
(2004) 08 DEL CK 0028
In the Delhi High Court
Case No : WP (C) 2569 of 2003

Ashwani Mathur

APPELLANT

Vs

Chief of the Air Staff and Another

RESPONDENT

Date of Decision : 12-08-2004

Acts Referred:

Citation : (2004) 112 DLT 197 : (2004) 76 DRJ 165

Hon'ble Judges : Gita Mittal, J;Dr. M.K. Sharma, J

Bench : Division Bench

Advocate : P.K. Gaur, for the Appellant; B.S. Jain, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, J.—This petition is filed by the petitioner challenging the action of the respondents in imposing upon him the market rate damage rent for occupation of the residential accommodation of the respondents. The petitioner has alleged in the petition that he was allotted a Station Married Quarter No.206/8 on 1.6.99 and that as per the extant rules the petitioner was entitled to remain in the said quarter for a period of five years. It was also stated that as per the provisions of Para 1725 of the Air Force Regulations, the petitioner is entitled to remain in the service quarter as long as he is posted with the present strength. As the petitioner was transferred/posted out to 35 wing, on 27.4.2001, he moved an application for retention of the station married quarter for the reason of posting in the modified field area, which was filed on 17.9.2001. It is alleged that not only the said request was not acceded to but instead the respondent No. 2 issued a letter/notice dated 22.8.2002 to the petitioner whereby the petitioner was asked to vacate the station married quarter by 31.8.2002. It was also stated that the petitioner moved a writ petition in this court immediately after receipt of the said letter/notice, which was registered as W.P. No.5795/20

2. Wherein an order was passed by this court that the petitioner should not be

dislocated from the quarter till the representation submitted by the petitioner is disposed of. It is also stated that the petitioner vacated the station married quarter on 8.2003. It is alleged that as the respondents served the petitioner with orders dated 3.3.2003, 22.2.2003 , 3.3.2003 and 10.3.2003 imposing the market rate damage rent on the petitioner w.e.f 14.5.2001 to 31.10.2002, Therefore, the petitioner filed the present petition alleging that the aforesaid action imposing market rate damage rent upon the petitioner is in violation of the provisions of Para 1725 of the air force regulations applicable to the Air Force.

3. The respondents, after appearance, have filed a detailed counter affidavit contending, inter alia, that the petitioner has been registered for allotment of station married quarter w.e.f 15.5.1996 and not from 1.6.99, as alleged in the petition. It is also stated therein that he was brought in Authorized Married Establishment with effect from the same day i.e. 15th May, 1996. It is further stated that as station married quarter was not available, which could be given to the petitioner w.f. 15.5.96, he was given compensation in lieu of the quarter w.e.f 15.5.1996 at the rate of Rs.2100/- per month, which was, however, stopped when the petitioner was allotted station married quarter No.206/8 at Subrato Park on 10.1.90. It is also stated that since the petitioner was brought within the authorized married establishment with effect from 15.5.96, consequently he could remain in station married quarter for a period of five years as provided for under Para 29 (a and c) of the Air Force Order of 06/95 dated 11.2.95 i.e. up to 14.5.2001. The petitioner, however, continued to occupy the said station married quarter beyond the said period and accordingly a letter was issued to him on 22.8.2002 directing him to vacate the said quarter latest by 31 8.2002 failing which, it was stated that, market rate damage rent would be raised from the date of completion in authorized married establishment.

4. However, immediately after receipt of the aforesaid letter, the petitioner challenged the legality of the same in this court by filing a writ petition registered as C.W. 5795/2002. However, the said writ petition was disposed of by an order dated 11.9.2002 directing the petitioner to file a representation to the competent allotting authority and to seek appropriate orders under law and also ordering that till then the petitioner should not be dislocated from the aforesaid quarter. The petitioner, however, did not make any representation within the time frame fixed by this court. The respondents accordingly wrote a letter dated 23.10.2002 to the petitioner reminding him of the order passed by this court, whereupon the petitioner made a representation on 21.3. 2003 for waiving off the market rent. The said representation was disposed of by the respondents holding that the petitioner could retain the station married quarter for a period of five years only and that his request was not to be able as per the rules. Thereafter, the petitioner has filed the present writ petition in this court.

5. Counsel appearing for the petitioner, in his submissions, has reiterated the stand taken in the writ petition contending, inter alia, that the petitioner could stay in the station married quarter for five years effective from 1.6.99 and,

Therefore, the action on the part of the respondents in imposing the market rate damage rent is illegal and without jurisdiction. It was also submitted that the petitioner was required to stay on at the station as he was cited as a witness in a case pending against Sqn. Ldr. P.S. Roth, in view of which he was to required to stay at the station and in that view of the matter no such damage rent could be demanded from the petitioner. In the light of the aforesaid submissions and the pleadings of the party, we may discuss the issues that arise for our consideration.

6. Para 29 (a) and (c) of Air Force Order No.06/95 dated 11.2.95 provides as follows:

""29 (a) An airman posted to family station will be allowed to continue to remain within AME/stay in Station Married Quarter for a period of 5 years.

(c) The period of 5 years will reckon from the date an airman is brought within the AME and becomes entitled to CILQ.""

We are informed that ""AME "" is the abbreviation for Authorized Married Establishment and ""CILQ"" for Compensation In Lieu of Quarter.

7. The aforesaid provision makes it crystal clear that an airman posted to a family station could continue to remain within the authorized married establishment and get compensation or stay in the station married quarter for a period of five years. The period of five years would be reckoned from the date an airman is brought within the authorized married establishment and becomes entitled to compensation in lieu of the quarter.

In the present case, there could be no dispute that the petitioner was registered for allotment of station married quarter with effect from 15.5.96 as he was brought in authorized married establishment with effect from 15.5.96. It is, however, to be mentioned, at this stage, that as no station married quarter was available at the relevant time, namely, w.e.f 15.5.96, the petitioner was given compensation in lieu of the quarter (CILQ) w.e.f 15.5.96 at Rs.2100/- per month. The said compensation in lieu of quarter was, however, stopped by the respondents when the petitioner was allotted station married quarter NO.206/8 at Subrato Park, on 10.1.90.

8. On the face of the aforesaid facts, it is clearly proved and established that the petitioner was enjoying the benefit of station married quarter w.e.f 15.5.96 and in terms of the aforesaid Para 29 of the Air Force order No.06/95, the petitioner was entitled to remain in station married quarter till 14.5.2001. This fact was also brought to the notice of the petitioner by letter dated 22.8.2002, Annexure R-2 to the counter affidavit wherein the petitioner was categorically told that he could remaining the said quarter only up to 14.5.2001 and that he has overstayed in the authorized married establishment without any authority. By the said intimation the petitioner was informed that he should vacate the station married quarter by 31.8.2002, failing which the market rent would be raised. Even after receipt of the aforesaid letter, the petitioner did not vacate the quarter

and instead approached this court with the writ petition, which is registered as CWP 5795/2002, which was disposed of with a direction to the petitioner to file a representation within the time frame fixed. Therefore and also directed the respondents to dispose of the same and till then not to be dislocated from the quarter. The petitioner even failed to carry out the aforesaid direction and order from this court and did not file any representation within the time frame fixed to file the same. Subsequently, however, a reminder was issued by the respondent. Thereafter only, the petitioner filed a representation, which was disposed of. The petitioner finally vacated the station married quarter only on 8.8.2003, after almost a year. It is, Therefore, the stand of the respondents that under those circumstances the petitioner is liable to pay market rent of the quarter from 14.5.2001 to 8.8.2003. The respondent has already informed the petitioner that he is liable to pay a sum of Rs.75,09/- for the period from 14.5.2001 to 31.10.2002 under letter dated 3.3.2003. It is also the stand of the respondents that further market rent with effect from 1.11.2002 to 3.8.2003 is being calculated and the petitioner would be intimated in that regard.

9. The period for which an airman posted to a family station can continue to remain in authorized married establishment or stay in station married quarter is specified, which is only for a period of five years. As to how the said five years period is to be reckoned is also specified in the aforesaid paragraph 29. In terms of the aforesaid, the petitioner could have stayed in the said authorized married establishment only up to 14.5.2001. Any overstay in the quarter after the aforesaid period was unauthorized.

10. Paragraph 54 of the aforesaid Air Force Order also provides for the effect of unauthorized occupation of quarter. It states that in case of failure to vacate the quarter allotted to an airman on or before the date up to which he was permitted to occupy as per rules, the following action is to be taken by the administration:

""(a) UABSO is to be informed to raise bill for charging damage for the quarter from the date an airman is ineligible to retain the quarter. Other allied charges will be over and above the damages recovered for the unauthorized occupation.

(b) Disciplinary action is also to be taken against the airman.""

11. In terms of the aforesaid provisions, Therefore, the respondents were entitled to raise bill against the petitioner charging damage for the quarter from the said date the petitioner was ineligible to retain the quarter.

12. Counsel appearing for the petitioner, however, submitted that that it cannot be said that the petitioner became entitled to retain the quarter on/or after 14.5.2001 in view of the provisions of Para 53 of the said air force order and also in view of Para 1725 of the Air Force Regulations. We have considered the aforesaid submission of the counsel appearing for the petitioner. In our considered opinion Para 53 of the air force order is not applicable to the facts and circumstances of the present case. Para 54 of the said order is relevant and applicable to the case of the petitioner.

13. The petitioner has failed to prove and establish that the retention of the quarter by the petitioner beyond 14.5.2001 was permissible under any specific provision. Para 53 clearly provides that an airman must vacate and hand over quarter at the time of his posting out except when specific provision exists for the retention of his quarter by his family. The petitioner was posted out when he was transferred to 35 wing air force, which is a modified field unit and not a field unit, w.e.f 27.4.2000 and the aforesaid order of transfer would not permit the petitioner to retain his station married quarter, which was allotted to him at 206/8, Subrato Park. Para 1725 of Air Force Regulation is also not applicable to the facts of the present case and what is applicable is Para 29 (a) and (c) of Air Force Order No. 06/95.

14. Counsel appearing for the petitioner also submitted that the petitioner was not allowed to move on to his new posting by the respondent No.2 on the ground that a disciplinary proceeding was in progress against one Sqn. Ldr. P.S. Rath, in which the petitioner was a witness. The records placed before us, however, disclose that the petitioner himself was involved in the disciplinary case where Mr. Rath was involved and, Therefore, it cannot be said that the petitioner was directed to be present at the station merely because he was a witness in the said case. It is also disclosed from the said records that as a result of the aforesaid disciplinary proceeding, the petitioner was reduced to the rank of Corporal. It is also clear and apparent from the records that when an airman is posted to field unit, he is not allowed to take his family but in a modified field unit he can take his family along with him.. Since the petitioner was posted to a modified field unit, there was no impediment or restriction on the petitioner to take his family with him. The petitioner was required to stay at the station because of the proceeding which was pending against the petitioner but he was not entitled to retain his quarter on the aforesaid ground and, Therefore, it cannot be said that the action taken by the respondents against the petitioner is, in any manner, illegal and without jurisdiction. The petitioner was also informed by the respondent vide letter dated 22.8.2002 that although he was required to vacate the quarter by 14.5.2001, he did not vacate the same but in case he vacates the quarter even latest by 31.8.2002, the respondents would not charge any market rent from him. The petitioner was clearly put to notice that in case there is any default in vacating the same by 1.8.2002, market rate would be charged from him. The said order was challenged in this court wherein an order was passed directing the petitioner to file a representation. He did not choose to file the representation immediately in terms of the orders of this court and started intentionally delaying the matter so as to enjoy the occupation of the station married quarter without making payment of the market rent. The aforesaid conduct on the part of the petitioner is reprehensible and cannot be condoned. The respondents themselves sympathized with the petitioner and granted him an opportunity to vacate the quarter without levy of damage rent. The petitioner chose not to accept the opportunity and instead intentionally delayed the matter and continued to occupy the quarter without any authority. Therefore, we find no

merit in this petition and the petition is dismissed.