
(1991) 07 DEL CK 0026
In the Delhi High Court
Case No : C.W. No. 35 of 1991

Col. M.C. Gautam

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 31-07-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1992 Delhi 49

Hon'ble Judges : D.K. Jain, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : Ravinder Sethi and M.G. Kapoor, for the Appellant; K.S. Dhingra, for the Respondent

Judgement

B. N. Kirpal, J.—This order will dispose of Civil Writ Petitions 3044, 3045, 3056, 3219, 3220 and 3467 of 1989, 977 and 3677 of 1990 and 32, 33, 34 and 35 of 1991. The common question involved in all these writ petitions is whether the officers who have been allotted married accommodation by the Army Headquarters can be asked to shift to another accommodation when they proceed on study leave.

2. In order to appreciate the contentions raised in these writ petitions, for convenience, we refer to the facts mentioned in C.W. 35/ 91 (Col. M. C. Gautam v, Union of India). The facts of the other petitions are the same except that orders with regard to them were passed on different dates.

3. Col. Gautam was posted in the Army on 7th December, 1987. In April, 1989, he was allotted regular residential accommodation meant for married officers. Prior to this he had been allotted single accommodation, with which fact we are not concerned at the present moment. The petitioner like the other petitioners in the other petitions, applied to the Army HQs for being granted study leave. The petitioner wanted to pursue higher studies. The permission sought for was granted and, for administrative purpose, the petitioner was attached to the Army HQs during the study leave. The petitioner was then served with a letter dated

5th December, 1990, requiring him to vacate his regular married accommodation which had been allotted to him and he was asked to shift to an alternative accommodation which was provided. The grievance of the petitioner is that such letter written to him, asking him to shift to alternative accommodation is unwarranted.

4. On behalf of the petitioner, reliance is placed on the Regulations for the Army which have been issued by the Ministry of defense. Regulation 1025 pertains to vacation of married quarters and it reads as under:

" 1025. Vacation of Married Quarters:

(a) Once a married quarter has been allotted to an officer, JCO, WO, OR or NC(E) by proper authority and he has taken up occupation of the same he will not normally be required to vacate the quarter while on the strength of the station unit unless circumstances arise which make the continued occupation of the quarter by the individual, his family or household inappropriate or impossible, or except under any of the following circumstances

(i) When the person to whom the quarter is allotted is posted away from the station/ unit.

(ii) When the person proceeds on temporary duty elsewhere for a period which is expected to exceed six months.

(iii) When the person to whom the quarter is allotted is absent without leave for more than 30 days and there is no satisfactory Explanation for his absence.

(iv) When the quarter is required for use otherwise than as a married quarter, or its continued use as a married quarter becomes impossible, e.g., by reason of the disposal, of the quarter and alternative accommodation has been offered.

(v) When, in the case of JCOs, WOs, OR and NCs(E), the quarter is required, for allotment to another JCO, OR or NC(E) in accordance with station/unit orders governing the allotment of married quarters in the station/ unit.

(vi) When the quarter is of a higher class than the entitlement of the allottee and alternative accommodation of the appropriate class is offered to him.

(b) In addition, misconduct, misbehavior or a breach of station/unit regulations on the part of the person to whom the quarter is allotted or of any member of his family, or any other person living in or using the quarter, may lead to all its occupants being required to vacate it."

5. With regard to allotment to officers on study leave, there are three paras of Special Army Order 10/ S/ 86 which are relevant, they are paras 47, 48 and 83. The said paragraphs read as under:

"47. Officers on study leave can also apply for family accommodation at the study leave station subject to the following conditions:

(a) No accommodation remains vacant at the old duty station.

(b) No TA/DA will be payable for the move to the study leave station and TA/ DA for the move for joining duty at new station will be restricted to TA/DA from place of residence of family to the new station or from old duty station, whichever is less.

48. Officers opting for accommodation at the study leave station may be allotted accommodation (Government owned, hired or requisitioned) in their own turn or be permitted to live out on rent reimbursement basis.

83. Service Officers granted study leave may be permitted to retain family accommodation of a lower class at the last duty station during the entire period of the study leave on payment of normal rent. This concession can also be given to service officers living in privately hired accommodation/ living -in their own houses and claiming reimbursement of rent."

6. An Inter-Services Accommodation Advisory Committee meeting took place on 7th December, 1988. At that meeting, it was decided that all officers who were staying in regular accommodation should be asked to shift to hired accommodation when they proceed on study leave. This decision of the Committee was circulated amongst all Branches and Headquarters of the Army vide letter dated 10th January, 1989 issued from the Army Headquarters. In para 2 of the said letter it was stated that:

"The above policy may be brought to the notice of all officers who have applied for study leave including those officers who have been sanctioned study leave but are being struck off strength w.e.f. 7th December, 1988".

The contention of the learned counsel for the petitioners is that this decision to shift the officers from married accommodation is unwarranted. In the alternative it is contended that the petitioners were never aware of the aforesaid decision of 7th December, 1988 and, Therefore, the said decision cannot be applied to them.

7. Referring to regulation 1025, it was submitted by the learned counsel for the petitioners that the same is applicable only if the circumstances (i) to (vi) mentioned therein are applicable.- We are unable to agree with this. Regulation 1025 provides, in our opinion, that an officer occupying a married quarter while on the strength of the station/ unit shall not be required to vacate the same unless circumstances arise which make his continued occupation (a) inappropriate or (b) impossible or (c) when any of the circumstances mentioned in clauses (i) to (vi) exists. These circumstances mentioned in clauses (i) to (vi) are not exhaustive in the sense that even apart from the existence of these circumstances ,allotment of married accommodation can be cancelled if it is inappropriate or impossible for the officer to occupy the same. It is to be borne in mind that these regulations are not statutory in nature, but nevertheless they have been issued by the Government and are widely circulated amongst the members of the Army. These regulations have to be regarded as administrative

instructions which are applied by the Army HQs. Therefore, as far as possible, the action of the Army HQs. has to be in accordance with these administrative instructions. The decision of the Committee of 7th December, 1988 has to be tested or examined in the light of Regulation 1025. In our opinion it cannot be said that the said decision is unreasonable. The rationale behind the said decision is that when a serving Army Officer occupying married accommodation goes on study leave, then in his place another officer is posted. That officer would be entitled to married accommodation. The serving officer should not be deprived of the married accommodation and he should be given preference, regarding allotment of married accommodation over the officer who had gone on study leave. This decision of the Committee is a decision of policy and it is not proper for the Court to decide whether this policy is warranted or not. All that is to be seen is whether the Committee was right in coming to the conclusion that it will be inappropriate to allow an officer on long leave to continue to occupy married accommodation and officers who are on duty being deprived of the same.

8. Learned counsel for the petitioner has brought to our notice a letter issued by the Army HQs dated 20th April, 1991, paragraph 2 of which purports to clarify para 83 of the SAQ 10/S/86 and the same is as follows:

"(a) Officers on study leave are entitled to Govt. owned, hired or requisitioned accn. commensurate with their rks. The officer can also be permitted to live out on rent reimbursement. An officer on study leave in any stn. (incl. the one which may also be his last duty stn) posted to that stn. for matters relating to provn. of ind accn, and will be allotted accn. commensurate to his rk in his own turn."

9. In our opinion, the aforesaid letter of 20th April, 1991 is not applicable to the present cases. The letter of 20th April, 1991 was in reply to a query raised by M.P. Sub Area, who wanted an interpretation of para. 83. The clarification contained in the aforesaid para 2 of the said letter dated 20th April, 1991 no doubt seems to suggest that officers on study leave are entitled to Government-owned accommodation as per their rank but we are concerned with the decision of the Inter-Services Accommodation Advisory Committee (ISAAC), which is an Inter-Services Committee and is concerned with the defense Pool accommodation. The decision of the ISAAC of 7th December 1988, was in relation to only those officers who were serving in Delhi and was not concerned with the other defense personnel. In other words, persons serving outside Delhi would be continued to be governed by the provisions of Paras 47, 48 and 83 of the SAQ 10/S/86 but in respect of Delhi, the defense Pool accommodation was to be governed by virtue of the aforesaid decision of the Inter Services Committee dated 7th December, 1988. Army HQs belongs to one of the three Wings of the Armed Forces and it could not, by issuing the aforesaid clarification dated 20th April, 1991 override the decision of the Inter-Services Committee of 7th December, 1988.

10. In our opinion, Therefore, there is no infirmity in the decision to shift the married officers from accommodation which is allotted to them out of the

defense Services Pool from which pool officers belonging to all the three defense Services could be allotted accommodation, when they proceed on study leave.

11. In the present - case, however, the decision of the Committee cannot be applied to the petitioners. The reason for this is that in the aforesaid letter of 10th January, 1989 issued by the Army HQs, it was specifically stated that the policy decision arrived at as a result of the Inter-Services Committee meeting, should be brought to the notice of all the officers who have applied for study leave, including those officers who have been sanctioned study leave but are being struck off the strength w.e.f. 7th December, 1988. The intention of making such a provision was that wide publicity should be given to the serving officers in Delhi that if they go on study leave, then the benefit of Standing Order 83 would not be applicable to them and they would have to surrender the married accommodation and will have to shift.

12. In the writ petitions, it is alleged that the petitioners were not made aware of this decision when study leave was granted to them. It has further been alleged that it is subsequent to the petitioners have gone on leave that they were informed that their allotment was being cancelled. The respondents were bound to comply with the terms of the letter dated 10th January, 1989 and it was incumbent upon them to inform the officers about the decision with regard to the retention of the married accommodation. In fact the letter of 10th January, 1989 was preceded by a letter dated 23rd December, 1988 issued from the Ministry of defense in which, also, it had been stated that the policy to shift the officers from married accommodation should be brought to the notice of the said officers who applied for study leave or whose names were struck off the strength w.e.f. 7th December, 1988.

13. In the affidavit in reply, the aforesaid averments of the petitioners have not been denied. There is nothing on the record to show that the attention of the petitioners was drawn to the fact that if study leave is granted to them, then they will have to shift from the married accommodation. The order granting the said leave is also silent in this regard. The decision of the Inter-Services Committee dated 7th December, 1988 does not form part of the Regulation which has been issued by the Ministry of defense. No general circular to this effect has been issued amongst the defense personnel to whom married accommodation has been allotted in Delhi. Officers like the petitioners were ignorant of such decision having been arrived at. This being so, it will be unfair and arbitrary to now require them to shift from their married accommodation. Such officers would continue to be entitled to be governed by the principles incorporated in paragraphs 47, 48 and 83 and would not be required to surrender their married accommodation so long as they are on study leave. Once the study leave is concluded, they would be governed by the normal rules.

14. We are conscious of the fact on strict interpretation, the provisions of paras 47, 48 and 83 of the SAO 10/S/86 may not be applicable but it is evident that the said principles have been applied to officers going on study leave for

otherwise there would have been no need for the Inter-Services Committee to take the decision which they took on 7th December, 1988. The petitioners have in paragraph 12 of their writ petitions enumerated a large number of cases where officers going on study leave have been continuing to occupy married accommodation. It is only with a view that the position must be altered that the Inter-Services Committee took the decision on 7th December, 1988 that officers like the petitioners who go on study leave must be asked to vacate the married accommodation and shift to an alternative accommodation.

15. These writ petitions are allowed in the aforesaid terms. There will be no order as to costs.

16. Petitions allowed.