

(2017) 03 KAR CK 0051
In the Karnataka High Court
Case No : Writ Petition No. 36702 of 2015

Lt. Col. D.S. Choudhary

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 07-03-2017

Acts Referred:

Army Act, 1950 — Section 192, Section 192
Defence Service Regulations, 1986 — Regulation 1025

Citation : (2017) 2 AirKarR 565 : (2017) 3 KantLJ 293

Hon'ble Judges : Raghvendra S. Chauhan, J.

Bench : Single Bench

Advocate : K. Shashi Kiran Shetty, Senior Advocate for Ms. Farah Fathima, Advocate, for the Petitioner; Prabhuling K. Navadgi, Additional Solicitor General of India, A/w H. Jayakara Shetty, CGC, for the Respondent Nos. 1 to 7; Sri Lt. Col. S. S. Dagar, Party In Person, for the Petitioner; Sri Prabhuling K. Navadgi, Additional Solicitor General of India, A/w Sri H. Jayakara Shetty, CGC, for the Respondents; Sri K. Shashi Kiran Shetty, Senior Advocate for MS. Farah Fathima, Advocate, for the Petitioner; Sri Prabhuling K. Navadgi, Additional Solicitor General of India, A/w Sri H. Jayakara Shetty, CGC, for the Respondents; Sri K. Shashi Kiran Shetty, Senior Advocate For Ms. Farah Fathima, Advocate, for the Petitioner; Sri Prabhuling K. Navadgi, Additional Solicitor General of India, A/w Sri H. Jayakara Shetty, CGC, for the Respondents; Sri K. Shashi Kiran Shetty, Senior Advocate For Ms. Farah Fathima, Advocate, for the Petitioner; Sri Prabhuling K. Navadgi, Additional Solicitor General of India, A/w Sri H. Jayakara Shetty, CGC, for the Respondent Nos. 1 to 7; Sri K. Shashi Kiran Shetty, Senior Advocate For Sri Mohammed Akhil, Advocate, for the Petitioner; Sri Prabhuling K. Navadgi, Additional Solicitor General of India, A/w Sri H. Jayakara Shetty, CGC, for the Respondent Nos. 1 to 7; Sri K. Shashi Kiran Shetty, Senior Advocate For Sri Pavan G. N., Advocate, for the Petitioner; Sri Prabhuling K. Navadgi, Additional Solicitor General of India, A/w Sri H. Jayakara Shetty, CGC, for the Respondent Nos. 1 to 7; Sri K. Shashi Kiran Shetty, Senior Advocate For Ms. Farah Fathima, Advocate, for the Petitioner; Sri Prabhuling K. Navadgi, Additional Solicitor General of India, A/w Sri H. Jayakara Shetty, CGC, for the Respondents; Sri K. Shashi Kiran Shetty, Senior Advocate For Ms. Farah Fathima, Advocate, for the Petitioner; Sri Prabhuling K. Navadgi, Additional Solicitor General of India, A/w Sri H. Jayakara Shetty, CGC, for the Respondents; Sri K. Shashi Kiran Shetty, Senior Advocate for Ms. Farah Fathima, Advocate, for the Petitioner; Sri Prabhuling K. Navadgi, Additional Solicitor General Of India, A/w Sri H. Jayakara

Judgement

Raghvendra S. Chauhan, J.—Twelve Army officers have approached this Court by filing different writ petitions, wherein they have challenged the legality of the Circular dated 30.01.2015, with regard to entitlement and grant of accommodation to army officers on study leave. The Quarter Master Generals Branch, Ministry of Defence (Army), has issued the said Circular. The petitioners have also challenged different letters written by the Administration Commandant, whereby the petitioners' request to retain the sanctioned married accommodation during the period of study leave has been rejected.

2. Since Col. Satish Kumar Gupta, and Col. G. P. S Sohni have already completed their study leave programme, the writ petitions filed by them, namely W.P.No.38246/2015 and W.P.No.37639/2015, respectively, have become infructuous. Therefore, they are dismissed as infructuous.

During the course of the proceedings, this court had suggested to the parties that they should try to settle the dispute, outside the court, and amongst themselves. The remaining petitioners and the respondents had almost reached a settlement between themselves. The compromise entered between most of the petitioners and the respondents was noticed by this Court in its order dated 18-11-2016. But before the said order could be corrected and finalized, a few petitioners complained that the respondents were backtracking from their commitments made to them. Thus, the petitions were listed on 26-11-2016 in the category of "Being Spoken To". The petitions were again heard on merit. The order dated 18-11-2016 was recalled. Although only five petitions were listed before this Court, but this Court made it amply clear, by order dated 26-11-2016, that since the dispute has re-erupted between the parties, all the petitions would be decided on the merit of the case. Hence, this order on the basis of the merit. But for the two petitions, already dismissed as infructuous, the remaining ten writ petitions arise out of similar factual matrix, and raise similar legal issues, hence, they are being decided by this common order.

3. The facts are being taken from Lt. Col. D.S. Choudhary v. Union of India and others, W.P. No. 36702/2015.

4. The brief facts of the case are that, the petitioner joined the Indian Army as 2nd Lieutenant, as a Commissioned officer, on 06.03.1993. The petitioner has not only participated in war, but has also participated in intensive counter-insurgency operations. He has been awarded an outstanding Battle Performance Report (BPR) for active participation in the battlefield during the Kargil War, and for his participation in "OPERATION PARAKRAM" in 2002. He has also been awarded for his participation in Counter-Insurgency Operation "RAKSHAK" in

Jammu & Kashmir during the years 1998-1999 and 2007-2008. On 04.11.2006, the petitioner was promoted to the rank of Lt. Colonel. On 17.07.2015 the petitioner was transferred from 15, Infantry Division, Ordinance Unit-Amritsar Station to Head Quarters, Karnataka and Kerala Sub-Area.

5. Having obtained prior permission of the Station Commander to move to the Bengaluru Station along with his family, on 09.08.2013, the petitioner shifted to the Bengaluru Station along with his wife and two children. Since the petitioner was entitled to a married accommodation, upon his reporting for duty on 19.08.2015, he filed an application before the Station Commander and Estate officer for allotment of a married accommodation. However, from August, 2013 to December, 2013 the petitioner was allotted a single room at the officers' Mess. Subsequently, on 18.12.2013, he was allotted a temporary married (lowest scale) accommodation. Since the petitioner could not accommodate his family of four in the limited space provided to him, he was compelled to rent out a guest room for his family members.

6. Moreover, since the petitioner was keen in improving his educational qualifications, which would also contribute to the smooth running of the Indian Army, on 22.08.2014, he applied for a study leave for the academic years 2015-2017 in order to pursue a post-graduate course in MBA. During the pendency of his application for study leave, on 17.04.2015, the petitioner was allotted a regular married accommodation at the Bengaluru Station.

7. On 08.05.2015, the petitioner's application for study leave was approved. On 01.06.2015, the Director General of Military Training informed the petitioner that his application for study leave has been approved and he has been granted a study leave for two years, namely for the academic years 2015-2017.

8. During the course of pendency of the application seeking the study leave, on 30.01.2015, the Director General, Land Work Estate (LWE), respondent No.4, issued a new Circular with regard to the retention of the accommodation during the period of study leave. By letter dated 16.04.2015, the respondent No. 4 communicated the said Circular to the Administration Commandant, Station Cell at Bengaluru, respondent No.7. According to the Circular, dated 30.01.2015, an Army officer on study leave was directed to vacate his/her regular accommodation within ten days of the commencement of the study leave. Therefore, under the said Circular, the petitioner was required to vacate his regular married accommodation which was allotted to him on 17.04.2015.

9. On 30.06.2015, the petitioner made a representation to the Station Commander for permitting him to retain his regular married accommodation in light of Regulation 1025 of Defence Service Regulations, 1986 ("the Regulations", for short) and in light of the Army Order, commonly referred to as SAO 10/8/86 ("the SAO", for short). However, by letter dated 15.07.2015, the respondent No.7 rejected the petitioner's request. On 17.08.2015, the petitioner again requested the Station Commander & Estate officer, respondent No.6, to permit

him to retain the regular accommodation allotted to him, as his son was studying in Class X and his daughter was studying in First Year Pre-University Course. However, the said representation has fallen on deaf ears. Meanwhile, on 09.09.2015, the petitioner commenced his study leave at Dr. Ambedkar Institute of Management Studies in Bengaluru. The other writ petitions, filed before this court, also arise in similar factual matrix. Hence, the present petitions before this court for challenging the Circular dated 30.01.2015, and for challenging the different letters denying the retention of the married accommodation to the petitioners as they are on study leave.

10. Mr. Prabhuling K. Navadgi, the learned Senior Counsel for the respondents, has raised a preliminary objection with regard to the maintainability of the Writ Petitions. According to the learned Senior Counsel, the Regulations were framed under Section 192 of the Army Act. The Regulations clearly proclaim that they are "non-statutory" in nature. Regulation 5 of the Regulations defines the constituent parts of the Army Headquarters; one such constituent part is the Quartermaster General. His branch, called the Quartermaster General's Branch, deals with quartering of the troops and of their officers, besides other duties. The SAO was issued by the Quartermaster General's Branch. Even the impugned Circular, dated 30-1-2015, has been issued by the Quartermaster General's Branch. Therefore, with the SAO, and the impugned Circular are "administrative instructions". As such, they do not bestow any civil right upon the officers on study leave. Since they have no vested rights, they cannot invoke the writ jurisdiction of this court under Article 226 of the Constitution of India. In order to buttress this plea, the learned Senior Counsel has relied upon the cases of *R. Abdulla Rowther v. The State Transport Appellate Tribunal, Madras, and Others* [AIR 1959 SC 896], and on *South Central Railway v. G. Ratnam* [(2007) 8 SCC 212].

11. On the other hand, Mr. K. Shashikiran Shetty, the learned Senior Counsel for the petitioners, has relied upon the case of *Union of India v. K. P. Joseph and Ors.* [(1973) 1 SCC 194], in order to plead that some administrative orders do confer rights and impose duties upon individuals. In such a case, the rights and duties can be given effect to by the High Court under its writ jurisdiction. The learned Senior Counsel has also pleaded that the cases of *R. Abdulla Rowther* (supra) and of *K. P. Joseph* (supra) were decided by Full Bench of the Apex Court. However, in the latter case, the Apex Court has diluted the ratio of the former judgment. Furthermore, the case of *G. Ratnam* (supra) was decided by a Division Bench of the Hon'ble Supreme Court. Since the case of *K.P. Joseph* (supra) is of a recent vintage, since it is a case decided by the Full Bench of the Hon'ble Supreme Court, it would hold the field.

Secondly, both Chapter XXII of the Regulations and the SAO deal with the retention of the married accommodation, in general, and such retention during the study leave, in particular. Moreover, the Army has issued different circulars, prior to the issuance of the impugned Circular, which also dealt with the subject

of "Study Leave", and with the retention of the married accommodation during the period of study leave. The Regulations, the SAO and the circulars impose certain duties on the "allotting authority", and simultaneously bestow certain rights on the officers. Therefore, this Court would be justified in invoking its writ jurisdiction and in protecting the petitioners' rights.

Thirdly, the Circular dated 30-1-2015 is being applied retrospectively. Since the said Circular deprives the petitioners of their right to retain the married accommodation during the study leave period, the said Circular cannot be given a retrospective effect. Thus, the request of the petitioners for retaining their married accommodation during the study leave period is being denied illegally. Hence, the writ petitions are maintainable.

12. Heard the Learned Senior Counsel for the parties, and considered the case law cited at the Bar.

13. In the case of R. Abdulla Rowther (supra) a Full Bench of the Apex Court had opined as under:

It is not and cannot be seriously disputed that if the Government Order contains merely executive or administrative directions, their breach, even if patent, would not justify the issue of a writ of certiorari. The executive order properly so-called do not confer any legal enforceable rights on any persons and impose no legal obligations on the subordinate authorities for whose guidance they are issued; that is not to say that the directions are not valid and should not be followed by the said authorities; the said authorities are undoubtedly expected to follow the said directions and their breach may expose them to disciplinary or other appropriate action. If the present Government Order is held to be an executive order it would confer no legal or enforceable rights on any applicant for permits; so that, even if any of the directions contained in the order is found to have been ignored or misapplied, the applicant for a permit cannot claim any relief by way of a writ of certiorari. The direction itself, though valid, and in a sense binding on the subordinate authorities is not a statutory rule and has not the force of law and so its misconstruction cannot be said to be an error of law.

14. However, in the case of K. P. Joseph (supra), another Full Bench of the Hon'ble Supreme Court held that "To say that an administrative order can never confer any right would be too wide a proposition. There are administrative orders which confer rights and impose duties." The Hon'ble Full Bench further quoted the case of Union of India and Ors. v. M/s Indo-Afghan Agencies Ltd. [AIR 1968 SC 718] with approval, wherein while dealing with the Import Trade Policy, the Hon'ble Supreme Court had observed that "Granting that it is executive in character, this Court has held that Courts have the power in appropriate cases to compel performance of the obligations imposed by the Schemes upon the departmental authorities." Thus, in this case the Apex Court has diluted the carte blanche observation made in the case of R. Abdulla Rowther (supra).

15. of course, in the case of G. Ratnam (supra) the Apex Court did hold as under:

Broadly speaking, the administrative rules, regulations and instructions, which have no statutory force, do not give rise to any legal right in favour of the aggrieved party and cannot be enforced in a court of law against the administration. The executive orders appropriately so-called do not confer any legally enforceable rights on any persons and impose no legal obligation on the subordinate authorities for whose guidance they are issued. Such an order would confer no legal and enforceable rights on the party concerned (delinquent employee in this case) even if any of the directions is ignored. Their breach may expose the subordinate authorities to disciplinary or other appropriate action, but they cannot be said to be in the nature of statutory rules having the force of law, subject to the jurisdiction of certiorari.

16. Thus, in the above noted case, a Division Bench of the Hon'ble Supreme Court has reiterated the ratio of R. Abdulla Rowther (supra). However, the Hon'ble Supreme Court has not noticed the Full Bench decision of the Apex Court in the case of K. P. Joseph (supra) which had diluted the ratio of the case of R. Abdulla Rowther (supra). Thus, presently, the issue whether executive instruction can be enforced through the writ jurisdiction is covered by the decision of K. P. Joseph (supra) case. Hence, an administrative order, or an executive instruction would be enforceable provided it "confers rights and impose(s) duties." [Ref. to K. P. Joseph (supra)] In such a case, the Court would be justified in invoking its writ power "to compel performance of the obligations imposed by the Scheme upon the departmental authorities." [Ref. to M/s Indo-Afghan Agencies Ltd. (supra)].

17. Admittedly, the Regulations were framed under Section 192 of the Army Act. Thus, the Regulations are a subordinate piece of legislation. Regulation 5 of the Regulations mentions different constituents of the Army Headquarters. The said provision also mentions the Quartermaster General. He heads the Quartermaster General Branch which supervises the quartering of the troops and of officers, besides performing other functions. Chapter XXII of the Regulations deals with "Housing and Quartering." Regulation 1011 of the Regulations imposes a duty on the officers to reside within the limits of the cantonment. Regulation 1012 of the Regulations makes it mandatory that all officer quarters, whether Government owned, hired, leased, or requisitioned should be classified. Regulation 1014 of the Regulations imposes the duty of allotting the accommodation to the officers upon the Station Commander. Moreover, Regulation 1020 of the Regulations prescribes the percentage of married accommodation for different officers. According to the said provision, 100% of married accommodation would be available for the JCOs/WOs of all the Army Units. Lastly, Regulation 1025 prescribes the circumstances under which an officer may normally be required to vacate the married quarters. The said Regulation would be noticed and dealt with in extenso herein below in the later part of this order.

18. Thus, the Regulations, mentioned above, do prescribe certain legal duties and rights.

19. Undoubtedly, SAO deals with "Provisions of Accommodation and Allied Services and Recovery of Quartering Charges from Service officers." Part I-"General" clearly states that "Rules for provision of accommodation and allied services and recovery of quartering charges from service officers except those entitled to defence pool accommodation in Delhi and New Delhi controlled by the Chief Administrative officer, Ministry of Defence are contained in the succeeding paragraphs." Therefore, the SAO provides "Rules" governing the accommodations and allied services and recovery of quartering charges from the officers.

20. Para 3 of the SAO defines the scope of the applicability of the Rules. According to Para 3 of the SAO, the Rules will apply to "All Commissioned officers of the Army."

21. Para 4 of the SAO is under the heading "Eligibility to married accommodation". It is as under:

"4. Married officers. A married officer is entitled for allotment of married accommodation at the duty station, provided his family is residing with him. If his family is not residing with him, he may be allotted single accommodation vide paragraph 38. The terms "family" for purposes of allotment of accommodation means an officer, his wife or her husband, legitimate children and step-children/ residing with and wholly dependent on him/her, a divorcee or a widower with dependent children will be treated as married."

22. Para 19 of the SAO deals with Provision of Accommodation and is as under:

"19. Accommodation will generally be provided to officers in existing Government buildings, permanent and temporary, including buildings of the Civil Departments and by new construction. In stations where Government owned accommodation is insufficient, additional suitable accommodation will be hired in accordance with the prevalent procedure."

Obviously, the said Para bestows a right on the officer to have access to an accommodation, and casts an obligation on the Station commander to hire suitable accommodation, in case the accommodation is insufficient, in accordance with the prevalent procedure.

23. Similarly, Para 22 of the SAO imposes a duty on the Station Commander to allot the accommodations. The said Para is as follows:

"22. The Station Commander (or allotting authority) will be responsible for the classification, allotment and administration of all accommodation is the station pool. The Station Commander will ensure that as far as possible officers are allotted quarters of the class to which they are entitled and that all Government quarters and messes whether Government owned, hired, requisitioned, leased or appropriated are fully allotted having due regard to military convenience and financial consideration and that the interests of the State in the recovery of rent are safeguarded. The Station Commander will be assisted by the quartering Committee in the matter of allotment of accommodation, where Naval and/or Air

Force officers are also affected, these duties will be carried out by an ISQC consisting of representatives of the Services concerned and presided over by the Station Commander. The Station Commander for this purpose will be the senior most officer of the predominant service."

24. Similarly, Para 37 of the SAO empowers the Station Commander to allot a lower class of accommodation for administrative reasons such as non-availability of proper class of accommodation.

25. Likewise, Paragraphs 47 and 48 deal with the "Allotment to officers on Study Leave." Para 47 is as follows:

"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.

Para 48 is as under:

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

Moreover, Para 83 of the SAO deals specifically with the "Retention of Family Accommodation by Service officer during the Period of Study Leave." It is as under:

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."

26. In short, a bare perusal of the Regulations and the SAO clearly reveals that these provisions not only impose a duty upon the Station Commander to allot the married accommodation to the officers, but also bestow certain rights on the officers during the study leave period. Moreover, as will be discussed herein below, the circulars issued with regard to retention of the married accommodation during the study leave period equally bestow certain rights on the officers with regard to accommodation. Since, rights are being bestowed, and obligations are being imposed, this Court would be well justified in invoking its writ jurisdiction under Article 226 of the Constitution of India in order to decide the issues raised by the petitioners. Therefore, the writ petitions are, indeed, maintainable before this Court. Hence, the preliminary objection raised by Mr. Prabhuling K. Navadgi, the learned Senior Counsel for the respondent, is

unacceptable.

27. Mr. K. Shashi Kiran Shetty, the learned Senior Counsel for the petitioners, has raised the following contentions before this Court:-

Firstly, as mentioned above, these Regulations bestow certain rights upon the petitioners. According to Regulation 1025 of the Regulations, once an accommodation has been allotted and has been occupied, then the officer can be asked to vacate the married quarters only within certain specified circumstances. However, proceeding on a study leave is not one of the grounds given in Regulation 1025 of the Regulations for asking the officer to vacate the accommodation. Therefore, the petitioners cannot be asked to vacate the married quarters during the period of study leave.

Secondly, the SAO deals with the Rules governing accommodation and allied services and recovery of quartering charges from the Service officers. As mentioned above, according to the SAO, an officer is entitled to a married accommodation, and in case, the officer were to avail a study leave, at worst he can be allotted a family accommodation of a lower class. But under no circumstances can he be asked to vacate the married accommodation, or be forced to take private accommodation on House Rent Allowance ("HRA", for short), or House Rent Reimbursement ("HRR", for short).

Thirdly, however, according to the impugned Circular dated 30.01.2015, an officer proceeding on a study leave is required to vacate the regular accommodation within ten days of commencement of study leave. Moreover, during the study leave period, in case there is a vacant lower status accommodation available in the station, on the date of commencement of the study leave, and in case he is willing to accept the offer of the lower status accommodation, his case shall be considered for the same. Otherwise, he shall be entitled to a hired accommodation, or an accommodation on HRA, or HRR basis. Thus, the said Circular is contrary to the relevant provisions of the Regulations and to the SAO.

Fourthly, the impugned Circular is said to come into effect from 01-06-2015. However, the respondents are giving the Circular a retrospective effect. For, the petitioners had applied for their study leave between 14-7-2014 to 23-1-2015, their study leaves were approved between 16-2-2015 to 24-9-2015. Therefore, their case would be governed by the circular which was prevalent on the date of filing of the application for seeking study leave. The Circular dated 21.10.2011 was in force on the date when some of the petitioners had applied for the study leave. The Circular dated 07-10-2014 had also come into force when other petitioners had applied. However, the latter Circular clearly states that the accommodation during the study leave period would be governed by the Circular dated 21-10-2011. Thus, for the purpose of the present case, the Circular dated 21-10-2011 is relevant. According to the said Circular, if the Study Leave Station ("SLS", for short) and the Last Duty Station ("LDS", for short) are the same, the

Station Commander, should, as far as feasible, permit the retention of the same accommodation during the course of study leave. In case, it is not feasible to permit the retention of the same accommodation, then the Station Commander is expected to allot alternative accommodation of entitled scale. It is only when the SLS and the LDS are different, and if the officer chooses to retain his accommodation at the LDS, then he should be offered an accommodation of the lower scale. However, as the SLS and the LDS are the same for the petitioners, they cannot be asked to take an alternate accommodation which will be lower than their status.

Fifthly, since a right has been bestowed upon the petitioners under the Regulations, under the SAO, and under the Circular dated 21.10.2011, the said right cannot be deprived by retrospectively applying the Circular dated 30.06.2015.

Sixthly, according to all the circulars issued by the respondent, dealing with entitlement and grant of accommodation to officers on study leave, it was clearly held out that the circular would be prospective and not retrospective in nature. Even the Circular dated 21.10.2011 states the same position. Therefore, when the petitioners applied for study leave, when they agreed to change their legal position, they had the bona fide belief that they will be governed by the Circular dated 21.10.2011.

Lastly, since the petitioners had given an undertaking keeping in mind the Circular dated 21.10.2011, since the petitioners had changed the legal position on the basis of Circular dated 21.10.2011, the respondents should not be permitted to retrospectively impose the impugned Circular dated 30.01.2015 upon the petitioners.

28. On the other hand, Mr. Prabhuling K. Navadgi, the learned Senior Counsel for the respondents, has raised the following counter contentions before this Court :-

Firstly, the interpretation of Regulation 1025 of the Regulations by the learned Sr. counsel for the petitioner is highly misplaced. For, Regulation 1025 of the Regulations, covers the cases of officer "on the strength of the station unit". The protection provided by the said Regulation is available to an officer as long as he is "on the strength of the station unit." However, once an officer goes off on a study leave, he/she is no longer on "the strength of the station unit". According to Army Instruction No. 9 of the Army Instruction Nos. 41-46, during the study leave period the officer is said to be "struck off the strength of his unit". Moreover, once an officer is "struck off the strength of the unit", he is said to be on the "supernumerary strength of the unit". Thus, the petitioners, who are on study leave, are not covered by Regulation 1025 of the Regulations. Therefore, the petitioners cannot claim the benefit of Regulation 1025 of the Regulations. Hence, the respondents are justified in directing the petitioners to vacate the married accommodation given to them prior to their proceeding on study leave.

Secondly, according to Regulation 1014 of the Regulations, dealing with

allotment of Quarters, the Station Commander is empowered to allot the quarters keeping in mind the "military convenience", and "financial consideration". Similarly, Para 22 of the SAO casts a duty upon the Station Commander to allot the accommodation "as far as possible" and while keeping in mind "the military convenience" and "the financial consideration" in mind. Thus, these two factors are important considerations to be borne in mind while allotting the accommodations to the officers. Considering the fact that the Army Station at Bengaluru has shortage of married accommodations for its officers, considering the fact that those officers who are on duty, and have not availed study leave, such officers have to be given priority in allotting the married accommodations, considering the fact that a long waiting list exist where other officers are waiting for their chance to occupy the married accommodations, the petitioners cannot claim the right to retain the married accommodation during the study leave period. For the "military convenience" and "the financial consideration" would have necessarily to be kept in mind. Since the petitioners are neither on the strength of the unit, nor on "active duty", those officers who are discharging their military duties actively, would necessarily have to be given priority in allotment of married accommodations in the Station. Thus, the respondents are justified in directing the petitioners to vacate their married accommodations within ten days of their proceeding on study leave, and in rejecting their representations for retention of the married accommodation.

Thirdly, there is a clear cut distinction between the LDS and SLS. LDS is the station where the officer served on the last occasion, prior to going off on study leave; the SLS is the station where the officer is studying during his study leave period. At times the two stations may be different; at times, they may be the same, as in the case of the petitioners. Since different provisions cover different situations, the distinction between the two has to be borne in mind.

Fourthly, since the impugned Circular, dated 30-01-2015 came into force on 1-06-2015, and since the petitioners' study leave period commenced from September, 2015, therefore, the respondent are not applying the said Circular retrospectively. In fact, the respondents are applying the said Circular prospectively. Hence, the learned Senior Counsel for the petitioners is unjustified in claiming that the impugned Circular is being applied retrospectively.

Fifthly, even if for the sake of argument it were accepted that the Circular dated 21-10-2011 were applicable to the petitioners' case, even then it would hardly make any difference. For, even the said Circular does not bestow an absolute right upon the petitioners to retain their married accommodation during the study leave period. For, the Circular states that "Where the Study Leave Station (SLS) and the LDS are the same, the Station Commander, as far as feasible, permit the retention of the same accommodation." Thus, the feasibility, or the "military convenience" and the "financial considerations" would have to be kept in mind.

Sixthly, while dealing specifically with the Station Head Quarter Bangalore, the

Circular dated 21-10-2011, clearly states that the officer should be offered a married accommodation. But "Where such allotment is not be feasible for the duration of the study leave, the officer be granted choice of lower scale/type accommodation or hired accommodation." Moreover, "Should they not be willing to exercise the choice as above, they be permitted private hiring on HRR or staying under own arrangement on HRA basis." Thus, even this provision does not bestow a clear cut right upon the petitioners to claim the right to retain their married accommodation during the study leave in the Station Head Quarter at Bangalore.

Furthermore, the Circular dated 21-10-2011 does state that, "officers already allotted accommodation be allowed to complete their study leave in the allotted accommodation, and future cases be given specific instructions to make an informed choice on applying for accommodation at Bangalore as SLS." But this provision cannot be interpreted as including the petitioners as they were already allotted the accommodation prior to their proceeding on study leave. The words "already allotted the accommodation" would mean those who were "allotted the accommodation prior to coming into force of the Circular dated 21-10-2011." For, the same provision speaks of "future cases be given specific instructions to make an informed choice on applying for accommodation at Bangalore as SLS." Therefore, the petitioners are not justified in seeking protection under the said provision. the said provision is clearly inapplicable to the petitioners.

Seventhly, the only difference between the Circular dated 21-10-2011 and the Circular dated 30-01-2015 is that while the former made a distinction between the LDS and the SLS, the latter erases the said difference. Although with the Circulars may slightly differ in their phraseology, but neither of the two Circulars bestow a right upon the petitioners to retain their married accommodation during the study leave period. Hence, even if a wrong Circular were mentioned in the impugned letters rejecting the case of the petitioners for them to retain the married accommodation, it would hardly make any difference. For, a wrong mention of a provision would not render the impugned letters illegal.

Lastly, all the petitioners have given an undertaking that they will be willing to shift to an alternate accommodation provided by the respondents as soon as they proceed on study leave. Therefore, the petitioners are not entitled to claim the retention of the married accommodation granted to them prior to commencement of study leave period. Hence, the Senior Counsel has supported with the impugned Circular dated 30.01.2015, and the respondents' action in denying the petitioners their right to continue in the married accommodation allotted to them.

29. Heard the learned counsel for the parties, considered the Circular dated 21-01-2011, perused the impugned Circular dated 30-01-2015, and examined the impugned letters whereby the petitioners' representations for retention of the married accommodations have been rejected by the respondents.

30. Regulation 1025 of the Regulations is 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 quarters 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 in 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, WO, 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, misbehaviour 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."

Thus, the said Regulation speaks about being "on the strength of the station unit". Hence, the protection of the said Regulation is available as long as the officer is "on the Strength of the unit".

31. Further, according to Instruction No. 9 of the Army Instruction Nos. 41 - 46, which also deals with Study Leave Rules, "Study leave will commence from the date an officer is struck off the strength of his unit and the officer must report to the unit to which he is posted on the day following the date of completion of his leave." Thus, during the period of study leave, an officer is "struck off the strength of his unit". Furthermore, according to the Army Instructions dealing with "Compilation of Reports and Returns", once an officer is struck off from the strength of the unit, he/she is to be shown as being on supernumerary post. Hence, during the study leave period the officer is on a supernumerary post. Since they are not "on the strength of the unit" during their study leave period, they cannot plead that they are covered by Regulation 1025 of the Regulations.

Therefore, the petitioners are unjustified in claiming the protection of Regulation 1025 of the Regulations. Thus, the contention raised by Mr. K. Shashi Kiran Shetty, the learned Senior Counsel, that the petitioners are entitled to the protection contained in Regulation 1025 of the Regulations, is unacceptable.

32. Relying on Paragraphs 47 and 48 of SAO, Mr. K. Shashi Kiran Shetty has argued that these two paragraphs specifically deal with the rights of the officer on study leave to have an family accommodation during the study leave period. However, even the said contention is misplaced. For, Para 47 of the SAO provides that "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." Firstly, the said provision applies to where the LDS and the SLS are different. For the provision speaks of "old duty station." Secondly, the provision merely gives the officer the right to apply, as the provision uses the words, "can also apply." It does not give a right to retain the family accommodation which was granted prior to going off on study leave.

33. Moreover, even Para 48 of the SAO does not support the case of the petitioners. For, the said Para merely states that, "officers option for accommodation at the study leave may be allotted accommodation (Government owned, hired or requisitioned) in their own turn or be permitted to live out on rent reimbursement basis." Here the word used is "may". Thus, it is left to the discretion of the allotting authority to allot a government owned, or hired, or requisitioned accommodation to the officers. Moreover, while allotting an accommodation, the allotting authority has to bear in mind the military convenience and the financial consideration as required both by Regulation 1014 of the Regulations, and by Para 22 of the SAO. Thus, even this provision does not permit the petitioners to retain the married accommodation during the period of study leave.

34. Moreover, even Para 83 of the SAO, which specifically deals with retention of family accommodation during the period of study leave, does not buttress the petitioners' case. For, according to the said provision, "an officer 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. Further, this concession can also be given to service officers living in privately hired accommodation living in their own houses and claiming reimbursement of rent". A bare perusal of the provision clearly reveals that it permits the officer "to retain a family accommodation of a lower class" that too at the "last duty station". Hence, even this para does not permit the petitioners to retain their married accommodation at the SLS.

35. Undoubtedly, both Circular dated 21-10-2011, and dated 30-01-2015 deal with the grant of accommodation during the study leave period. (This Court is not referring to the Circular dated 07-10-2014, for the said Circular refers to the Circular dated 21-10-2011). Thus, the crucial question before this Court is of the two Circulars, namely one dated 21-10-2011, or the other dated 30-01-2015,

which one would be applicable to the petitioners? While Mr. K. Shashi Kiran Shetty has stressed on the former Circular, Mr. Prabhuling K. Navadgi, on the latter one. While the former Circular states that, "the policy change be applied prospectively.", the latter Circular claims to come into effect on 01-06-2015.

36. It is, indeed, trite to state that the crucial date for application of the Circular would be the date of filing of the application for seeking study leave. For, at the time of the filing of the application, the officer is aware of the Circular which would govern the retention of the accommodation during his study leave period. At the time of filing of the application he cannot possibly image that prior to commencement of the study leave period, the instructions with regard to retention of the accommodation would be changed. Thus, the officer takes the decision on the basis of the Circular which was operational at the time of filing of the application for grant of study leave.

37. Moreover, it is a settled position of law that in case a rule were to change between the filing of the application, and the decision on the application, the rule applicable on the date of the filing of the application would cover the field. The subsequent change in the rule cannot be applied retrospectively. [Ref. to P. Mahendran and Ors. v. State of Karnataka (1990) 1 SCC 411, Govind Prasad v. R. G. Parsad and Ors (1994) 1 SCC 437, Gopal Krushna Rath v. M. A. A. Baig (Dead) by LRs. and Ors. (1999) 1 SCC 544]. In fact, in the case of Ex-Major N. C. Singhal v. Director General, Armed Forces Medical Services, New Delhi and Ano. (1972) 4 SCC 765, while dealing with change of service condition by a subsequent administrative instruction, the Hon"ble Supreme Court has held that the condition of service cannot be altered or modified to the prejudice of an employee by a subsequent administrative instruction having retrospective effect. The same principle is applicable to the present case. Since allotment of accommodation is a condition of service, the same cannot be prejudiced by a subsequent administrative instruction, like the Circular dated 30-01-2015 by giving it a retrospective effect. In fact, it is the Circular which covers the field on the date of the filing of the application which is relevant. Admittedly, the petitioners had applied for their study leave between 14-07-2014 to 23-01-2015. This was prior to the Circular dated 30-01-2015 coming into force. Therefore, the Circular dated 21-10-2011 is applicable to the petitioners" case. Hence, the respondents are not justified in applying the Circular dated 30-01-2015 on the petitioners.

38. The Circular dated 21-10-2011 deals with the situation where the Last Duty Station and the Study Leave Station are the same. It states that, "Hence, it is evident from the above that no distinction can be made between officers on duty and an officer on study leave with regard to entitlement and allotment of accommodation except lower scale entitlement at LDS (Last Duty Station) vide provision of Para 83 of SAO 10/S/86." However, with regard to the policy dealing with Station Head Quarters Bangalore, and Head Quarters South Command, different parameters have been prescribed. The relevant extract is as under:

(a) Station Commander, Bangalore Station Commander will permit the officer to apply for married accommodation provided the officer has not retained accommodation at LDS.

(d) Where such allotment is not be feasible for the duration of study leave officer be granted choice of lower scale/type accommodation or hired accommodation.

(e) Should they not be willing to exercise the choice as above they be permitted private hiring on HRR or staying under own arrangements on HRA basis.

(f) officers already allotted accommodation be allowed to complete their study leave in allotted accommodation and future cases be given specific instructions to make an informed choice on applying for accommodation at Bangalore as SLS.

(g) The policy change be applied prospectively and wide circulation be given to the environment by letters/intranet.

39. Thus, according to the Circular dated 21-10-2011, an officer on study leave will be permitted to apply for married accommodation even during the study leave period. Secondly, if such an allotment is not feasible, then he/she should be granted the choice of lower scale/type accommodation, or hired accommodation. If the officer does not exercise the choice given to him/her, then he/she should be permitted to hire private accommodation on HRR or to stay under one's own arrangement on HRA basis. However, officers already allotted, meaning those officers who were allotted prior to 21-10-2011, they would be allowed to complete their study leave in the allotted accommodation. And the future cases should be given specific instructions to make an informed choice on apply for accommodation at Bangalore as Study Leave Station.

40. But the Circular dated 30-01-2015 prescribes slightly different set of instructions while dealing with retention of regular government accommodation during the study leave period. It is as under:

(a) The officers on study leave are entitled to regular Government Accommodation or Hired accommodation or accommodation on HRR, or HRA.

(b) However, the priority of allotment of regular Government Accommodation shall be to the officers posted on duty in the station. All officers posted in the station would be allotted permanent accommodation ahead of the Study Leave officers. Hence, when an officers proceeding on Study leave applies for accommodation in a station, or applies for retention of the accommodation in which the officer was staying being posted to that station, the officer would be allotted hired accommodation or accommodation on rent reimbursement basis or can avail the facility of HRA. He would vacate the regular accommodation within 10 days of commencement of Study leave. Return of same or alternative accommodation on CEG is not permitted to officers proceeding on Study leave as the provision of return of accommodation on CEG as per SAO 10/S/86 is applicable only for officers posted from one peace station to another peace station. The "Reserved Accommodation" vide Para 103 of SAO 10/S/86 will in no

case be allowed to be retained by the officers and shall be vacated within 10 days of commencement of the Study leave. In case there is a vacant lower status accommodation available in the station on the date of commencement of the study leave, officer on Study leave may be considered for allotment of lower status accommodation, provided, the officer is willing to accept the officer, Else; the officer shall be offered a Hired accommodation/HRA.

41. Hence, according to the said Circular, the officer is supposed to vacate the accommodation allotted to him within ten days of proceeding on study leave. During the study leave period he is entitled to either an hired accommodation, or an accommodation on basis of HRR, or HRA. But he will not be permitted to retain the accommodation he was allotted prior to the beginning of the study leave. According to the Circular dated 31-01-2015, it comes into operation on 01-06-2015.

42. According to Circular dated 21-10-2015, the respondents have three options before them. Firstly, to permit the officers to apply for married accommodations, if they don't have such an accommodation in their Last Duty Station. Secondly, if married accommodation is not available during the study leave, the officer should be granted a choice of lower scale/type accommodation, or hired accommodation. Thirdly, if the officer is not willing to exercise the option, then he/she should be permitted to hire a private accommodation on HRR basis, or be permitted to stay, on his own arrangement on HRA basis. Therefore, the contention raised by Mr. Shashi Kiran Shetty, the learned Senior Counsel, that the petitioners have a right to retain the married accommodation under the Circular dated 21-10-2011 is highly misplaced. Hence, the said contention is unacceptable.

43. Mr. K. Shashi Kiran Shetty, the learned Senior Counsel, has emphasised that according to the Circular dated 21-10-2015, if the officer is "already allotted accommodation", then he/she should be allowed to complete the study leave period in the allotted accommodation. However, such an interpretation is an incomplete reading of the Circular. For, the complete portion reads as under:

officers already allotted accommodation be allowed to complete their study leave in allotted accommodation and future cases be given specific instructions to make an informed choice on applying for accommodation at Bangalore as SLS (Study Leave Station).

(Emphasis added).

44. The words "already allotted" would naturally cover those cases where the accommodation was allotted prior to Circular dated 21-10-2015 coming into force. But once the Circular came into force, thereafter in future cases specific instructions to make an informed choice on applying for accommodation at Bangalore as Study Leave Station would have to be given. Hence, the contention raised by the learned Senior Counsel that the petitioners are entitled to retain the accommodation already allotted to them prior to their proceeding on study

leave is unsustainable.

45. Mr. Prabhuling K. Navadgi, the learned Senior Counsel, has stressed on the undertaking given by the petitioners while applying for the study leave. According to the learned Senior Counsel, once the petitioners have given an undertaking to shift to an alternate accommodation during the period of study leave, they cannot be permitted to challenge the action of the respondent in asking them to vacate the married accommodation provided to them.

46. The petitioner, Lt. Col D. S. Choudhary, has given an undertaking that, "a) In the event study leave being granted to me, I will shift to alternative family accommodation offered to me by the Station Headquarters/CAO. b) Refusal to shift to alternative accommodation will result in cancellation of Study Leave granted to me, and reimbursement of proportionate cost i. e. pay and allowances for the period of study leave already availed."

Other petitioners have given an undertaking that, "a) In the event of study leave being granted to me, allotment of accommodation to me will be governed by AO 10/S/86 (the SAO) classification issued by QMG Branch on the subject on time to time and the local orders of the station. b) Refusal to abide by the above will result in cancellation of study leave granted to me, and reimbursement of proportionate cost i.e. pay and allowances for the period of study leave already availed."

47. Once the said undertakings were given, and since the undertakings are in consonance with the Circular dated 21-10-2015, the petitioners cannot be permitted to claim that they have a right to retain the married accommodation given to them prior to commencement of the study leave period. of course, according to with the undertaking given by Lt. Col D. S. Choudhary, or by others, the burden of providing alternative family accommodation is on the Station Headquarters. Even Para 48 of the SAO, which is mentioned in the undertaking given by others, prescribes that, "officers option 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." Thus, even the SAO does not permit the officer to retain the married accommodation given to him/her prior to the beginning of the study leave period. During the study leave period the officer is entitled to merely an alternative accommodation which may be government owned, or hired by or requisitioned by the government, or on his/her own on the HRR basis. Therefore, even the other petitioners cannot claim the right to remain in the married accommodation provided prior to the commencement of the study leave period.

48. of course, Mr. K. Shashi Kiran Shetty, the learned Senior Counsel, has vehemently argued that the petitioners' representation has been rejected by retrospectively applying the Circular dated 30-01-2015, thus the rejection is illegal. However, even this contention is unworthy of acceptance. For, mere mention of a wrong Circular would not make the rejection of the representation

an illegal one. Moreover, even if the Circular dated 21-10-2011 were applied to the petitioner, which really covers their cases, as discussed herein above, even then the petitioners are not entitled to retain the married accommodation given to them prior to the beginning of the study leave period. As mentioned above, while dealing with Bangalore as the Study Leave Station, the said Circular gives only few options, namely either an accommodation of lower scale/type, or hired accommodation, or private hiring on HRR basis, or staying under own arrangement on HRA basis. But even the said Circular does not permit the petitioners to retain the accommodation granted to them prior to the beginning of the study leave period. Hence, even if the respondents have quoted the wrong Circular, they are still justified in denying the retaining of the accommodation to the petitioner. Hence, the impugned orders declining the representation are legally valid.

49. In conclusion, the petitioners' case is covered under Circular dated 21-10-2011, and not by the Circular dated 30-01-2015. However, the Circular dated 21-10-2011 does not permit the petitioners to retain the accommodation given to them prior to the commencement of the study leave period. The said Circular merely gives the petitioners and the respondents few options, namely an accommodation of lower scale/type, or hired accommodation, or private hiring on HRR basis, or staying under own arrangement on HRA basis. Neither Para 48, nor Para 83 of the SAO permits the petitioner to retain the married accommodation during the study leave period. Hence, the respondents are justified in denying the married accommodation to the petitioners during the study leave period. Moreover, once an undertaking has been given, which is also in consonance with the Circular dated 21-10-2011, the petitioners are bound by the undertakings. In case the petitioners refuse to shift to the alternative accommodation, the respondents are free to cancel the study leave granted to the concerned petitioner.

50. For the reasons stated above, this court does not find any merit in these petitions. They are, hereby, dismissed. No order as to cost.