

(2001) 05 DEL CK 0127

In the Delhi High Court

Case No : Writ Petition (Civil) No. 3431 of 2001 and C.M. No. 6016 of 2001

H.S. Rana (Constable)

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 60 DRJ 148

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

Bench : Single Bench

Advocate : P.K. Aggarwal, for the Appellant; Sanjay Jain and Sunanda Roy, for the Respondent

Judgement

Dr. Mukundakam Sharma, J.—This writ petition is directed against the order dated 24th October, 2000, passed by the respondents intimating the petitioner that he has to vacate the Government accommodation in his previous Unit IOC Mathura failing which, penal rent would be recovered from the petitioner from his pay from the month of April, 1999.

2. The petitioner was earlier posted at IOC Mathura when he was allotted a Government accommodation. The petitioner was later on transferred to CISF Unit Uri, (J&K) on 8th April, 1999. The petitioner, however, continued to retain the Government accommodation at Mathura during the entire period when the petitioner was serving at J&K. The petitioner, however, was transferred to Badarpur, Delhi on 1st May, 2000 and consequently the aforesaid order was issued on 24th October, 2000 directing the petitioner to vacate the Government accommodation retained by him at IOC, Mathura without any delay failing which, it was intimated to him that penal rent would be recovered from his pay.

3. Counsel appearing for the petitioner submits that the son of the petitioner was studying in Class XI and his daughter was studying in College when the aforesaid impugned order was passed. He also submits that the petitioner is entitled to retain the Government accommodation at Mathura in terms of the Government

Memorandum dated 1st April, 1999. He specifically relies upon para 2 thereof which provides that, as a humanitarian measure, personnel who are serving in hard stations of J&K and North-East and whose wards are studying in 10th, 11th or 12th classes may be allowed to retain quarters in their previous Units which would facilitate them to continue their studies.

4. I have also heard the learned counsel appearing for the respondents who submits that the circular dated 1st April, 1999 is applicable only to those personnel who is working at hard station in Jammu & Kashmir and North-East and not to any other personnel. According to her since the petitioner who transferred to Badarpur with effect from 1st May, 2000, retention of the Government accommodation at Mathura after the said date was contrary to the aforesaid circular dated 1st April, 1999.

5. In the light of the aforesaid submission of the counsel appearing for the parties, I have also considered the records placed before me.

6. The petitioner was transferred to Jammu & Kashmir on 8th April, 1999. So long the petitioner was working in Jammu & Kashmir and since the son of the petitioner was studying in Class X at that relevant point of time, the notification dated 1st April, 1999 was applicable in his case and, Therefore, the petitioner could retain the accommodation at Mathura till that time. The petitioner, however, when later on was transferred to Badarpur on 1st May, 2000, the petitioner lost the right, if any, to claim further retention of the accommodation at Mathura. Attention of the petitioner was also brought to the aforesaid position, as far back as, on 24th October, 2000. In spite of the said order, petitioner did not vacate the said accommodation and instead filed a representation before the Commanding Officer to allow him to retain the accommodation and also requesting him not to deduct any penal rent from his salary.

7. Having regard to the aforesaid discussion and also the documents placed on record, I am of the considered opinion that, the petitioner could not claim any right to continue to be in possession of the official accommodation at Mathura subsequent to 1st May, 2000 and, Therefore, he was required to vacate the same immediately after his transfer to Badarpur. However, in the impugned order dated 24th October, 2000 the respondents could not have stated that penal rent could be recovered from the pay of the petitioner from the month of April, 1999. The respondents are not entitled to claim penal rent from the petitioner from the month of April, 1999 and at best the petitioner could be made liable to pay penal rent subsequent to 1st May, 2000 only.

8. However, the respondents have started deducting penal rent only from the month of April, 2001. It is brought to my notice that in spite of the order issued on 24th October, 2000, the respondents did not deduct penal rent from the pay of the petitioner from April, 2001. In my considered opinion, the said action of deducting the penal rent from April, 2001 cannot be said to be illegal. In case the petitioner does not vacate the Government accommodation provided to him at

Mathura within a month from today, it shall be open to the respondents to proceed to recover penal rent from the petitioner, in accordance with law.

9. In terms of the aforesaid order, the writ petition stands disposed of. Pending application stands disposed of accordingly.