
(1998) 09 DEL CK 0056

In the Delhi High Court

Case No : Civil Writ Petition No. 433 of 1998 and C.M. No. 748/98

Anil Kumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 07-09-1998

Acts Referred:

Citation : (1998) 6 AD 328 : (1998) 76 DLT 413 : (1998) 47 DRJ 339

Hon'ble Judges : A.D. Singh, J

Bench : Single Bench

Advocate : Mr. N.L. Bareja, for the Appellant; Mr. B.K. Aggarwal, for Mr. Chandra Shekhar, for the Respondent

Judgement

Anil Dev Singh, J.—The petitioner challenges the impugned orders dated May 27, 1996 and June 6, 1996 whereby the respondents have levied damage rent on the petitioner for retaining the defense pool accommodation for the period, December 16, 1995 to May 14, 1996.

2. The petitioner who was serving at New Delhi was transferred and posted at Srinagar in June, 1996. He reported for his duties at Srinagar on June 15, 1995. On June 16, 1995 he applied for separated family accommodation for his family which he had left behind in Delhi. On December 15, 1995 the petitioner applied for six months' extension for retaining the defense pool accommodation in Delhi. In January, 1996 the petitioner was allotted hired accommodation at NOIDA (UP). The petitioner, however, did not shift from the defense pool accommodation to the allotted accommodation at NOIDA till May 15, 1996. Consequently, he was asked to pay damage rent for the period December 16, 1995 to May 15, 1996 amounting to Rs.42,126/-. Pursuant to the above said impugned orders the above said sum was deducted from his salary.

3. It appears to me that the action of the respondents in levying damage rent on the petitioner was not authorised by law. By communication of the Government of India dated February 7, 1991 to the Chief of the Army Staff certain

concessions were given to officers, JCOs, NCOs, etc., who were transferred to Srinagar. According to the order contained in the said letter, an officer could retain the defense pool accommodation till such time he was posted in Srinagar. The relevant portion of the said letter reads as follows :-

"(b)

(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 Srinagar, and from there to new duty station on reposting. Entitlement of TA, conveyance of baggage and private conveyance will be regulated accordingly in terms of Rules 67 and 70 of the Travel Regulations."

4. By virtue of sub clause (iii) of the aforesaid letter the order was to remain in force till June 30, 1991 but by the subsequent letter dated October 29, 1996, the operation of the same was extended up to December 31, 1996. In view of the extension given to the provisions contained in the letter dated February 7, 1991 the respondents were not right in imposing damage rent on the petitioner for retention of the defense pool accommodation at Delhi for his family.

5. Learned counsel for the respondents invited my attention to the letter of the Government of India dated March 7, 1995 which makes provisions for retention of defense pool regular accommodation in Delhi/New Delhi on posting to high risk, high intensity and anti insurgency areas. Learned counsel submitted that the provisions of this letter apply to the petitioner and he had to vacate the regular defense pool accommodation and shift to alternate accommodation on expiry of six months from the date of SOS failing which damage rent was liable to be levied on him. I have considered the submission of the learned counsel. This letter is not applicable to the case of the petitioner. This letter makes general provision with regard to the matters relating to the retention of defense pool regular accommodation by the officers who are posted to high risk, high intensity and anti insurgency areas. The letter which makes special provision regarding retention of Govt. accommodation occupied by the officers before their posting to Srinagar is the letter dated February 7, 1991. The respondents, Therefore, were not right in relying on the letter dated March 7, 1995 for imposing the damage rent on the petitioner. The action of the respondents, Therefore, must be struck down.

6. Accordingly, the writ petition succeeds and the impugned orders are hereby quashed. The amount deducted from the salary of the petitioner on account of damage rent shall be refunded to him within a period of six weeks from today.