more grave than these sailors and therefore, he has been discriminated against.

11. On the other hand, the learned counsel for the respondents submits that the present petition is not maintainable as the petitioner has an alternate efficacious remedy in the form of a petition before the learned Armed Forces Tribunal under the Armed Forces Tribunal Act, 2007 and/or before the learned District Judge in the form of an appeal under the Public Premises Act.

12. On merit, he submits that the case of the petitioner was duly examined and the petitioner was granted an extension of time to retain the quarter till 31.05.2021 on compassionate grounds. While communicating the said decision, a mistake was made as the Quartering

In-Charge was on leave and it was recorded that the petitioner has been granted an extension to retain the quarter till 11.08.2021. Realising the said mistake, a fresh communication was sent informing the petitioner that his request for an extension has been acceded only till 31.05.2021.

13. The learned counsel for the respondents further submits that the representation of the petitioner was again rejected by the Competent Authority whereupon, at the request of the petitioner, a further extension was granted to him to vacate the quarter till 07.06.2021. He submits that as the petitioner showed intention to vacate the quarter, a further extension was granted to him till 21.06.2021 to vacate the quarter. Instead of vacating the quarter, the petitioner forwarded an RoG to his Commanding Officer seeking extension of retention of the quarter till 31.01.2022. The said application was also rejected. Upon his failure to vacate the quarter, eviction proceedings under the Public Premises Act were initiated, resulting in the passing of an Order of Eviction dated 06.07.2021.

14. The learned counsel for the respondents submits that the case of the petitioner has been sympathetically considered and extension has been granted in his favour from time to time. He submits that the petitioner can therefore, not plead discrimination. He further submits that there is a shortage of accommodation and any extension granted in favour of the petitioner to retain the quarter would in fact, be discriminatory against other officers.

15. We have considered the submissions made by the learned counsels for the parties.

Signature Not Verified

Digitally Signed
By: SHALOO PATRA
Signing Date: 05.10.2021

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16. It is not in dispute that the allotment of the quarter in favour of the petitioner was for a period of two years ending on 11.04.2021. Though the case of the petitioner to retain the quarter till 31.07.2021 was recommended, the said request was acceded to by the Competent Authority only till 31.05.2021. The respondents have produced before us the document where the said decision has been recorded. The respondents have further explained that the earlier communication informing the petitioner of a decision to allow him to retain the quarter till 11.08.2021 had been erroneously recorded as the Quartering In-Charge was on leave. In view thereof, such mistake cannot create any right in favour of the petitioner to retain the quarter till 11.08.2021.

17. The respondents have also produced the relevant documents before us wherein the fresh request of the petitioner to retain the quarter till 31.07.2021 was again rejected by the Competent Authority consisting of a Board of Officers. The case of the petitioner was thereafter again considered by a team of officers who, vide Minutes of Meeting dated 07.07.2021, again rejected the said request of the petitioner and called upon the petitioner to vacate the quarter by 13.07.2021. The case of the petitioner has, therefore, been considered and reconsidered at various levels. We cannot sit in an appeal over such a decision. As far as the decision making process is concerned, we find no infirmity with the same.

18. We may also note that the initial request of the petitioner was for retention of the quarter only till 31.07.2021. This Court vide its interim

order dated 14.07.2021, had restrained the respondents from evicting the petitioner from the quarter. Based thereon, the petitioner continues to occupy the quarter till date. The petitioner has therefore, already availed of the benefit of retention of the quarter beyond the period he had initially requested for.

19. The reliance placed by the petitioner on the Circular dated 03.02.2021, issued by the Ministry of Defence, Government of India can also not come to the aid of the petitioner. The Circular is applicable only where the officer is occupying the government accommodation at the time of his retirement/superannuation 'authorisedly'. In the present case, an Eviction Order under the Public Premises Act has been passed against the petitioner on 06.07.2021. Therefore, the petitioner cannot be said to be occupying the quarter 'authorisedly' as on the date of his superannuation, which is 31.07.2021.

20. The relevant extract from the Circular dated 03.02.2021 is reproduced hereinbelow:

“ In supersession of all the existing provisions (except relating to battle casualty) on the subject, I am directed to convey the sanction of the President for retention of Government accommodation by Defence Service Personnel for a period of six months at their Last Duty Station (LDS)/ station where service personnel have been authorised to retain accommodation on retirement/ superannuation/ invalidation from service. The term accommodation includes all accommodation whether Government owned, hired, requisitioned or otherwise allotted to the separated families of service personnel who

*proceed on retirement directly from unit/
formation in operational areas.”*

(Emphasis supplied)

21. The plea of the petitioner that he has been discriminated against and that the respondents have granted an extension of retention of government accommodation in favour of forty sailors, cannot also be accepted as the petitioner has not produced before us the details of these officers/sailors. In any case, as we have observed hereinabove, the case of the petitioner has been examined and re-examined at various levels by the respondents and therefore, merely because some other officers have been granted an extension of time to retain the quarter, it cannot be said that the decision to reject similar relief of the petitioner is arbitrary or discriminatory.

22. In view of the above, we find no merit in the present petition.

23. The interim order dated 14.07.2021 shall stand vacated, however, in the peculiar facts of the present case and as the interim order had continued for this period, the petitioner shall not be evicted from the quarter for a period of two week from the date of pronouncement of this judgment.

24. This Court, vide its interim order dated 23.07.2021, had also directed the respondents not to release the financial benefits payable to the petitioner on his discharge from service. The said order shall also stand vacated.

25. As this petition has been pending for a long period before this court and interim orders dated 14.07.2021 and 23.07.2021 referred to herein above have been passed by this court, we have considered it appropriate to consider the petition on merit leaving the objection of availability of alternate efficacious remedy open to be considered in an appropriate case.

26. The petition is disposed of in the above terms. There shall be no order as to costs.

NAVIN CHAWLA, J

MANMOHAN, J

OCTOBER 05, 2021/rv/AB/P

