

(2001) 04 P&H CK 0005
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 6123 of 2001

Major Rohit Chaudhary

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 30-04-2001

Acts Referred:

Citation : (2001) 04 P&H CK 0005

Hon'ble Judges : N.K. Sud, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Tribhuvan Dahiya, for the Appellant;

Final Decision : Dismissed

Judgement

N.K. Sud, J.—The Petitioner is an officer of the Indian Army. In the year 1996, he was posted in Ambala Cantt. and had been allotted

entitled Government accommodation viz. 4/2 Convey Park, Ambala Cantt. In July, 1999, the Petitioner was transferred to Secunderabad. After

his transfer, he was allotted another accommodation at 32/1, Staff Road, Ambala Cantt. where his family has been staying since then. As the

Petitioner was not provided with any permanent married accommodation at Secunderabad, he was given a no accommodation Certificate (for

short the "NAC") up to the period ending on 15.1.2001. On 2.1.2001, the NAC for a further period of three months i.e. from 16.1.2001 to

15.4.2001 was sought. However, this request was declined by the Station Commander, Secunderabad, vide his letter dated 13.2.2001 on the

ground that his immediate junior officer in the waiting list had been allotted temporary accommodation. Consequently, the Station Commander,

Ambala Cantt, issued a letter dated 23.2.2001 requiring him to vacate the

accommodation at Ambala Cantt, immediately. The Petitioner had challenged these orders before us in the earlier round of litigation in Civil Writ Petition No. 4174 of 2001. The said petition had come up for hearing before us on 21.3.2001. The Petitioner's challenge to the orders dated 13.2.2001 and 23.2.2001 was resisted by the Respondents. During the course of arguments, the Petitioner had submitted that since his children had to take examination at Ambala, he may not be asked to vacate the accommodation till then. According to him, the examinations were to last till middle of April, 2001 and he prayed that some reasonable time be granted to him thereafter to vacate the accommodation. The Respondents agreed to grant him time up to 30.4.2001 and the writ petition was disposed of with the consent of the parties in the following terms:

The Petitioner, a member of the armed forces, is aggrieved by the orders dated February 13, 2001 and February 23, 2001 by virtue of which, he is required to vacate the family accommodation. He prays that the two orders, (copies of which have been produced as Annexures P1 and P2 with the writ petition), be quashed.

Mr. Gupta, learned Counsel for the Petitioner submits that the Petitioner's children have to take the examination. The examination shall continue till about the middle of April, 2001. Therefore, some reasonable time be given to the Petitioner to vacate the premises.

Mr. MS Guglani has put in appearance on behalf of the Respondents. He states that the Petitioner shall not be asked to vacate the premises till April 30, 2001. He further states that the rent at normal rate shall be charged.

In view of the above statement made on behalf of the Respondents, Mr. Gupta states that the petition has been rendered infructuous. He states that the Petitioner shall vacate the premises on or before April 30, 2001.

Disposed of accordingly, The parties shall be bound by their undertakings.

No. costs.

copy of this order be given dasti to counsel for the parties on payment of usual charge.

2. The Petitioner has now filed this petition with a prayer that he be allowed to retain the accommodation at Ambala Cantt, beyond the stipulated

date i.e. 30.4.2001 as he has not been allotted a proper accommodation at

Secunderabad. According to the Petitioner, he had been allotted some accommodation by the Station Commander, Secunderabad, vide letter dated 24.3. 2001. However, according to him, this accommodation was not in a proper condition as there were various defects in the electrical wiring, plastering, kitchen slabs, flooring, broken ventilators, etc. He has brought these defects to the notice of the Army authorities vide his letter dated 7.4.2001 and has also applied on 16.4.2001 for another NAC for a further period of three months i.e. up to 15.7.2001. He, therefore, prays that the Respondents be directed to issue him the requisite NAC up to 15.7.2001 and till then, he be allowed to retain the old accommodation at Ambala Cantt.

3. Mr. Tribhuvan Dahiya, appearing on behalf of the Petitioner, contended that the accommodation offered to the Petitioner at Secunderabad had already been rejected by three officers of the Army. Thus, as per the policy of the Respondents, the same had become an open offer house for all officers in the waiting list and could be taken by any officer desirous of taking a sub-standard house irrespective of his seniority. He further stated that the Petitioner's refusal to take sub-standard accommodation had relegated him in seniority for six months. He, therefore, cannot be considered to have been allotted any accommodation for this period. In these circumstances, the Petitioner is entitled to a NAC for the period from 16.4.2001 to 15.7.2001 and the Station Commander at Secunderabad be directed to issue the same. He further prayed that till then, the Petitioner be allowed to retain the old accommodation at Ambala Cantt.

4. After hearing the learned Counsel for the Petitioner, we find no merit in his claim. The Petitioner had been asked to vacate the accommodation at Ambala Cantt earlier vide order dated 23.2.2001 which order he had challenged before this Court in Civil Writ Petition No. 4174 of 2001. The Respondents had controverted his claim and had supported the orders impugned therein. The writ petition was disposed of by a consent order which has already been reproduced in earlier part of this judgment. It is clear that the Petitioner had undertaken to vacate the premises on or before 30.4.2001, unconditionally, There was no stipulation that this undertaking was subject to allotment of an accommodation to him at Secunderabad. Thus, irrespective of the merits of his claim that he can not be

treated to have been allotted an accommodation at Secunderabad, the Petitioner cannot be allowed to continue to occupy the accommodation allotted to him at Ambala Cantt. His claim for NAC for the period up to 15.7.2001 has nothing to do with the issue about the retention of accommodation at Ambala Cantt. We are of the considered view that the Petitioner cannot continue to occupy the accommodation at Ambala Cantt. beyond 30.4.2001 in view of his unconditional undertaking given in this Court.

5. As far as the issue of NAC for the period up to 15.7.2001 is concerned, the Petitioner has submitted his application barely a few days ago. No decision on the same has so far been taken by the Army authorities. Some reasonable time has to be given to them to consider the same and take a decision. We have no doubt that the Respondents will consider the same on merits and take a decision in accordance with law. In case, the Petitioner is not satisfied with the order, it would be open to pursue his remedies under the law. At this stage, the claim of the Petitioner is premature.

6. In the result, we find no merit in this writ petition and the same is dismissed in limine.

Sd/- Jawahar Lal Gupta, J.