

(2016) 03 DEL CK 0030

In the Delhi High Court

Case No : W.P.(C) 8308 of 2015 and C.M. 17532 of 2015

S.K. Mishra [LT.COL] & Ors.

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 08-03-2016

Acts Referred:

Citation : (2016) 228 DLT 11

Hon'ble Judges : Hima Kohli;Sunil Gaur, JJ.

Bench : Division Bench

Advocate : S.S. Pandey and Ajeet Pandey, Advocates, for the Appellant;
Ashwani Bhardwaj, Advocate, for the Respondent

Final Decision : Disposed off

Judgement

1. The present petition has been filed by seven petitioners praying inter alia for issuance of directions to the respondent No.3- Station Commander, Station Head Quarter, Delhi Cantt., New Delhi to allot them the entitled scale of accommodation and further, quash the order whereby the respondents have refused to permit them retention of the entitled scale of accommodation. The impugned order, passed by the respondent in the case of the petitioner No.1, has been enclosed with the petition and forms part of Annexure P-1 (colly), wherein the addressee was informed as below:-

"2. It is observed that on being SOS of Army HQ w.e.f. 13th July 2014 (AN), you are proceeding on Study Leave for the period 14th Jul 2014 to 31 May 2016 and will remain attached with Stn. HQ Delhi Cantt, during Study Leave.

3. As per MOD Accn rules, officers proceeding on study leave for a period of more than six months and attached to Non-AFHQ Unit, are required to seek allotment of accn from the unit to which attached and vacate the MoD Pool of Accn within 10 days of being SOS of AFHQ/ISOs. For retention of accn beyond 10 days of being SOS of AFHQ/ISOs, the officer is required to furnish NAC from the unit to which attached, within 02 months from the date of SOS, the officer is required to

compulsorily shift to alternate hired accn, for which he is required to contact this office well before completion of 02 months from the date of SOs."

2. The grievance of the petitioners is that all of them were granted study leave by the respondents and they had submitted representations to the respondent No. 3 for allotment of their entitled scale of accommodation while on study leave in terms of the Special Army Order (SAO 10/8/86), which entitles them to be treated at par with regular officers on duty, however, the respondents had turned down their representation, thus, compelling them to approach the Court.

3. At the outset, learned counsel for the petitioners submits that the tenure of the study leave of most of the petitioners shall expire between May to July, 2016. To be more specific, the study leave of the petitioners No. 1, 6 and 7 shall expire on 31st May, 2016, that of the petitioners No. 2 and 5 shall expire on 30th June, 2016 and that of the petitioners No. 3 and 4 shall expire on 31st July, 2016.

4. Learned counsel for the petitioners submits that when the petition was listed on 31st August, 2015, an interim order was passed, where under the respondents were restrained from taking coercive action to dispossess the petitioners from the quarters under their occupation and the said order has been continuing to operate in their favour. He submits that the tenure of the study leave is at the fag end and the children of most of the petitioners are school going and presently sitting for their year end examinations. It is urged that it will cause great hardship to the petitioners and their family members if they are directed to vacate the subject premises right away and shift to alternative hired accommodation.

5. It is pertinent to note that in the counter affidavit filed by the respondents, there is no averment made with regard to the offer for alternative hired accommodation made to the petitioners herein. It has only been averred in the counter affidavit that the petitioners, who were granted study leave, were occupying CAO Pool accommodation and as per the existing rules were liable to vacate the same within two months from the date of commencing the study leave.

6. Learned counsel for the respondents asserts that the petitioners were offered allotment of accommodation by the CAO, which they have not accepted. The said submission has, however, been categorically denied by the petitioners in paragraph No. 5 of their rejoinder filed in response to the counter affidavit of the respondents.

7. Be that as it may, the respondents have failed to clarify in their counter affidavit as to which policy would govern the petitioners. The petitioners stand is that they are governed by paragraph No. 5 of the order dated 30th January, 2015, issued by the respondent No. 5, which clarifies that the instructions contained in the said document will be implemented for study leave commencing w.e.f 1st June, 2015 and status quo shall be maintained for all the earlier cases.

8. The said submission has, however, been vehemently denied by learned counsel for the respondents, who states that the instructions in the order dated 30th January, 2015, would not have any application to the petitioners herein.

9. Having regard to the fact that tenure of the study leave of most of the petitioners shall expire between May, 2016 to 31st July, 2016, and given the peculiar facts and circumstances of the present case as also keeping in mind that if they are displaced at this stage, undue hardship is likely to be caused to the petitioners and their family members, particularly the school going children who are sitting for their exams in March/April 2016, it is deemed appropriate to permit the petitioners to retain their present accommodations till the expiry of their study leave. Immediately, thereafter, the petitioners shall be governed by the policy with regard to the allotment of accommodation, as may be applicable to them.

10. The present petition and the application are disposed of.