

**(2009) 11 AHC CK 0296**

**Allahabad High Court**

**Case No:** None

Manoj Kumar (A.P. 186)

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision:** Nov. 20, 2009

**Citation:** (2010) 2 AWC 1614

**Hon'ble Judges:** Sudhir Agarwal, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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### **Judgement**

Sudhir Agarwal, J.

Heard Sri Gulab Chandra, learned Counsel for the petitioner and perused the record.

2. The petitioner has challenged the order dated 29.9.2009, whereby he has been directed to vacate the official accommodation at Moradabad since he has been transferred at Trade Tax Department, Lucknow on deputation. The petitioner submits that since he has not been allotted any official accommodation at Lucknow, therefore, he should be allowed to continue to retain the official accommodation at Moradabad.

3. However, I find no force in the submission. Learned Counsel for the petitioner could not show any legal right whereby he is entitled to retain the official accommodation despite of his transfer.

4. Whether an official who has been transferred from one place to another has a right to retain the official accommodation at the transferred place or not has been considered by this Court time and again. In respect to the employees of the State Government rules have been framed namely, Fundamental Rule 45 read with subsidiary Rules 18 and 18A to 18C. Considering in the light of the above Rules, a Division Bench (of which I was also a Member) in [Ram Paras Tripathi Vs. The State of Uttar Pradesh](#), observed as under :

A judicial notice can be taken of the fact that available accommodations are not sufficient to meet the requirement of the serving Government servants, who are actually holding the post, and a large number of Government servants in service are waiting in queue for their turn to get official accommodation after it is vacated by the Government servant, who has ceased to hold the post or is transferred under the Rules.

5. Similarly in the context of the employees of the Central Government again a Division Bench considered the matter in *Union of India and Ors. v. Rajeev Kumar Tyagi and Anr.* 2008 (1) ADJ 673, and this Court observed in paras 8 and 9 of the judgment as under:

8. A Government servant holding a transferable post cannot be allowed to retain official accommodation at two places, particularly at the place wherefrom he has been transferred. Further he cannot retain official accommodation at the place of transfer beyond the period permissible in rules. No provision has been shown to us by respondent No. 1 that he could have retained official accommodation at Rampur also despite the fact that he has been allotted official accommodation at Moradabad.

9 Moreover, allotment or non-allotment of official accommodation at the place of posting does not vest any right upon the Government employee to retain official residence wherefrom he has been transferred. Irrespective of the fact that whether the Government servant has been or not has been allotted official accommodation at the place where he has been transferred, he has to vacate the official accommodation at the place wherefrom he has been transferred after the period permitted under the Rules is expired.

6. Further in para 10 of the judgment in *Rajeev Kumar Tyagi (supra)* the Court held :

10. In this view of the matter, we are clearly of the view that the respondent No. 1 was not entitled either under the Rules or otherwise to retain official accommodation at Rampur once he has been transferred to Moradabad and joined thereat and the period prescribed in the Rules for retention of official accommodation at Rampur has already expired. Therefore, the order of the learned Tribunal cannot sustain.

7. In the light of the above exposition of law as discussed above and in the absence of any statutory right of petitioners to retain the official accommodation after having been transferred from one place to another, I am not inclined to grant any relief to petitioner.

8. Learned Counsel for the petitioner further drew my attention to para 14 of the writ petition and contended that there are two other constables who also have been transferred from Police Lines, Moradabad to Trade Tax Department, Moradabad but are allowed to retain the official accommodation while the petitioner has been

required to vacate the same and, therefore, it is a case of discrimination.

9. Once it is established that the petitioner has no legal right to retain the official accommodation after having been transferred from one place to another, merely because some irregularities and illegalities have been observed by the respondents in some other cases that would not confer any right upon the petitioner to claim parity. The right of equality under Articles 14 and 16 of the Constitution is a positive concept and not a negative one. [See [Post Master General, Kolkata and Others Vs. Tutu Das \(Dutta\)](#), [Punjab National Bank by Chairman and Another Vs. Astamija Dash](#), [Punjab State Electricity Board and Others Vs. Gurmail Singh](#), [M/s. Laxmi Rattan Cotton Mills Ltd. v. State of U.P. and Ors.](#) 2009 (1) SCC 565 ; [Panchi Devi Vs. State of Rajasthan and Others](#), [State of Bihar Vs. Upendra Narayan Singh and Others](#), [State of Uttaranchal Vs. Alok Sharma and Others](#), [State of Punjab and Another Vs. Surjit Singh and Others](#), [State of Madhya Pradesh and Others Vs. Ramesh Chandra Bajpai, Shanti Sports Club and Another Vs. Union of India \(UOI\) and Others](#), and [Ghulam Rasool Lone Vs. State of Jammu & Kashmir and Another](#), It is well-settled that two wrongs will not make one right. [See [State of Bihar and Others Vs. Kameshwar Prasad Singh and Another](#), [Union of India \(UOI\) and Another Vs. International Trading Co. and Another](#), [Lalit Mohan Pandey Vs. Pooran Singh and Others](#), [Anand Buttons Ltd. Vs. State of Haryana and Others](#), and [Kastha Niwarak Grahnam Sahakari Sanstha Maryadit, Indore Vs. President, Indore Development Authority](#),  
10. I, therefore, find no merit in the writ petition. Dismissed.