

Ajay Kumar Bhatnagar and anr. Vs. Union of India (Uoi) and ors.

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SooperKanoon Citation : sooperkanoon.com/703097

Court : Delhi

Decided On : Aug-16-2005

Reported in : 123(2005)DLT242

Judge : Vikramajit Sen, J.

Acts : [Constitution of India](#) - Article 14

Appeal No. : W.P. (C) Nos. 5827/2002 and 13213/2005

Appellant : Ajay Kumar Bhatnagar and anr.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : A.K. Bhardwaj, ; B.K. Berera, ; Tani Sudan and ;

Advocate for Pet/Ap. : B. Krishnan, Adv

Disposition : Petition dismissed

Judgement :

Vikramajit Sen, J.

1. In these Petitions we are concerned with applications for retention of Government accommodation owing to the retirement of the allotted during the existing eligibility of the retirees' ward for grant of Government accommodation. The applications in these petitions are all post May, 1999. Reliance has been

placed by learned counsel for the Petitioners on Office Memorandum dated 12.10.1990 in which it was possible to retain Government accommodation from the general pool, even though the next entitlement (of the ward) is from the departmental pool and vice-versa. Under the 1990 Office Memorandum the retention was possible in certain circumstances. Learned counsel appearing for the Respondents submit in unison that the Office Memorandum dated 12.10.1990 is no longer in vogue after the coming into operation of Office Memorandum dated 20th May, 1999, Clause 2(i) of which reads as follows:

When a Govt. servant, who is allottee of general pool accommodation, retires from service, the ward/spouse will be eligible for regularisation/allotment of entitled type of accommodation provided he/she is, as Govt. servant eligible for allotment of accommodation from general pool and had been residing continuously with the retiring Govt. servant for at least three year immediately preceding the date of retirement. In case, however, a person is appointed in Govt. servant within a period of three years preceding the date of retirement or had been transferred to the place of posting of the retiring Govt. servant any time within the preceding three years, the date on which he was so appointed/transferred would be the date for the purpose.

2. My attention has also been drawn to paragraph 4 of this Office Memorandum which clarifies that it shall be applicable in respect of all cases where the family was retaining the Government accommodation authorisedly as on 1.1.1998. It has been further clarified in this paragraph that this facility of regularisation/allotment of alternate accommodation will not be admissible in cases where the allottee was in possession of general pool and the ward/spouse is not eligible for allotment of accommodation from general pool accommodation and/or vice versa.

3. After the coming into operation of Office Memorandum dated 20th May, 1999, there is no reason for the entertainment of the Writ Petitions.

4. Reliance has been placed on alleged infractions of the policies in certain cases. However, those cases may pertain to the earlier Office Memorandum dated 12.10.1999, or may be instances where Orders passed by Courts/Tribunal have been implemented. There may be a third possibility, namely, that a irregular

allotment/exchange may be allowed by the Respondents. In all these cases the Petitioner would not have an indefeasible right to be placed on the same footing as the other persons. An irregularity and/or an illegality cannot be perpetuated. This would itself be in violation of the Article 14 of the Constitution. Reliance, therefore, on the decision of the Hon'ble Division Bench of this Court in *Goel R.P. v. Union of India* AIR 1986 Delhi 406, is of no avail to the Petitioners as also the decision of the Hon'ble Supreme Court in SLP No. 13011/1994 passed on 19.7.1994.

5. Keeping in view of the dearth of Government accommodation, stealing of march over other government servants who are patiently waiting in the queue should be frowned upon; and permitted in most strict circumstances. There will be manifold logistical problems in exchanging accommodation earmarked for one pool with accommodation in the general pool and vice versa. The latest and extant Office Memorandum dated 20.9.1999 is thus of salutary content.

6. The Writ Petitions are without merits and are dismissed.

7. Interim Orders are recalled.