

GAHC010014762014



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : WP(C)/4576/2014

FORCE NO. 861241004, HC/DRIVER SYED TAMIZ ALI
S/O LT. BAITTULA ALI, R/O PUB SAHAN, P.O. RANGIA, DIST- KAMRUP,
ASSAM

VERSUS

THE UNION OF INDIA and 3 ORS
REP. BY THE SECY. MINISTRY OF HOME AFFAIRS, NEW DELHI-01

2:THE SPECIAL DIRECTOR GENERAL

NE ZONE
CRPF
AMERIGOG
GUWAHATI
ASSAM
PIN- 781023.

3:THE DEPUTY INSPECTOR OF GENERAL OF POLICE
GROUP CENTRE
GUWAHATI CUM ESTATE OFFICER
AMERIGOG
GUWAHATI- 781023.

4:THE COMMANDANT

175 BATTALION
CENTRAL RESERVE POLICE FORCE
LOCATED AT RANI
KAMRUP
ASSAM

Advocate for the Petitioner : MR.R MAZUMDAR

Advocate for the Respondent : MR.A K BORA

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioners : Shri R. Mazumdar

Advocate for the respondents : Ms. A. Gayan, CGC

Date of hearing : **13.05.2024**

Date of Judgment : **13.05.2024**

JUDGMENT & ORDER

The challenge in this writ petition is with regard to an order of recovery of a total amount of Rs.1,88,537/- including an amount of Rs.49,525/- which was the housing allowances given to the petitioner. The recovery has been sought to be made in 30 installments @ Rs.6,285/- and this Court has been informed that three installments had already been recovered. However, in view of an interim order passed by this Court on 24.09.2014, no further recovery has been made.

2. To resolve the controversy, the essential facts may be narrated in the following manner.

3. The petitioner was appointed with the CRPF in the year 1986 as a Constable / General Duty. By following the procedures, in the year 1988, he was posted as Constable / Driver and subsequently in 1997, he was promoted to the post of Head Constable / Driver. It is projected that the personnel of the CRPF are entitled to family quarter and in the year 1999, such a family quarter was

allotted to the petitioner in the Group Centre, 9th Mile, Jorabat. For the period 2002-05, the petitioner was posted at Srinagar, in 2006 he was posted at Jorhat for one year and in 2007 he was posted at Chhatisgarh and thereafter in 2008 at Delhi for about six months. The petitioner was posted at Rani in the district of Kamrup, Assam in 2009.

4. On 11.01.2012, an eviction notice was issued to the petitioner in connection with the family quarter under his occupation. The said notice was replied to by the petitioner by stating that his children who were school students were required to complete their academic session. Ultimately, on 31.03.2014 the quarter was vacated. However, vide the impugned communication dated 01.04.2014, the recovery of rent @ market rate, as indicated above was sought to be made. It is this action which is the subject matter of challenge in this writ petition.

5. I have heard Shri R. Mazumdar, learned counsel for the petitioner whereas the respondents are represented by Ms. A. Gayan, learned CGC, who submits that affidavit-in-opposition has been filed on 19.01.2015.

6. Shri Mazumdar, learned counsel for the petitioner has referred to the CRPF Family Accommodation Rules, 2008 (Rules of 2008) as per which in the event if a personnel is posted in any sensitive locations of the North-East India, Jammu and Kashmir and Left Wing Extremist areas, they are entitled to retain the family quarter. He submits that except for a short stint of six months at Delhi in 2008, the petitioner has all along been posted in the aforesaid sensitive areas and therefore he was entitled for retaining the family quarter. He submits that at no point of time earlier, especially during the aforesaid stint at Delhi no notice was served upon him to vacate the quarter and such notice was only served on

11.01.2012 when the petitioner was already posted at Rani, Kamrup from 2009. He submits that there was no basis for issuing the said eviction notice and consequential action of recovery is bad in law and without any justification.

7. Coming to the impugned communication dated 01.04.2014, the learned counsel for the petitioner has submitted that the period specified in the notice is 25.02.2013 to 31.03.2014 and in the said period, the petitioner was admittedly posted at Rani, Kamrup and therefore entitled to retain a family quarter. The learned counsel, however, has fairly admitted that so far as the component of payment of housing allowance for the period 01.03.2009 to 31.03.2014 amounting to Rs.49,525/- is concerned, he may not have a dispute as admittedly in that period the family quarter was under his occupation. However, the amount of Rs.1,39,012/- which has been sought to be recovered is submitted to be absolutely illegal.

8. The learned counsel for the petitioner has also informed this Court that in the year 2017, the petitioner has retired from service and therefore, the order of recovery would otherwise be harsh and would cause immense hardship to the petitioner. The learned counsel has relied upon an order dated 12.12.2023 of this Court passed in WP(C)/5357/2012 wherein an action of eviction of a personnel similarly situated was interfered with.

9. *Per contra*, Ms. Gayan, learned CGC has submitted that it was the duty of the petitioner to vacate the premises when he was posted in a non-sensitive location. It is further contended that the eviction notice was issued on 11.01.2012 and the quarter was actually vacated on 31.03.2014 and therefore the impugned demand is wholly justified. The learned CGC has however fairly submitted that the period mentioned in the impugned notice is from 25.02.2013 to 31.03.2014 in which the petitioner was posted at Rani in the district of

Kamrup, Assam.

10. The rival submissions have been duly considered.

11. There is no dispute with the Rules of 2008 which provides for a situation wherein a personnel of CRPF could retain the family quarter if he is posted in sensitive location as indicated above. The records would reveal that except for a period of six months in the year 2008 when the petitioner was posted at Delhi, all along he has been posted in the sensitive areas. The family quarter was allotted in the year 1999 at the Group Centre, Jorabat and there is nothing on record to show that prior to 11.01.2012, more specifically in the year 2008 when the petitioner was posted at Delhi any such eviction notice was issued. In fact, it appears that when the eviction notice was issued on 11.01.2012, the petitioner was posted at Rani, Kamrup, Assam wherein it has been stated that there is no provision for family quarter. What has also to be noted is with regard to the period specified in the impugned notice which is 22.05.2013 to 31.03.2014. When there is no dispute that during the aforesaid period the petitioner was posted at Kamrup in the State of Assam and was entitled for a family accommodation, the action to recover the amount for the said period does not appear to have any basis or logic. This Court has also noted that so far as the amount of Rs.49,525/- is concerned, the same is on the account of housing allowances which the learned counsel for the petitioner has fairly submitted that the same would not be disputed with. This Court has also noted that the petitioner had retired from service in the year 2017.

12. In view of the aforesaid discussions, this Court, in the interest of justice, holds that the demand for recovery of rent for the period of 25.02.2013 to 31.03.2014 vide the impugned order dated 01.04.2014 is illegal and accordingly set aside. However the petitioner would be liable to re-pay the amount of

Rs.49,525/- which is the Housing Allowance. This Court has also been informed that prior to the impugned order passed by this Court, three installments @ 6,285/- have already been recovered. The aforesaid recovery would be adjusted with the amount of Housing Allowance, as mentioned above.

13. The writ petition accordingly stands allowed in the manner indicated above.

14. Cost made easy.

JUDGE

Comparing Assistant