

(2013) 10 DEL CK 0009

In the Delhi High Court

Case No : Writ Petition (C) 3585 of 2012

Kishan Singh Negi

APPELLANT

Vs

GNCT of Delhi and Others

RESPONDENT

Date of Decision : 04-10-2013

Acts Referred:

Citation : (2013) 10 DEL CK 0009

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Naina Kejriwal, for the Appellant; Vinod Wadhwa, for R-1, Mr. R.K. Vats, for R-2, Mr. A.K. Singh, for Mr. S.N. Chaudhri, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jain, J.—The petitioner before this Court is an employee of respondent No. 3/ BSES Yamuna Power Ltd. (for short "BSES Yamuna"). Initially the petitioner had joined the services of erstwhile Delhi Electricity Supply Undertaking (DESU)/Delhi Vidyut Board (DVB) and on unbundling of DVB his services were transferred to respondent No. 3/BSES Yamuna. On the request of the petitioner, he was allotted a Type-III quarter bearing No. D-117, Third Floor, IPGCL Colony, Sarai Kale Khan, New Delhi-110014, where he continues to live with his family. The said colony is now under the control of respondent No. 2//Indra Prastha Power General Company Ltd. (for short "IPGCL"). The petitioner made several requests to respondent No. 2 to allot a flat to him on the ground floor on the ground that he was suffering from Ankylosing Spondylitis and had been advised not to climb stairs. The request of the petitioner having not been granted, he is before this Court seeking the following relief's:

a. Issue writ, writs, direction or orders in the nature of mandamus directing the respondents to allow the flat/accommodation to the petitioner on the ground floor in the IPGCL Colony, Sarai Kale Khan, New Delhi, in view of his deteriorating health conditions;

In its counter affidavit respondent No. 2/IPGCL has stated that Rule 7.7 of the Allotment Rules provides for out of turn allotment on medical grounds if the employee or a member of his family is suffering from the ailments stated therein and Ankylosing Spondilitis is not one of the ailments specified in the said Rule. It is also stated in the counter affidavit that though the petitioner was entitled to allotment of a Type-II quarter he was allotted a Type-III quarter on his request on payment of extra licence fee and therefore, he is not entitled to seek any change of the accommodation allotted to him.

2. The allotment of accommodation is governed by the Rules framed by respondent No. 2-Company. Rules 7.7 and 8.5 of the aforesaid Rules are relevant for the purpose of the writ petition and read as under:

7.7 Out-of-turn allotment on medical grounds:

In the General Pool Accommodation, 5% of vacancies is reserved for ad hoc allotment on medical grounds and for physically handicapped. Employees suffering from heard ailment will be considered for ad hoc allotment on medical grounds and the concession will be restricted to self-ailment only, i.e. if the employee himself is suffering from Cardiac ailment. In case of pulmonary TB and Cancer, illness of the employee and his own family, i.e. wife/husband and the children should alone be considered for the concession of ad hoc allotment. For this purpose the above-mentioned committee shall meet at least once in three months and after scrutiny of requests, recommend the cases for consideration and orders of Competent Authority.

8.5 Change of residence:

i. Eligible employees who have been in occupation of company quarters may be permitted, on specific application to this effect, a change of quarters within the same type subject to the condition that such change shall not be allowed more than once.

ii. If an employee fails to accept a change of accommodation offered to him within 15 days of the receipt of such offer of allotment, he may not be considered again for a change of allotment of that type for a period of one year.

iii. Employees to whom accommodation of the same category have been allotted under these rules may apply for permission to mutually exchange their accommodation with the approval of Competent Authority.

3. The request of the petitioner could not be for an out-of-turn allotment. He having already been allotted an accommodation, the request made by him could be for change of residence which is governed by Rule 8.5 extracted hereinabove. Clause (i) of Rule 8.5 clearly stipulates that only one change is allowed to an employee. Admittedly the petitioner was initially allotted a Type-II accommodation and one change has already been taken by him in the year 2007, when Type-III flat bearing No. D-117, Third Floor was allotted to him. In fact, he was entitled to a change in the same type of quarter but respondent No.

2 gave a concession to him by allotting a bigger accommodation to him, on payment of extra licence fee. No second change of residence is envisaged in the Rules framed by respondent No. 2. Therefore, the petitioner was not entitled to yet another change by shifting him from the third floor to a ground floor flat. If the petitioner wanted only a ground floor flat, he ought not to have accepted the allotment of flat No. D-117, and at that time he could have insisted upon allotment of a flat on the ground floor and if no such allotment was forthcoming he could have continued to live in the house which he was occupying at the time he sought a change.

4. Coming to Rule 7.7, a perusal of the said Rule would show that an out-of-turn allotment can be made only if the employee himself is suffering from a cardiac ailment or either he/she or any of his family members is suffering from ailments namely, pulmonary TB and Cancer. In no other case an out-of-turn allotment is envisaged on medical grounds. Therefore, the case of the petitioner cannot be considered under Rule 7.7 since neither he nor any member of his family is suffering from cardiac ailment, pulmonary TB or Cancer. The learned counsel for the petitioner has drawn my attention to the case of one Mr. D.N. Kapar, who according to the petitioner, has been allotted a Type-II accommodation on the ground floor. The case of the petitioner is that initially he was allotted a flat on the third floor which was later on changed to ground floor. A perusal of the counter affidavit filed by respondent No. 2 would show that Mr. D.N. Kapar was occupying a flat as per his entitlement and was not beneficiary of one time relaxation for a higher type of flat whereas the petitioner before this Court was granted one time relaxation by allotting a flat of higher Type to him. According to respondent No. 2, the case of Mr. D.N. Kapar is, therefore, clearly distinguishable. A perusal of the minutes of the House Allotment Committee meeting would show that the said Committee resolved to make allotment to Mr. D.N. Kapar only on the third floor and flat No. 100-D was to be allotted to him. However, a perusal of the office order dated 10.2.2012 would show that flat No. 105-A was allotted to him and according to the learned counsel for the petitioner this is a ground floor flat. Be that as it may, as far as Mr. D.N. Kapar is concerned admittedly he was not granted any relaxation. In any case, even if a wrongful allotment has been made to Mr. D.N. Kapar that by itself does not entitle the petitioner to a similar wrongful allotment as the Allotment Rules envisage only one change to the employee and the petitioner has already availed that benefit by shifting from a Type-II accommodation to a Type-III accommodation. The learned counsel for the petitioner states that Mr. D.N. Kapar was entitled to Type-II accommodation and was given relaxation by allotting a Type-III accommodation and that too on the ground floor but the learned counsel for respondent No. 2 maintains that he was entitled to Type-III accommodation and there was no relaxation granted to him as far as the type of accommodation is concerned. Since there can be no negative equality even if the allotment made to Mr. D.N. Kapar was contrary to the Rules, the respondent cannot be directed to perpetuate the same illegality by making another mistake in the case of the

petitioner. In order to succeed in the writ petition the petitioner has to show that under the Rules he can be considered for change of the accommodation on the ground of ailment from which he claims to be suffering. That, however, is not the position. As noted earlier, out-of-turn allotment is not available to the petitioner since he is not suffering from one of the specified diseases and the one time change allowed to an employee has already been availed of by him.

The writ petition is devoid of any merit and is dismissed. No order as to costs.