
(2014) 11 DEL CK 0156

In the Delhi High Court

Case No : Writ Petition (Civil) 7885/2014 in C.M. Nos. 18485-18486/2014

Ran Singh Kohar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 17-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 7

Citation : (2014) 11 DEL CK 0156

Hon'ble Judges : Vipin Sanghi, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Sachin Chauhan, Advocate for the Appellant; Anil Soni, CGSC, Naginder Benipal, Advocate, Ruchi Sindhwani, Addl. Standing Counsel and Megha Bharara, Advocate for the Respondent

Judgement

Vipin Sanghi, J.—Issue notice. Mr. Anil Soni, CGSC accepts notice on behalf of Union of India. With consent of counsel, the matter heard finally.

2. The petitioner assails the order dated 08.09.2014 passed in O.A. No. 2457/2013 by the Central Administrative Tribunal (CAT/ Tribunal) in these proceedings under Article 226 of the Constitution of India. The Tribunal dismissed the petitioner's original application by the impugned order.

3. The petitioner was appointed as a Sub Inspector (Exe) in the Delhi Police on 10.07.1979. He retired from the Delhi Police after earning successive promotions, as ACP, on 31.03.2012. While serving as Sub Inspector, the petitioner was selected and sent on deputation to the Intelligence Bureau (IB) as ACIO-II(G). He joined the deputation post on 18.09.1982. While on deputation, he was allotted a government quarter on Mandir Marg, New Delhi from the general pool of Directorate of Estates (DoE).

4. The petitioner was repatriated to the Delhi Police on 01.06.1986. The petitioner continued to occupy the aforesaid general pool accommodation ever

after repatriation. A request was sent to the DoE on 06.09.1994, requesting that the said general pool government quarter be placed at the disposal of Delhi Police and, in exchange, the Delhi Police would surrender a similar unit into the general pool - as and when the same would be available.

5. On 07.06.2010, the DoE issued a letter cancelling the allotment of the aforesaid government accommodation on account of the petitioner's retirement. After obtaining extension to retain the quarter upto 30.11.2012, the petitioner vacated the said quarter on 01.01.2013. However, when he sought NOC from the DoE, the said Directorate issued a letter dated 15.04.2013 which, inter alia, stated as follows:

"I am directed to refer your letter dated 05.04.2013 regarding issue of NOC and to say that your request has been examined and found that you are ineligible for GPRA from 01.06.1986 to 03.05.2011 by virtue of your posting in ineligible office.

2. However, on your promotion as ACP, a Gazetted post w.e.f. 04.05.2011 you became eligible for GPRA in accordance with policy guidelines.

3. Damage rate of licence fee will be chargeable for the period of unauthorized stay w.e.f. 01.06.1986 to 03.05.2011.

Sd/-

(Shobhana Mathew)

Deputy Director of Estates

Copy to:-

1. Rent Section (R-III) to calculate the rental liability of Shri Ran Singh Ex-allottee of Quarter No. J-933, Kalibari Marg, New Delhi from 01.06.1986 to 03.05.2011 i.e. his ineligible period."

6. In view of the aforesaid communication - stating that damages would be chargeable for the unauthorized stay in the said general pool government accommodation between 01.06.1986 to 03.05.2011, the petitioner's gratuity to the extent of 10% was withheld. Aggrieved by the said withholding, the petitioner preferred the aforesaid original application.

7. The case of the petitioner was that till he vacated the said government accommodation, at no stage, did the DoE issue any notice intimating that he was not eligible to hold the quarter after repatriation to Delhi Police, or asking him to vacate the same, and that all of a sudden, the order dated 15.04.2013 had been issued on the basis of which his gratuity was withheld. The petitioner placed reliance on the memorandum dated 18.04.1972 of DoE relating to retention of government pool accommodation by officers entitled to residential accommodation from police pool, on their transfer, and vice versa. This memorandum, inter alia, reads as follows:

"Cases have come to notice where officers in occupation of quarters from the

Police Pool were transferred to the offices entitled to general pool accommodation and they continued to remain in unauthorized occupation of these quarters. Similarly, officers in occupation of general pool quarters overstayed in quarters after their transfer to the Delhi Police. To avoid hardship to the concerned officers and also to avoid infructuous work the matter has been considered in consultation with the I.G. (Police) and it has been decided that in case of transfers of the officers occupying accommodation in Police Pool to the officers entitled to general pool accommodation, they will be allowed to retain residential accommodation already in their occupation. The next vacancy of a quarter of the same type irrespective of the locality or floor will be included in the pool from which the officers has been transferred from the other pool e.g. if an officer of CBI in occupation of general pool accommodation is deputed/transferred to the Delhi Police a quarter of the same type irrespective of the locality/floor will be transferred by the Delhi Police to the general pool and vice-versa."

8. The submission of the petitioner was that since the Delhi Police had sent a communication to the DoE on 06.09.1994 for retention of the government accommodation in question - with an offer to surrender another similar quarter, and no response had been received from the DoE, the petitioner was justified in presuming that the respondent had agreed to the said proposal. The further case of the petitioner was that the DoE had given extension for retention for the said quarter even after the petitioner's retirement - on medical grounds, upto 30.11.2012 and even at that stage it was not claimed by the DoE that the petitioner was not eligible to retain the said accommodation.

9. The stand of the respondent was that in Delhi Police, upto the rank of inspector, the employees are ineligible for allotment of general pool accommodation by the DoE. It was also stated that the DoE allots general pool accommodation only to those police officers who are in the rank of ACP and above. Since the petitioner was not holding the rank of ACP at the relevant time, he was not entitled to retain the general pool accommodation. Moreover, it was only in 1994 that the DoE was informed regarding the exchange of quarter with a quarter in the Delhi Police pool, whereas the petitioner had been repatriated on 01.06.1986.

10. Reliance was placed on the following clause in the application made by the petitioner for allotment of general pool accommodation:

"4. That I have been continuously employed in an eligible office located in eligible zone since the date of my application for allotment of General Pool Residential Accommodation. I undertake to keep the Directorate of Estates informed about my transfer within/ outside Delhi or to an office ineligible for General Pool Residential Accommodation."

Therefore, it was obligatory for the petitioner to inform about his repatriation to Delhi Police from IB in 1986, which he failed to do.

11. The Tribunal, while dismissing the petitioner's original application, concluded

as follows:

"8. What becomes clear from the arguments of both sides is that an Inspector of Delhi Police is not entitled to general pool accommodation by the Directorate of Estates, only an ACP is eligible. But when the Inspector gets deputed to IB under the Ministry of Home Affairs, he becomes eligible for general pool accommodation. The application form for allotment of accommodation itself stipulates that when the allottee comes to know that he is ineligible for general pool accommodation, he is supposed to inform the Directorate of Estates. Therefore, the onus is on the allottee and the defence cannot now be taken that since the Directorate of Estate did not respond to 1994 letter of Delhi Police, it could be presumed that he could continue in the quarter beyond 1.06.1986, though ineligible. In fact, there is no dispute regarding the period 4.05.2011 (when the applicant got promoted as ACP) till the date of his retirement and period beyond for which he was permitted to retain the quarter. However, we agree with the argument of the respondents counsel that, based on getting permission for retention of the quarter post retirement, the applicant cannot stake a claim that his allotment for the period 1.06.1986 to 3.05.2011 also gets regularized. While we agree with the learned counsel for the applicant that the facts of the cases cited by the respondents do not strictly apply to this case, we hold that the occupation by the applicant of the accommodation between 1.06.1986 and 3.05.2011 was unauthorized as he was not eligible for the same and, therefore, we can apply the general principle laid down in the judgments cited that if an employee retains a quarter in an unauthorized manner, the penal rent can be recovered.

9. In the light of the facts and circumstances of the case, we conclude that the impugned order dated 15.04.2013 is a valid order and does not call for any interference. The QA is, therefore, dismissed. No costs."

12. The submission of learned counsel for the petitioner is that it is not in dispute that the petitioner was entitled to the type of accommodation as was allotted to him while on deputation from general pool accommodation by the DoE, even after his repatriation to Delhi Police. The respondents were not justified in claiming that the DoE had not been informed about the petitioner's repatriation. The communication dated 06.09.1994 addressed to the DoE by the Delhi Police is relied upon in this regard, which reads as follows:

"I am directed to say SI Ran Singh, now as per No. D/1812 of Delhi Police was allotted H.No. J-933, Park Street, Mandir Marg, New Delhi vide Dt. of Estate's letter No. 933/PS/TB (M)/83 dated 06.10.83 while he was on deputation to I.B. After his repatriation he is still in occupation of above said Qr. And now the said S.I. has requested to retain the same.

It is, therefore, requested that the above mentioned govt. Qr. may placed at the disposal of Delhi Police. However, a similar unit will be surrendered to the General pool as and when the same will be available."

13. The further submission of learned counsel for the petitioner is that, in any event, the DoE cannot unilaterally determine the damages for the alleged unauthorized occupation of the general pool accommodation. Learned counsel submitted that the determination of damages is an adjudicatory process to be undertaken by resort to the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 ("the Act").

14. Learned counsel for the respondent, who appears on advance notice, does not dispute the fact that the petitioner was entitled to the same type of accommodation after repatriation - though from the Delhi Police pool. It is also not in dispute that the petitioner had not drawn the HRA while retaining the accommodation in question.

15. Having heard learned counsel for the parties, we are of the view that for the period 01.06.1986 to 06.09.1994 - when the Delhi Police sent the aforesaid communication to the DoE, the holding of general pool accommodation by the petitioner may not have been justified, and the petitioner may be subjected to damages after adjustment of the HRA. However, for the period after 06.09.1994, till the date he was permitted to occupy accommodation, in our view, there would be no justification to claim any damages for the reason that the DoE had been put to notice on 06.09.1994 and offered another similar accommodation for surrender to the general pool. The DoE did not reject the request made by the Delhi Police in the said communication dated 06.09.1994 and the petitioner had, therefore, no reason to vacate the accommodation in question. The DoE did not ask the petitioner to vacate the said accommodation at any stage. The petitioner, therefore, was justified in continuing to occupy the accommodation in question till his retirement, and thereafter till it was so expressly permitted on medical grounds.

16. We also accept the petitioner's submission that the quantification of damages is an aspect which is statutorily covered by Section 7 of the Act, and the DoE cannot unilaterally determine the damages for unauthorized use and occupation of the accommodation in question - either between the period 01.06.1986 and 06.09.1994, or for the period for which the petitioner overstayed in the accommodation after the expiry of the extension period post retirement. The said determination can be made only by the Estate Officer appointed under the Act.

17. For the above reasons, the petition partly succeeds. The impugned order is hereby set aside. It is, however, open to the respondents to initiate proceedings under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 in respect of the period 01.06.1986 to 06.09.1994, and for the period after expiry of the extension, if so advised, and after giving due opportunity in terms of the said Act in accordance with law pass appropriate orders as regard damages payable by the petitioner. The respondents are further directed to ensure that the amount of gratuity withheld, be now kept in an interest bearing deposit and be disbursed subject to the final orders in the proceedings under the

said Act along with the said interest as is accrued upon that amount, in case the same - or any part thereof, becomes payable to the petitioner. The proceedings under the said Act shall be completed at the earliest convenience of the Estate Officer and, in any case, within six months from today. All the rights and contentions of the parties in that regard are reserved.

18. The writ petition is allowed to the above extent.