



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

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Date of decision: 16th February, 2022

+ W.P.(C) 14616/2021, CM APPL. 46073/2021

SUSHIL KUMAR DHAR

..... Petitioner

Through: Mr. Manoj V. George with
Ms. Shilpa Liza George, Advs.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Rahul Sharma, Sr. Panel Counsel
with Mr. C.K. Bhatt, Adv. for UOI

AND

+ W.P.(C) 1770/2021, CM APPL. 5088/2021 & 39788/2021

SURINDER KUMAR RAINA

..... Petitioner

Through: Mr. Arvind Chaudhary and
Mr. B.L. Wali, Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Ajay Gupta, Sr. Panel Counsel

AND

+ W.P.(C) 5443/2021, CM APPL. 16867/2021 & 3171/2022

PRIDMAN KIRSHEN KOUL

..... Petitioner

Through: Mr. Arvind Chaudhary and
Mr. B.L. Wali, Advs.

versus



UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Ajay Digpaul, CGSC with
Mr. Kamal R. Digpaul, Adv. for UOI

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

1. By this common order I shall decide the aforesaid three writ petitions filed by the petitioners challenging the action of the respondents seeking their eviction from the government quarters being Quarter No.245, Type IV, Laxmi Bai Nagar, New Delhi – 110022, B-179, Type IV, at Nanak Pura, South Moti Bagh, New Delhi, and Flat No.50 B, Pocket-B, Mayur Vihar Phase-II, Delhi-110091 respectively. The facts of each of the writ petition are narrated separately.

W.P.(C) 14616/2021

2. This petition has been filed by the petitioner with the following prayers:

“In the light of the above mentioned facts and circumstances, it is most respectfully prayed by the Petitioner before this Hon’ble Court that it may be pleased to:-

a) Quash and Set aside the order F.No.245/LXN/TDA/2021 dated 02.12.2021 passed by the Respondent No. 1

b) Stay the eviction proceedings against the residential quarter No. 245, Type IV, Laxmi Bai Nagar, New Delhi – 110022



c) Issue directions to the Respondents to regularize the Petitioner's allotment of Government accommodation at residential quarter No. 245, Type IV, Laxmi Bai Nagar, New Delhi – 110022 and charge him normal license fees for a period three years as directed by the Hon'ble Supreme Court in the case of UOI Vs. Om Kar Nath Dhar CA 6619/2014 dated 07.10.2021

d) Pass any other further such order or direction that this Hon'ble Court deems fit in the interests of justice."

3. The petitioner was a government servant having been appointed as SRO in National Sample Survey Organisation (Field Operation Division) Udhampur, State of Jammu and Kashmir as it then was in the year 1983. While working in Udhampur, the petitioner was transferred to Delhi. The case of the petitioner in this petition is that he is a Kashmiri Migrant and is similarly placed as other government servants who are retired Kashmiri Migrants, who have been granted the continuation of government accommodation by the Ministry of Urban Development, Government of India. It is his case that he was under the belief that the respondents have covered the petitioner under the scheme providing alternate accommodation to retired Central Government employees belonging to the State of Jammu and Kashmir and as such did not bother to take any alternate accommodation and continued to stay in the government accommodation allotted to him. However, the respondents vide Office Memorandum dated October 20, 2021, stated that in compliance with the judgment of



the Supreme Court dated August 05, 2021, they are seeking eviction of the petitioner.

4. According to the petitioner, the respondents have adopted a pick and choose implementation of the order of the Supreme Court. The Supreme Court after the judgment dated August 05, 2021, has also passed an order dated October 07, 2021, which the respondents have ignored wherein in paragraph 17 the Supreme Court has allowed the retention of accommodation by Kashmiri Migrants for a period of three years from the date of retirement.

5. Mr. Manoj V. George, Advocate who appears for the petitioner would submit that the petitioner hails from Srinagar which was the hub of militants at that time. The petitioner and his family were indifferently treated by the militants and separatist group of Kashmir as an informer of the Union of India as he was a government servant serving the Union of India and therefore, was one of the prime targets of the militants. The threat against the petitioner was real and imminent as many of the petitioner's neighbours were gunned down in his native village by various militant groups. Therefore, in a do-or-die situation, he brought his family from Srinagar to Jammu leaving all baggage, moveable and immovable property at home in Srinagar.

6. According to Mr. George, the threat to the lives of the Kashmiri Pandits like the petitioner from the regional militants still persists in the Kashmir Valley even after many years of exodus by the Kashmiri Pandits. It is not advisable for the Kashmiri Pandits like the petitioner to go back to Srinagar to their native place



owing to the present unrest and the deplorable conditions. The petitioner having been allotted the quarter No.245, Type – IV, Laxmi Bai Nagar, New Delhi – 110022 while serving in Central Electricity Authority, Ministry of Power, he should be allowed to continue for a period of three years in terms of paragraph 17 of the order dated October 07, 2021, of the Supreme Court.

W.P.(C) 1770/2021

7. This petition has been filed by the petitioner with the following prayers:

“In view of the aforesaid facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to issue:

(a) an appropriate writ in the nature of certiorari or an appropriate, writ order or direction calling for the records of EC/175/AD/LIT/2020/TD dated 06.01.2021 pertaining to residential property bearing No. B-179, Nanak Pura, (Type-IV) South Moti Bagh, New Delhi-110021 and set aside the same; and

(b) writ of mandamus thereby restraining the respondents from evicting the petitioner from the property bearing No. B-179 Nanak Pura, (Type-IV), South Moti Bagh, New Delhi-110021 till such time the Government of India/State Government makes it possible for the petitioner to return to the Kashmir Valley alongwith his family or till such time an alternative and suitable accommodation is provided to the petitioner; and

(c) issue. an appropriate writ, order or direction thereby directing the respondents not to charge penalty or enhanced license fee from the petitioner, during his stay in the official accommodation; and permit him to pay normal license fee; and



(d) A ward costs of the present petition; and

(e) Any other or further order, direction or reliefs as this Hon'ble

Court may deem just fit and proper in the facts and circumstances of the present case may also be passed in favor of the Petitioner.”

8. The petitioner in this writ petition has stated that he is a Kashmiri Migrant who was working in All India Radio (*hereinafter, 'AIR'*) and superannuated as an Assistant Engineer. He was appointed as a Technician with AIR, Leh Ladakh in the year 1981. In 1982 he was transferred to Doordarshan Kendra Srinagar and continued to be posted there till 1990. On April 06, 1990, after the petitioner migrated to Delhi, he got himself registered as Kashmiri Migrant. The petitioner was thereafter transferred to AIR, Leh and from AIR, Leh to AIR Jammu in the year 1991 and worked in Jammu till 2006 when he was transferred to the AIR, Akashwani Bhawan, New Delhi. He was allotted a government accommodation in 2009, being B-179, Type IV, at Nanak Pura, South Moti Bagh, New Delhi

9. It is also his case, he is aggrieved by the eviction order passed by the respondents calling upon him to vacate the residential accommodation. The impugned action of the respondents is contrary to the judgment of the Division Bench in the case of *P.K. Koul v. Estate Officer & Anr., W.P. (C) 15239/2004*, decided on November 30, 2010 and also *LPA No.332/2011* titled as *Union of India v. Vijay Mam & Ors.*



Reference is also made to the case of ***Rajinder Kumar Pandita & Ors. v. Union of India & Ors., W.P.(C) 3908/2019.***

10. A counter affidavit has been filed by the respondents wherein it is stated that as per the policy dated March 28, 2017, which stipulates the terms and conditions for qualifying as a Kashmiri Migrant, one of the conditions is that the applicant should have been transferred by the Central Government from Srinagar to Delhi on security ground after November 01, 1989. It is stated that the petitioner was not officially transferred from Srinagar to Delhi during the relevant period. He is not entitled to retention under the policy and action has been taken seeking his eviction from the accommodation allotted to him under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

11. Mr.Arvind Chaudhary, learned counsel for the petitioner make similar submissions as made by Mr. George, inasmuch as the petitioner had retired from service on March 31, 2020 and in terms of paragraph 17 of the order passed by the Supreme Court, dated October 07, 2021, the petitioner is entitled to retain the accommodation for a period of three years from that date.

W.P.(C) 5443/2021

12. This petition has been filed by the petitioner with the following prayers:

“In view of the aforesaid facts and circumstances, it is Most Respectfully prayed that this Hon’ble Court may be pleased to issue:



(a) *an appropriate writ in the nature of certiorari or an appropriate writ order or direction calling for the records of the property bearing House ID No.1110352101 being residential Flat No.50 B, Pocket-B, Mayur Vihar Phase-II, Delhi-110091 and to set aside the eviction notice dated 08.03.2021 (Annexure P-1); and*

(b) *writ of mandamus thereby restraining the respondents from evicting the petitioner from Flat No.50 B, Pocket-B, Mayur Vihar Phase-II, Delhi-110091 till such time the Government of India/State Government makes it possible for the petitioner to safely return to the Kashmir Valley along with his family or till such time an alternative and suitable accommodation is provided to the petitioner; and*

(c) *issue an appropriate writ, order or direction thereby directing the respondents not to charge penalty or enhanced license fee from the petitioner, during his stay in the official accommodation; and permit him to pay normal license fee; and*

(d) *Award costs of the present petition; and*

(e) *Any other or further order, direction or reliefs as this Hon'ble Court may deem just fit and proper in the facts and circumstances of the present case may also be passed in favour of the Petitioner."*

13. The petitioner herein was appointed as an Auditor by the Controller of Defence Accountants (Northern Command), Jammu Cantt. on October 18, 1982. After joining the post, he also served at Srinagar. Between 1986-88 the petitioner was transferred to Leh Ladakh where he remained posted till June 1988.

14. It is the own case of the petitioner that between July 1988 to September 2009, he was posted to various places in North India,



including the states of Himachal Pradesh and Punjab. It is also his case that due to insurgency, the petitioner migrated from Kashmir Valley to Jammu along with his parents. His father was issued a Ration Card and the petitioner's name is also mentioned in the same as he was then unmarried. He was also issued a Kashmiri Migrant Card.

15. It is the case of the petitioner that in September 2009, he was transferred to Delhi, where he was allotted a government accommodation bearing Flat No.50 B, Pocket-B, Mayur Vihar Phase-II, Delhi-110091. In May 2016 he was transferred to Srinagar, where he served the Principal Controller of Defence Accounts (Northern Command), till his superannuation in December 31, 2020. On his transfer to Srinagar, he made a request to retain the family accommodation, as his wife and two daughters continued to reside at Delhi and also because Srinagar, was a non-family station. The said request was allowed and the petitioner continued to retain the official allotted accommodation at Delhi.

16. Pursuant to his retirement which was during the lockdown, the petitioner made a request for retention of the official accommodation as he is a Kashmiri Migrant, who does not have any other residential house to shift to. The only ancestral property of the petitioner is situated in Anantnag District, Jammu and Kashmir, which is inhabitable for such a long time as the petitioner was forced to leave the valley due to militancy and unrest. The house is in a dilapidated condition and is not fit for living. His allotment has been cancelled upon the expiry of six months of his



superannuation till June 30, 2021. The petitioner gave a representation to the respondents which has not been replied to till date.

17. Counter affidavit has been filed by the respondents wherein it is stated that the petitioner does not qualify under the scheme of March 28, 2017, as he was not officially transferred to Delhi during the relevant period on security grounds.

18. The counsel for the respondents would submit, on the only ground urged by the counsel for the petitioners for retention of the accommodation for a period of three years in view of the order dated October 07, 2021, of the Supreme Court more specifically paragraph 17 of the order, that the said paragraph has to be read in continuity with the earlier paragraphs from 13 to 16. Paragraph 17 is only an observation of the Supreme Court but not a direction that every Kashmiri Migrant is entitled to the retention of the government accommodation for a period of three years from the date of retirement.

19. That apart, they heavily relied upon the fact that after the order dated October 07, 2021, the respondents have withdrawn the scheme of March 28, 2017, and as of date there is no scheme evolved by the respondents for retention of the government accommodation by the Kashmiri Migrants for a period of three years from the date of retirement. They seek the dismissal of the petitions.



20. Having heard the learned counsel for the parties, the first and foremost question that arises for consideration is whether the Office Memorandum dated March 28, 2017 was applicable to the petitioners for being allowed retention. The policy in terms of Annexure A-1 reads as under:

“1. Terms and conditions for qualifying as a ‘Kashmiri migrant’ under this scheme:

i) The applicant should be a retired Central Government employee or his/her spouse (in case the employee is dead), and the applicant should be in possession of a General Pool Residential Accommodation (GPRA) in Delhi allotted by the Directorate of Estates, Ministry of Urban Development on the date of filing the application.

ii) Applicant should be a permanent resident of State of Jammu and Kashmir and should be an erstwhile domicile of Kashmir Division excluding Ladakh and Kargil districts.

iii) Applicant was an employee of the Central Government, and was posted in Srinagar, J&K at the relevant time, and he was transferred by the Central Government from Srinagar to Delhi on security ground after 1st November, 1989.

iv) He/she or his/her family have no other residence in any part of the country.

v) Though he/she has retired, he/she is not in a position to go back to his/her native place because conditions are still not favourable for his/her safe return back to the valley.”

21. From the above, it is clear that the scheme which was in place at the relevant time contemplated that the same shall be applicable to those employees of the Central Government, who



were posted at Srinagar at the relevant time and have been transferred by the Central Government from Srinagar to Delhi on security grounds after November 01, 1989. In the case in hand, the facts demonstrate that none of the petitioners have been transferred from Srinagar to Delhi on security grounds after November 01, 1989. The petitioner, namely Sushil Kumar Dhar was posted at Udhampur before being transferred to Delhi. He has not stated when was he transferred to Delhi. He has also not annexed his transfer order to Delhi. From the representation dated October 18, 2021, it is noted that he was transferred to Delhi in January 1993, that is after four years from 1989. It is not his case that for security reasons he was transferred from Srinagar to Delhi after November 01, 1989. So, the petitioner was not eligible under Office Memorandum dated March 28, 2017. Similar is the case of the petitioner in W.P.(C) 1770/2021, who was posted at Srinagar till 1990, subsequently posted at Leh and thereafter, at Jammu (1991). He was transferred to Delhi only in the year 2006. So, it is not a case, that the petitioner was transferred from Srinagar to Delhi after November 01, 1989 on security grounds. It follows, he was not eligible under the scheme. I find even the petitioner in W.P.(C) 5443/2021 was posted in Dehi only in the year September 2009. He was not posted in Srinagar after the year 1986. Hence, he was also not eligible for retention of government accommodation as a Kashmiri Migrant under the Office Memorandum dated March 28, 2017.



22. Having said that, it must be noted, the Supreme Court vide its judgment dated October 07, 2021 has set aside the above Office Memorandum by holding in paragraphs 13 to 16 as under:

*“13. We do not find any merit in the argument that directions in **J.L. Koul** were not under Article 142 of the Constitution of India. This Court accepted the Rehabilitation Scheme produced on affidavit by the Chief Secretary of the State and thereafter expressed a pious hope. This Court did not decide any question of law or fact but merely expressed a compassionate view to alleviate the difficulties being faced by Kashmiri Migrants. The Rehabilitation Package approved by this Court itself contemplated that transit accommodations were being constructed at three sites but if such transit accommodation was not available, Rupees One Lakh per family towards rental and incidental expenses would be given to those who may not be accommodated in transit accommodation. Thus, even if they have not been given alternate accommodation, the Scheme approved by this Court contemplates cash compensation towards rental and incidental expenses. The compassion could not be extended in perpetuity and has to end some day or the other. Therefore, seeking parity with 31 retirees who were granted benefit in **J.L. Koul** is not tenable. The applicants are occupying the government accommodation at the cost of other Government servants who are waiting in queue for allotment of a government accommodation to discharge their official duties. The compassion shown to Kashmiri Migrants has to be balanced with the expectations of the serving officers to discharge their duties effectively. The Government accommodation is meant for serving officers and cannot be taken as a recourse to stay in Government accommodation for the life time of the Government servants or his/her spouse.*



14. *The Office Memorandum issued on 28.3.2017 was in terms of the directions of the High Court of Delhi. Such order of High Court has not been approved by this Court vide order dated 5.8.2021. Therefore, the entire basis of issuance of Office Memorandum falls flat as the very foundation of such Scheme stands knocked down.*

15. *We find that the Office Memorandum allowing government accommodation to the retired Government employees who are Kashmiri Migrants cannot meet the touchstone of Article 14 of the Constitution of India. The Government houses/flats are meant for serving Government employees. Post retirement, the government employees including Kashmiri Migrants are granted pensionary benefits including monthly pension. The classification made in favour of Government employees who were Kashmiri Migrants stands on the same footing as that of other Government employees or public figures. There cannot be any justification on the basis of social or economic criteria to allow the Kashmiri Migrants to stay in Government accommodation for indefinite long period.*

16. *To say that they would return to the Valley when the situation will improve is an open-ended statement capable of being interpreted in different ways. The satisfaction of improvement of situation would be widely different by the erstwhile Government employees and the State. But in no case it can be countenanced that the former Government employee, may be a Kashmiri Migrant, is entitled to stay in a government accommodation for an indefinite period. Thus, we are unable to uphold the Office Memorandum and strike it down as being totally arbitrary and discriminatory.”*

23. The plea advanced by the counsel for the petitioners that they are entitled to the benefit of retention of house for three years,



is unmerited. Firstly, the petitioners being ineligible under the Office Memorandum dated March 28, 2017, cannot rely on paragraph 17 of the order dated October 07, 2021, as they were not covered under the scheme, and as such were not entitled to retention of the government accommodation at all. Secondly, in the affidavit filed by the respondents on the directions of this Court, (noting the submission made by the counsels during the hearing on February 08, 2022), the following has been stated:

“5. I say that the OM dated 28.03.2017 was withdrawn on 20.10.2021 by the Respondent No.1, in terms of the Hon'ble Supreme Court's order/ judgment dated 05.08.2021 & 07.10.2021 passed in Union of India & Anr. Versus Omkar Nath Dhar (D) Through LR's.

6. I say that the contents of para 17 of the Hon'ble Supreme Court's judgment dated 07.10.2021 passed in Union of India & Anr. Versus Omkar Nath Dhar (D) Through LR's., may kindly be read with the contents of paragraphs 13, 14, 15, 16 & 18, which paras clearly espouses the basis and reason for setting aside/withdrawal of the policy/scheme of retention of the government accommodation by the retired Kashmiri migrants and further clarifies that the observations [which are being relied upon by the Applicant herein], are observation of the Hon'ble Supreme Court on Para 2 of OM dated 28.03.2017 and are not binding directions. Also, the Withdrawal of the policy and initiation of eviction proceedings, in compliance of Supreme Court Order dt 5.8.2021 and 7.10.2021, was taken on record by the Hon'ble Supreme Court in its order dated 11.01.2022 in MA No. 1891 /2021 in CA No. 6619/2014.

7. I say that the above said is further clear from the order dated 11.01.2022, passed by the Hon'ble



Supreme Court in Union of India & Anr. Versus Omkar Nath Dhar (D) Through LR., as well as Action Taken Reports filed by the Respondent No.1 before the Hon'ble Supreme Court in terms of the orders dated 05.08.2021 & 07.10.2021.

8. I say that all the retired Kashmiri migrants occupying government accommodation have been/ are being treated at par/ equally and in terms of the orders dated 05.08.2021, 07.10.2021 & 11.01.2022, passed by the Hon'ble Supreme Court in Union of India & Anr. Versus Omkar Nath Dhar (D) Through LR. and accordingly Action Taken Reports are being filed by the Respondent No.1 before the Hon'ble Supreme Court as directed."

24. In view of my above discussion, this Court is of the view, that the impugned action of the respondents cannot be faulted. The petitions are devoid of merit, the same are dismissed. No costs. The petitioners shall vacate the government accommodation allotted to them on or before March 31, 2022 and an undertaking shall be filed in the Court within one week. No costs.

CM APPL. 46073/2021 in W.P.(C) 14616/2021

CM APPLs. 5088/2021 & 39788/2021 in W.P.(C) 1770/2021

CM APPLs. 16867/2021 & 3171/2022 in W.P.(C) 5443/2021

In view of the fact that writ petitions are dismissed, these applications are also dismissed.

V. KAMESWAR RAO, J

FEBRUARY 16, 2022/aky