

(2014) 11 DEL CK 0160

In the Delhi High Court

Case No : Writ Petition (Civil) 4865/2012 and CM No. 9966/2012

Kuldeep Singh

APPELLANT

Vs

Commissioner of Police

RESPONDENT

Date of Decision : 18-11-2014

Acts Referred:

Delhi Police Act, 1978 — Section 27(2)

Citation : (2014) 11 DEL CK 0160

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Gurdeep Singh, Advocate for the Appellant; Mohammad Shariq, Debojyoti Bhattacharya for Joydeep Mazumdar, Abhay Prakash Sahay, CGSC and Amit Kishore Sinha, Advocate for the Respondent

Judgement

Vibhu Bakhru, J.—The petitioners filed the present petitioner, inter alia, praying as under:-

"(ii) Quash/stay the eviction notice dated 28.10.2011 issued by the Respondent No.1 vide its letter No. 19188/QAC-IV/PHQ dated 28.10.2011 and letters dated 12.07.2012 & 31.07.2012 for eviction proceedings.

(iii) Direct the Respondent No.2 to regularize the Govt. Qtr. No. 840, type-II, Sector-III, R.K. Puram, New Delhi in the name of Petitioner's wife Smt. Maya Rani."

2. Essentially, the petitioner claims that the accommodation allotted to him is liable to be regularised as an allotment in favour of the petitioner's wife. The controversy that needs to be addressed is whether the petitioner's wife would be entitled for regularisation of the accommodation in question by virtue of Office Memorandum No. 12035(7) /79-Pol.II dated 01.05.1981.

3. Briefly stated the relevant facts necessary for addressing the aforesaid controversy are as under:-

3.1. The petitioner was allotted a Government accommodation in October 1985 being Quarter No. 128, Type-II, Police Colony, Ahata Kidara, Sadar Bazar, Delhi as he was employed with the Special Branch of Delhi Police. This quarter was exchanged by the petitioner with the accommodation provided to another Delhi Police employee on a mutual exchange basis. Consequently, the petitioner came to occupy Quarter No. 840, Type-II, Sector-III, R.K. Puram, New Delhi (hereafter "the said premises").

3.2. The petitioner's wife is a Government servant, employed with Indian Railways at the post of Chief Reservation Supervisor. It is stated that she is also living in the said premises and has not claimed any House Rent Allowance (HRA) since 1985. The petitioner took premature retirement from his services with Delhi Police on 01.08.2010. It is stated that the allotment of the said premises was cancelled on 02.08.2010, however, the petitioner was allowed to retain the said premises up to 01.12.2010.

3.3. In order to continue to live in the said premises, the petitioner requested that the said premises be regularised in favour of his wife. In response to the petitioner's request, respondent no.2 informed the petitioner by a communication dated 04.01.2011 that the premises had been allotted from the Delhi Police Pool and as per existing guidelines Delhi Police Personnel were not eligible for General Pool Residential Accommodation in case of non-gazetted employee.

3.4. The petitioner's wife also made a request to her employer for regularisation of the said premises in her favour. This too was rejected by respondent no.4, by a letter dated 18.03.2011, informing the petitioner's wife that the premises in question was with Directorate of Estates, Nirman Bhawan and no regularisation could be made in her favour.

3.5. The petitioner filed a petition with the Central Administrative Tribunal which was also withdrawn on 27.09.2011. Thereafter, the petitioner made a representation to respondent no.2. In the meanwhile, the petitioner was called upon to vacate the said premises by a letter dated 28.10.2011. The petitioner was further warned that if the petitioner failed to vacate the said premises, action for eviction would be instituted under the Delhi Police Act.

3.6. Subsequently, eviction order under Section 27(2) of the Delhi Police Act, 1978 was issued on 31.07.2012 and forcible recovery of possession of the said premises was authorised. Further, by a letter of the same date, the petitioner was also called upon to deposit the licence fee at the rate of Rs. 143 per month from 02.09.2010 to 01.12.2010; double licence fee from 02.12.2010 to 01.04.2011 at the rate of Rs. 286 per month; and market rent from 02.04.2011 to the date of vacation at the rate of Rs. 4691/- per month.

4. The learned counsel for the petitioner relied upon an Office Memorandum No. 12035(7) /79-Pol.II dated 01.05.1981 and contended that the premises allotted to the petitioner was liable to be regularised in favour of his wife since she was

also entitled to Government accommodation. The learned counsel further referred to a decision of this Court in *Yashwant Singh & Anr. v. UOI & Ors.*: 2007 IX AD (Delhi) 633 in support of his contention. The learned counsel for the respondent contended that the aforementioned office memorandum would not be applicable in cases where the kith and kin of the allottee were not entitled to accommodation from the general pool.

5. I have heard the learned counsel for the parties.

6. Before proceeding further, it would be relevant to refer to the Office Memorandum dated 01.05.1981 which is quoted below:-

"No.12035(7) /79-Pol.II

Government of India

Ministry of Works and Housing (Directorate of Estates)

New Delhi, Delhi, the 1st May, 1981

Office Memorandum

Subject:- Concession of ad-hoc

Allotment of General Pool accommodation admissible to eligible dependants/relations of Govt. Employees on their retirement.

In exercise of the powers/conferred under S.R. 317-B-25 of the allotment Residences (General Pool in Delhi) Rules, 1963 the Central Government have decided that when a Government servant, who is an allottee of General Pool accommodation retires from service his/her son, unmarried daughter or wife or husband, as the case may be, may be allotted accommodation from the General Pool on an ad-hoc basis provided the said accommodation in General Pool and had been continuously residing such retiring government servant for at least three years immediately proceeding the date of his/her retirement. In case, however, a person is appointed to government service within a period of three years proceeding the date of retirement or had been transferred to the place of posting of the retiring Government servant any time within the proceeding three years, the date on which he was so appointed for transferred would be the date applicable for the purpose. This decision would cover cases of Government servants retiring on or after 07.11.1979.

In the case of those Government servants who retired prior to the 7th November 1979, the concession of making ad-hoc allotment to an eligible dependent i.e. his/her son, unmarried daughter or wife or husband only would be considered on fulfilment of the old conditions i.e. the dependent was residing continuously for a period of six months with the retired Government servants immediately prior to his retirement. This concession would also be extended on request to the eligible dependents i.e. son, unmarried daughter, wife or husband of those officers who vacated the Government accommodation after 1st May, 1978.

In all such cases, the Government servants will be required to pay license fee at market rate for the period of unauthorised occupation of the Government accommodation.

The above concession will, however, be not available in cases where the retiring officer or the member of his family owns a house in the place of his/her posting.

In respect of other pools of Government accommodation like Railways and Posts & Telegraphs the respective Ministries would consider the matter and take their own decision.

The clearance of all dues outstanding in respect of the premises in occupation of the retired officer shall be an essential condition for the consideration of an allotment to an eligible dependents.

The eligible dependents will be allotted accommodation one type below his/her retirement, provided that in no case, except otherwise specified allotment will be made to a higher type of quarter than in occupation of the retiring Government servant. Provided further that where the eligible Government servant is entitled to type II or any higher type of allotted accommodation in type II on ad hoc basis even if the retiring Government servant was occupying type I accommodation.

These orders will take immediate effect."

7. It is also necessary to refer to an Office Memorandum dated 18.02.2014, which was issued to consolidate several instructions which had been issued from time to time. The relevant extract of the said office memorandum dated 18.02.2014 is quoted below:-

"2. In view of above, the matter has been reviewed and, in supersession of all previous Orders/OMs issued by this Directorate on the subject, it has now been decided with the approval of the competent authority to consolidate the several instructions issued from time to time in this regard by harmonizing and modifying them as under:

(i) XXX XXX XXX XXX

(ii) In the event of retirement of the allottee, the same accommodation may be regularized in the name of the eligible spouse/ward of the retiring allottee if he/she is entitled for it and, if not, an alternate accommodation of entitled lower type may be allotted to him/her on payment of normal licence fee irrespective of the fact whether the eligible spouse/ward had been residing with the allottee prior to the retirement of the allottee, subject to fulfilment of the following conditions:-

a) In case the spouse/ward has been residing continuously with the retiring allottee, he/she has not drawn house rent allowance for this period;

b) Request for regularization/allotment of alternate accommodation may be

considered in case the spouse/ward of the retiring allottee joins the Government service in an eligible office even after the date of retirement of the allottee, provided he/she joins the Government service within the permissible period of retention and the accommodation in occupation has not be vacated;

c) A married daughter, working in an eligible office, will be eligible for regularization/allotment of alternate accommodation irrespective of the fact that the retiring official is having a son and he is in a position to maintain the parents;

d) A daughter-in-law, working in an eligible office, will also be eligible for regularization/allotment of alternate accommodation; and

e) In case of more than one eligible ward, the retiring official will have option to exercise his/her choice in favour of his/her wards."

8. The respondent has pointed out that in terms of the above Office Memoranda, the regularisation of General Pool Accommodation could be done only in favour of an "eligible" employee. According to the respondent, the expression "eligible" would mean, such employees who are eligible for General Pool Accommodation. In other words, if the kith and kin of the retiring employee were not entitled to General Pool Accommodation, the same could not be regularised in his favour; the aforementioned Office Memoranda would not enable the allotment of an accommodation to be regularised in the name of an employee who was otherwise not eligible for General Pool Accommodation. In view of this unequivocal stand of the respondent, the respondent was asked to submit an affidavit clearly stating that General Pool Accommodation had not been regularised in the name spouse/ward of any retiring allottee who was otherwise ineligible for allotment of General Pool Accommodation. In pursuant to the orders of this Court, the respondent No.2 filed an affidavit affirming as under:-

"6. That after the issue of the circular dated 01.05.1981 till date G.P. accommodation has not been regularised in the name of spouse/ward of any allottee who was otherwise ineligible for allotment of general pool accommodation by virtue of his being employed in an ineligible office of GPRA."

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The eligibility, as per policy guidelines, is subject to fulfilment of the various conditions. One of the prime conditions is the eligibility of the office for GPRA, in which the spouse/ward of the allottee is employed at the time of retirement of the allottee. However, the entitlement for a particular type is determined on the basis of Grade Pay of the spouse/ward at that time. A copy of Office Memorandum is annexed herewith and marked as Annexure-I

xxxxx xxxxx xxxxx

8. That the deponent states and submits that the circular dated 1.5.1981 would not be applicable in case the spouse/ward of the petitioner was not otherwise eligible for accommodation from general pool. (Sic 1.5.1981)

9. That the circular dated 1.5.1981 has been interpreted as above and so applied."

9. In view of the aforesaid policy, the petitioner's wife would not be entitled for regularisation of the premises in question. It is relevant to note that the policy itself is not called into question.

10. The decision of this Court in Yashwant Singh (supra) is not applicable since in that case, there was no dispute that the retiring employee's son was entitled to General Pool Accommodation and, in fact, the same had been regularised in his favour. The controversy in that case involved a question whether the retiring employee was liable to levy of damages with respect to the accommodation that has been subsequently regularised. The said decision is not an authority for the proposition that even employees, who are otherwise ineligible for General Pool Accommodation by reason of being employed in an ineligible office, would be entitled for regularisation of accommodation allotted to a retiring employee by virtue of Office Memorandum dated 01.05.1981.

11. In view of the affidavit filed on behalf of respondent No.2 that the above policy has been uniformly implemented without exception, no relief can be granted to the petitioner. The petition and application are, accordingly, dismissed.