
(2006) 02 DEL CK 0124
In the Delhi High Court
Case No : Writ Petition (C) 3390 of 2002

Ajay Kumar Datta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-02-2006

Acts Referred:

Citation : (2006) 02 DEL CK 0124

Hon'ble Judges : Mukul Mudgal, J;H.R. Malhotra, J

Bench : Division Bench

Advocate : Santosh Kumar and M.P. Singh, for the Appellant; Tatini Basu, for Sangeeta Tomar, for the Respondent

Final Decision : Disposed Off

Judgement

Mukul Mudgal, J.—Rule DB. The writ petition is taken up for final hearing. We have gone through the pleadings and the copy of the counter affidavit which is taken on record.

2. The petitioner complains in this writ petition of the damages levied for his alleged overstay in pool accommodation from 1st July, 1999 to 10th October, 1999. The petitioner was at the relevant time serving in the Army's Medical Corps as a Lt. Colonel and was allotted pool accommodation in Dhaula Kuan. In the month of November, 1998 the petitioner was transferred to Assam. This writ petition challenges the recovery of a sum of Rs. 53,545/- recovered as damages for the said period from the petitioner.

3. The learned counsel for the petitioner has relied on the grant of concessions dated 12th November, 1997 sanctioned by the Hon'ble President of India to all ranks of units located at Assam and Tripura. The relevant portion of the said concessions reads as follows:-

(b) OFFICERS AND PERSONNEL BELOW OFFICER RANK TO BE POSTED TO ASSAM and TRIPURA -- CONVEYANCE OF FAMILY, BAGGAGE AND PRIVATE CONVEYANCE

(i) Free conveyance of families of the officers and personnel below officer rank from old duty station to home or a selected place of residence in India, or alternatively, retention of Government married accommodation/separated family accommodation occupied by the officers/ personnel prior to their posting to Assam and Tripura, and from there to new duty station on reposting. Entitlement of TA, conveyance of baggage will be regulated accordingly in terms of Rules 67 and 70 of the Travel Regulations.

4. Apart from reliance upon the said concession on the basis that the petitioner was never sanctioned any free conveyance for his family and as an alternative, he was consequently entitled to retain Government married accommodation, the petitioner has also relied upon the contents of the letter dated 29th September, 1999 of the respondent asking the petitioner to collect the allotment letter of alternate hired accommodation, failing which the damages rent will be charged w.e.f. 1-7-1999 till he vacates the accommodation. The relevant portion of the letter dated 29-9-1999 reads as follows:-

Lt Col A K. Dutta 29-9-99

Commanding Officer

58 FMSD C/O 99 APO

Sub: Rent of DP Accn. No. 123 DK-I

1. Ref your letter No. 4373L/AKD/Pers/99 dt 10-9-99.

2. You are requested to contact this office personally or through your rep to collect the allotment letter of alternate hired accn. Failing which damages rent will be charged wef 1-7-99 till you vacate the accn. Eviction proceedings will also be initiated against you u/s 4 of the PPE Act 1971 in case you fail to collect the allotment letter.

3. This may be treated as most urgent.

Sd/-

AO, CAO/E1

for JS(Trg) and CAO

5. It is not in dispute that the petitioner did in fact vacate the accommodation on 10th October, 1999 even prior to the receipt of the said letter which was received by him only on 20th October, 1999, as averred in paragraph 14 of the writ petition. This averment of the petitioner that the aforesaid letter was received by him on 20th October, 1999 as averred in paragraph 14 of the writ petition had not been specifically denied in the counter affidavit in reply to paragraph 14 of the writ petition.

6. It is thus evident that the letter dated 29th September, 1999 would not create any penal liability on the petitioner on two grounds, firstly letter dated 29th

September, 1999 received by the petitioner on 20th October, 1999 could not by any means impose any charges with retrospective effect from 1st July, 1999. Secondly, the petitioner even before the receipt of the said letter dated 29th September, 1999 had already vacated the accommodation.

7. Furthermore, the petitioner not having availed of the free conveyance for his family was, in any event entitled to retain the accommodation as per the concession dated 12th November, 1997 and Therefore, could not have been charged for overstay.

8. Accordingly, there is no cause for the insistence of deduction of Rs. 53,545/- from the salary of the petitioner on the basis of the letter dated 29th September, 1999. Similarly, he not having availed of the free conveyance for his family was also entitled to retain the accommodation. The said amount of Rs. 53,545/- has been collected without justification and shall be returned to the petitioner on or before 31st March, 2006. In case the said amount is not returned within the period stipulated in this judgment the said amount shall carry an interest of 9% p.a.

9. The writ petition stands disposed of accordingly.