

(2001) 06 AP CK 0027

Andhra Pradesh High Court

Case No: Writ Appeal No. 878 of 2001

A.K. Chakraborty, Subedar

APPELLANT

Vs

Commanding Officer and
Another

RESPONDENT

Date of Decision: June 21, 2001

Citation: (2001) 4 ALT 401

Hon'ble Judges: S.B. Sinha, C.J; V.V.S. Rao, J

Bench: Division Bench

Advocate: K.M. Saxena, for the Appellant; Deepak Bhattacharjee, for the Respondent

Final Decision: Dismissed

Judgement

V.V.S. Rao, J.

The appellant, hereinafter referred to as the petitioner, assails the order of the learned Single Judge dated 19-4-2001 in W.P.No. 6641 of 2001 whereby and whereunder the petitioner's Writ Petition was disposed of permitting the petitioner to continue in the quarters bearing No. 104/4 till 1-6-2001.

2. The petitioner is a Subedar in Indian Army. By order dt. 8-11-2000 he was transferred to 525 ASC Battalion which is deployed in Western Sector to engage in anti-terrorist operations. The petitioner while working in Secunderabad under the control of the second respondent was allotted married accommodation at Quarter No. 104/4, New Mercury Line, Trimulgiri, Secunderabad. He has been staying in the said quarters with his family consisting his wife and three young children. On transfer, he was asked to vacate the quarters. He made a representation to the Commanding Officer 554 ASC Battalion, C/o.56 APO seeking permission to retain quarters upto 30-6-2001. It appears he also applied vide Form Appendix B 2 Army Order 191/79. The petitioner's application for retention of accommodation on the ground of children's education upto 30-6-2001 was not sanctioned by the Commanding Officer. He therefore filed Writ Petition, being W.P.No. 7196 of 2000 challenging the order dt. 31-3-2001 rejecting permission to retain the Government

Quarters. The learned Single Judge having heard the learned Counsel for the petitioner and the learned Counsel for the respondents at the admission stage disposed of the Writ Petition permitting the petitioner to continue in the quarters upto 1-6-2001.

3. In this Writ Appeal the learned Counsel for the petitioner Sri K.M.Saxena placed reliance on paragraph 1020 of Army Regulations and submits that hundred per cent married accommodation is required to be provided at all authorised establishments of army units and wherever the petitioner is transferred he is entitled to retain married accommodation at the old station.

4. Sri Dheepak Bhattacharjee, learned Standing Counsel for the respondents brought to our notice paragraph 1025 of Army Regulations as well as clarificatory points from Army Headquarters with regard to retention of quarters by Junior Commissioned Officers at old stations. Placing reliance on this he would submit that an Officer, who is transferred from old station has to vacate the quarters and in any event such an officer is entitled to retain the quarters till the completion of the academic year of the children of the officer and therefore he submits that the petitioner has no enforceable right to claim to retain the married accommodation at the old station.

5. The only point that arises for consideration is regarding the true interpretation of paragraphs 1020 and 1025 of Regulations for the Army 1987. Paragraphs 120 and 1025 read as under:

" 1020. Family Accommodation for Army Units. (a) Married accommodation for troops is authorised at the following percentages of the authorised establishments of Army Units.

1025. Vacation of Married Quarters -(a) Once a married quarter has been allotted to an officer, JCO, WO, OR or NC(E) by proper authority and he has taken up occupation of the same he will not normally be required to vacate the quarter while on the strength of the station unit unless circumstances arise which made the continued occupation of the quarters by the individual, his family or household inappropriate or impossible or except under any of the following " circumstances:-

(i) When the person to whom the quarter is allotted is posted away from the station/unit.

(ii) When the person proceeds on temporary duty elsewhere for a period which is expected to exceed six months.

(iii) When the person to whom the quarter is allotted is absent without leave for more than 30 days and there is no satisfactory explanation for his absence.

(iv) When the quarter is required for use otherwise than as a married quarter, or its continued use as a married quarter becomes impossible, e.g., by reason of the

disposal of the quarter and alternative accommodation has been offered.

(v) When in the case of JCOs, WOs, OR and NCs (E), the quarter is required for allotment to another JCO, WO, OR or NC(E) in accordance with station/unit orders governing the allotment of married quarters in the station/unit .

(vi) When the quarter is of a higher class than the entitlement of the allottee and alternative accommodation of the appropriate class is offered to him.

(b) In addition, misconduct, misbehavior or a breach of station/unit regulations on the part of the person to whom the quarter is allotted or of any member of his family, or any other person living in or using the quarter, may lead to all its occupants being required to vacate it.

6. A perusal of paragraph 1020 shows that married accommodation for troops is authorised at 100% in respect of JCOs/WOs of all army units. It only means that all married persons have to be provided accommodation on preferential basis. It cannot be interpreted as conferring a right on JCO, who is served with an order of transfer/posting directing him to move out of old station. Further, as per paragraph 1025 when the person to whom the quarter allotted is posted away from the station/unit is required to vacate the quarter. Army Headquarters in their QMG's Branch Letter No. 06835/Sep 98/Q1(E) dt. 26-11-1998 while clarifying on the points forwarded by Headquarters Command pertaining to QMG Branch gave the following clarifications with regard to the retention of the quarters by JCO/OR at old duty station. The same reads as under.

7. A reading of the above clarifications issued by the QMS Branch on the points raised by Head Quarters Command shows that in any event JCO/NCO is entitled to retain accommodation till the completion of children's academic year only. As noticed while making a representation to retain the quarters the petitioner himself requested to be permitted to retain the quarters till 30-6-2001. Indeed, by representation dated 9-4-2001 he requested that he be permitted to retain the quarters upto 15-4-2001. It is not the case of the petitioner that the academic year is not yet completed and therefore he desires to tender detain the quarter. Having been served with the transfer order and having specifically requested for permission upto 15-4-2001 in our considered opinion, the petitioner is not entitled to claim any right to retain the quarter on the ground that there is no proper accommodation at the place of posting in Western Sector. By the impugned judgment, the learned Single Judge permitted the petitioner to retain the quarters upto 1-6-2001 and it cannot be doubted that the academic year was over long ago. We find no merit in this appeal.

8. Accordingly, the Writ Appeal fails and the same is dismissed. There shall be no order as to costs.