

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

O.A.No. 138 of 2010

Col TS Solanki (Retd.) ...Petitioner

Versus

Union of India & Others ...Respondents

For the Petitioner : Petitioner in person

For the Respondents: Ms. Mohan Kumar, Advocate

C O R A M:

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

HON'BLE LT.GEN. M.L.NAIDU, MEMBER (A)

JUDGMENT

1. The Petitioner vide his application seeks quashing of the order dated 19 June 2004 issued by the Respondent No. 7 and issue orders / directions for return of the amount with-held /

deducted from the applicant's salary and grant relief as deemed fit.

2. Brief facts of the case are that the applicant was posted at Bangalore from March 1996 to July 2000 in the Group Headquarters NCC. He was allotted Government Quarters as per his entitlement. Thereafter, he proceeded on study leave for two years to be availed in Bangalore. He was, therefore, allotted "temporary" accommodation which was below his entitlement. On completion of the study leave he was posted to Manipur as Deputy Commander of 44 Mountain Brigade (Mtn Bde) from 3 July 2002.
3. Since he was posted to a Field area, he was entitled to Separated Family (SF) Accommodation. He accordingly applied for the same. The petitioner was allotted a SF Accommodation on 16 June 2003. At this point of time, the petitioner was unable to shift into the allotted SF Accommodation as he was embroiled in operations in Counter Insurgency (CI) area.

4. Several signals were exchanged between Station Headquarters Bangalore and 44 Mtn Bde, to say that the applicant is unable to proceed on leave due to operational reasons, as such the allotment of SF accommodation be deferred. The ~~petitioner~~ did proceed on leave in October 2003 as planned. However, by then allotment of SF accommodation was cancelled. He was thus charged damage rate of rent for the temporary accommodation held by him.
5. A fresh allotment of SF accommodation was made in September 2004 to the petitioner. Accordingly, he shifted from the temporary accommodation to this newly allotted SF Accommodation on 07 September 2004. However, he was charged damaged rate of rent for the temporary accommodation that he had occupied from 16 June 2003 to 07 September 2004.
6. The petitioner filed a WP (C) 5773/2005 in the Hon'ble High Court of Karnataka where their Lordships observed that the Respondents have stated that the petitioner was entitled to avail appellate remedy under the Army Act and hence the

petition is not maintainable. Their Lordships dismissed the petition with liberty to avail such remedies that may be available. Then he approached this Tribunal by filing the present petition.

7. The petitioner sought permission to argue his case in person. He was permitted to do so. He argued that when the damage rate of rent was being charged, he approached the Quartermaster General (QMG) at Army Headquarters vide his DO Letter of 18 October 2004. The QMG forwarded the case to Headquarters Southern Command and directed at Para 4, on 25 November 2004 which says:

“ 4 . As the case is under consideration with MOD/QMG, please initiate action to stop charging of DRR from the officer till finalization of the same”.

Even this direction was disregarded by the Respondents.

8. The learned counsel for the Respondent argued that the signals sent by 44 Mtn Bde were signed by junior officers and not the Brigade Commander. At one instance, the applicant has signed the Signal personally. As such, the request by the

petitioner was not accepted. He argued that the accommodation occupied by the petitioner was highly sought after and there was a long waiting list for this accommodation. Therefore, he had denied other eligible officers who were on the waiting list.

9. The learned counsel for the respondents confirmed the allotment made vide Station Headquarters, Bangalore Signal dated 16 June 2003 for SF Accommodation was cancelled when it was not taken over by the petitioner within the stipulated period. That SF accommodation would have been allotted to some other officer. He, however, did not have the details. Be as it may, SF accommodation was not allotted to the petitioner when he came on leave in October 2003. SF Accommodation was allotted to him only in September 2004. The petitioner shifted his family thereafter.
10. The learned counsel for respondents strenuously argued that it was also a matter of discipline. Having been allotted a SF Accommodation, incase the individual delays or does not shift into the new accommodation which is now his entitlement, he

denies another officer accommodation especially in a place like Bangalore which has acute shortage of accommodation. Hence, he argued that no latitude can be permitted in this matter. The Station Commander, Bangalore had correctly imposed ~~Damage~~ rate rent on the petitioner.

11. Having heard both the parties at length, we also examined the records in detail. The Station Headquarters Signal of 16 June 2003 allotted the SF Accommodation to the Petitioner. The 44 Mtn Bde where the petitioner was posted as the Deputy Commander responded on 28 June 2003 to say:

"Fmn Cdr in active CI Ops (.)

Col. T.S. Solanki comma Dy. Cdr. away on OP Task (.) offr returning next month(.) not rpt not possible to comply with your ibid sig in the given time frame(.) secondly (.) offr leave approved by op in Oct/Nov 2003)"

12. Station Headquarters, Bangalore without applying its mind responded by a signal dated 02 July 2003 "not accepting the contention." The signal was also endorsed to 4 Corps under which 44 Mtn Bde was operating. In response, a second

signal was sent by 44 Mtn Bde on 11 July 2003 signed by the applicant himself since he was officiating as the Brigade Commander in the absence of the permanent incumbent. This signal too was not accepted by Station Headquarters Bangalore. The signal was endorsed to 21 Mountains Division which was the controlling Headquarters for 44 Mtn Bde.

13. As analysis of the above communication through signals between 44 Mtn Bde and Station Headquarters suggests that the latter was not prepared to accept any other solution other than the petitioner taking over the SF Accommodation in the stipulated time-frame. 44 Mtn Bde was certainly in operations. The controlling Headquarters of 21 Mtn Div. and 4 Corps were kept informed but declined to relieve the petitioner due to operational exigencies. Operational exigencies certainly have over-riding priority over administrative requirements. The argument that the signal was not signed by the Commander does not hold good because if the signal is sent by the Headquarters the Commander is responsible for its contents.

14. It is also evident that there was a waiting list for both the types of accommodation i.e. SF Accommodation and temporary Accommodation. The petitioner was occupying temporary accommodation which was below his entitlement. The said SF Accommodation was allotted to someone else when it was not taken over by the petitioner by due date. The petitioner was not given SF Accommodation in October / November 2003 when he came on leave but was given accommodation in September 2004 instead. As such, there was no loss to the State.
15. Also the petitioner was occupying temporary accommodation which was below entitlement of the petitioner while the SF Accommodation sought to be allotted was as per entitlement. Therefore, the petitioner was not obtaining any advantage retaining the temporary accommodation.
16. Army Headquarters did order that charging damage rate of rent from the petitioner be stopped vide their letter of 25

November 2004, but the order was not implemented by Station Headquarters Bangalore.

17. In view of the foregoing reasons, it is obvious that the petitioner was being singled out for unreasonable treatment by Station Headquarters Bangalore. There is no justification for charging Damage Rate of Rent from him with effect from 16 June 2003 to 07 September 2004. As such we direct that the excess amount thus charged from the petitioner be refunded to him alongwith interest @ 12%. The exercise be completed within 90 days of receipt of this order.
18. Petition is allowed. No orders as to cost.

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. ML Naidu]
Member (A)

New Delhi
29th September, 2010

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

3.

C. A. No. 19 of 2011
In O. A. No.138 of 2010

Col. (Retd.) T. S. Solanki

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Petitioner in person.

For respondents: Sh. Mohan Kumar, Advocate

CORAM:

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

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER
19.5.2011

Learned counsel for the respondents submits that the order of this Tribunal has been partly complied with and the principal amount has already been paid to the petitioner. The petitioner is present in person and admits that he has received the principal amount. So far as the interest part is concerned, the respondents are directed to make payment of the interest amount to the petitioner expeditiously. With these observations, the execution petition/contempt petition stands disposed of.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
May 19, 2011

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

11.

C.A. No. 45 of 2011
IN OA No. 138 of 2010

Col. (Retd.) T.S. Solanki

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: None

For respondents: Mr. Mohan Kumar, Advocate.

CORAM:

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

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER
27.02.2012

Learned counsel for the respondents submits that order in question has already been complied with and sanction for interest has been issued. Copy of the sanction order also placed on record. Hence, nothing survives in the present execution petition. Same is accordingly disposed of.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
February 27, 2012
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