

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

TA NO.211/09

WP(C) NO.3136/91 of Delhi High Court

Wg. Cdr. Y.S. Ahlawat (12064) G (P)

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: None

For respondents: Ms.Jyoti Singh, Advocate, Counsel for respondents with
Sh.Om Prakash Sharma from CAO office

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON

HON'BLE LT. GEN. M.L. NAIDU, ADMINISTRATIVE MEMBER

ORDER

1. Petitioner by this writ petition has prayed that writ in the nature of Mandamus be issued directing the respondents to make rent reimbursement @Rs.1900/- per month w.e.f. 16.06.1989 to September, 1991 amounting to Rs.51,300/- with interest thereon @18% till its payment with other emoluments etc. and further to direct the respondents to make rent reimbursement to the petitioner till his posting in Delhi.

2. Brief facts necessary for disposal for present petition are that petitioner joined Indian Air Force as Commissioned Officer on 28.06.1969 as Flying Pilot. Petitioner remained posted in various bases including forward bases. The father of petitioner Sh. Murari Lal was an old person aged about 80 years and was not keeping good health and residing at his residence at Gurgaon. Due to old age and ill health, the father of the petitioner was not able to look after and maintain himself and there was nobody to look after and nurse him. Consequently, the petitioner applied for his transfer on compassionate ground to Delhi. Petitioner's request of posting at Delhi on compassionate ground was acceded. After posting at Delhi, petitioner sought permission to reside at Gurgaon, so that he could look after his aged and ailing father. Permission to reside at Gurgaon was accorded by the Director General of Resettlement vide Government of India, Ministry of Defence letter no. 27/003/F-147/Offrs./KSB/89/C dated 07.12.1989. After having been allowed to reside in Gurgaon with his father in his house, petitioner applied for reimbursement of rent w.e.f. 16.06.1989 to Dy. Chief Admn. Officer and in response to the petitioner's letter dated 16.06.1989 the Ministry of Defence vide letter dated 24.07.1989 required petitioner to furnish some relevant documents including permission of Director for living out of Delhi, New Delhi, rental assessment of property with plinth area from CPWD, which portion of the house is occupied by the petitioner and what its plinth area and rental value, the details of other member of HUF, the income, if any, by way of rental

being derived from HUF property and whether the income tax/wealth tax returns being filed regularly by him/HUF. Petitioner furnished the documents and information sought in the aforesaid letter. Ministry of Defence vide letter dated 02.01.1990 asked the petitioner to approach Directorate of Works, Air Force Head Quarter for submitting his case to P.S.O. Committee, Air Head Quarter, New Delhi. Accordingly the case of the petitioner was referred to PSO Committee. Thereafter vide communication dated 22.08.1991 the Ministry of Defence informed the Directorate of Works Air Force that in consultation with the Ministry of Defence (Finance), it was decided that since the officer who own house out side the municipal limit of Delhi and New Delhi were to be permitted to live on rent reimbursement basis. Further it was mentioned that petitioner cannot be granted rent reimbursement for the house allegedly hired by him from his father. Copy of letter dated 31.07.1990 was enclosed. Since his permission was turned down, therefore petitioner approached the Hon'ble Delhi High Court by filing present writ petition which has been transferred to this Tribunal for disposal after constitution of Armed Forces Tribunal.

3. Written was filed by respondents. Respondents in their written accepted that petitioner sought permission to hire rent accommodation and sought reimbursement for the house number 435/16, Civil Lines, Gurgaon,

Haryana to be owned by his father. Petitioner was granted permission to live outside municipal limit of Delhi in rented accommodation on reimbursement basis. Since house at Gurgaon was not owned by petitioner he could not get permission for rent reimbursement as house belong to his father. It was also pointed out that petitioner was thrice offered the allotment in Delhi in regular accommodation in Defence Pool Married Accommodation but he did not avail. It was also pointed that competent authority Director General of Resettlement has given the permission to petitioner to live outside the local limit of Delhi. Further it was pointed that his permission to reside in Gurgaon on compassionate basis accepted but he was declined reimbursement.

4. We have heard leaned counsel for respondents and gone through the material on record.

5. The reasons which have been given for declining to permit the petitioner are that house did not belong to him and belong^{ed} to his father and secondly thrice Government accommodation was offered but he declined to accept.

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6. We have examined both these aspects. So far as the first aspect is concerned, the Gurgaon house which belongs to father is a HUF property. In Hindu Law a person who is living in HUF, has always one share in the property. In HUF his share remain without being delineated. His share is only delineated or earmarked when the succession opens. In the present case since his father was living there was no question of succession being open and after death of his father the succession would have opened and property would have been divided by meets and bounds. Therefore, his share in undivided HUF family always remains intact. It is wrong to say that the he has no share in the house which was owned by his father in HUF. Therefore, contention by which the rent reimbursement has been denied is absolutely wrong.

7. Second aspect that he has been offered accommodation thrice in Delhi in the Defence Married Pool Accommodation is true but the fact remains that the authorities did not decline the offer on that count alone. If they could have revoked the permission to stay out of the municipal limit of Delhi, once they have granted the permission to live outside municipal limit of Delhi on compassionate ground of his father's ailment. There is no reason why he should not be given reimbursement. It is not a case where accommodation which has been offered to him, he has occupied and twice charged the reimbursement. He did not avail

Government accommodation and that accommodation would have passed to another person who is waiting. Therefore, Government would not lose anything if incumbent is living in Gurgaon. Therefore, there was no loss to the State. Rather it facilitate other officer ~~any person~~ who is waiting for an accommodation. They should have welcome this rather than declining the reimbursement. Therefore, in these circumstances, we are of the opinion that incumbent should be given reimbursement according to law and the arrears may be worked out and paid to him with interest @ 12% per annum. /k

8. Petition is allowed accordingly. No order as to cost.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Administrative Member)

New Delhi
November 12, 2009