



सत्यमेव जयते

न्यायालय मुख्य आयुक्त विकलांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES

विकलांगजन सशक्तिकरण विभाग / Department of Empowerment of Persons with Disabilities

सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment

भारत सरकार / Government of India

Case No.4642/1024/2015/PG

Dated:-03.06.2016

In the matter of:

Shri Sunil Kumar Uniyal, *D112*
PMO Suraj Hyderabad Group,
C/o Station HQ Cell,
Secunderabad-500 010.

..... Complainant

Versus

The Directorate General Quality Assurance,
(Thru Special DG),
Room No. 308B, 'D' Block, *D113*
Sena Bhawan,
New Delhi-110001.

..... Respondent No.1

Controllerate of Quality Assurance (Systems),
(Thru Controller),
DGQA Complex, *D114*
Manovikas Nagar P.O.,
Secunderabad-500009.

..... Respondent No.2

Date of hearing : 24.02.2016, 18.04.2016

Present :

24.02.2016

1. Lt. Col. S.K. Uniyal, Complainant.
2. Lt. Col. Pankaj Geetay, Dy. Controller (MS),CQAS, on behalf of the Respondent No.2

18.04.2016

1. Lt. Col. S.K. Uniyal, Complainant.
2. Lt. Col. Pankaj Geetay, Dy. Controller (MS),CQAS, on behalf of the Respondent No.2

ORDER

The above named complainant filed a grievance bearing Registration no. DODAF/E/2015/00214 dated 20.05.2015 on the Portal for Public Grievances regarding denial of retention of Government accommodation on the basis of 12 years old daughter suffering from Cerebral Palsy (100%).

2- The complainant has submitted that he is serving as an officer in Indian Army. He has a 12 years old 100% mentally challenged daughter suffering from Cerebral Palsy. He has been denied the government accommodation. During his tenure at DGQA, Secunderabad, he had requested for an extension of his tenure in DGQA, Secunderabad, which was denied to him by his establishment inspite of the fact that Military Secretary (MS-13), MS Branch had given 'no objection' in his case. He was also denied retention of government accommodation at Secunderabad.

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3. The matter was taken up under Section 59 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act with the respondent vide this Court's letter of even number dated 06.07.2015.

4. Upon considering the reply dated 18.08.2015 filed by the respondent no. 2 enclosing therein a copy of letter dated 14.08.2015 and complainant's rejoinders dated 03.09.2015 and 29.10.2015, it was decided to hold a personal hearing in the matter on 06.01.2016, which was re-scheduled for 24.02.2016.

5. During the hearing on 24.02.2016, the complainant reiterated his written submissions and stated that he has 12 years old daughter Miss Rachita Uniyal, who is a case of cerebral palsy (Severe Spastic Quadriplegia) with profound Mental Retardation having 100% disability, Microcephaly, Seizure Disorder and Scoliosis. She is undergoing periodic special care facilities and rehabilitation at National Institute of Mentally Handicapped (NIMH), Secunderabad, besides being provided with Regular Care & Development Therapy at Asha School, Secunderabad. Both the above institutions are close to DGQA Govt. residential complex, where he is presently residing. He with great difficulty has arranged special educator, various therapists, care taker and local administrative support for rehabilitation in his present set up. Besides his daughter is getting excellent psychological stimulus from very friendly and supportive neighbourhood who understand her difficulties and needs. Shifting out from the existing Govt. accommodation and set up shall completely disturb her well established rehabilitation process. He further submitted that Department of Personnel & Training vide O.M. No.42011/3/2014-Estt. (Res) dated 06.06.2014 has already issued a policy of exempting routine transfer of Govt. employees having differently abled dependents. He through CQA(EW) had applied for extension of tenure in DGQA based on DoP&T's order, which, however, was turned down due to administrative constrains.

6. He also drew the attention of this Court to Para 24 of Part-II – Allotment Rules of Special Army Order dated July, 1986, as per which all accommodations (Government, owned/hired/requisitioned) in the Station will be kept in the Station Pool at a station where more than one service has constructed accommodation. Accommodation built by a particular Service at the station will be allotted primarily to officers belonging to that service, subject to the provision that no accommodation in the respective pool in the station remains vacant at any time. Any accommodation lying vacant/surplus with either service will be offered for allotment to officers of other service on the waiting list irrespective of the

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Service one belongs to. All other Government owned accommodation i.e. hired, requisitioned etc. will be merged in a common pool to be allotted to service officers irrespective of the service based as a common seniority roster at that station. Notwithstanding the same, MS Branch considering the merit of his case and in line with above DoP&T's OM, side stepped him to same station and posted him to PMO SURAJ, Hyderabad Group, Secunderabad. Subsequently MS Branch has requested DGQA to permit him to retain his existing Government accommodation. In the end, he request to this Court to allow him to retain the existing Govt. accommodation till his next transfer, else any change in existing setup/environment will adversely affect/hinder the present rehabilitation process of his 100% differently abled daughter.

7. The representative of the respondent submitted that the complainant reported to CQA(EW) on posting from CQA(L), Bangalore which is a DGQA establishment in September, 2012, on his second tenure in DGQA. On completion of his second tenure in CQA(EW), Secunderabad, the officer applied for further extension of tenure in DGQA, which was not granted. Accordingly MS(3B) of Army reverted the officer back and the officer was side stepped within same station to PMO Suraj, Hyderabad Group. The complainant approached CQA(S) for obtaining clearance. In reply their office enquired about the status of the accommodation vide letter dated 16.10.2014. Thereafter, their office received application from the complainant for permanent retention of quarter vide his application dated 10.11.2014. As there is no provision for service officers to retain quarter when they are reverted back to parent organization (Army/Navy) case was taken up with DGQA/Adm-5 for necessary clarification vide letter dated 15.12.2014. DGQA vide letter dated 25.02.2015 directed their establishment to first provide all possible assistance till complainant makes suitable arrangement and also to decide the case based on existing rules. Therefore, Station Commander ordered Quartering Committee Meeting to examine the same. QCM was held on 01.05.2015 and it was decided to permit the retention of quarter till 30.06.2015 and the complainant was requested to complete suitable arrangements by the specified date. Due to technical problems his extension was not accepted in the organization. The complainant applied for retention of quarter till his next transfer, which is not in consonance with the request of his organization which was to permit retention till he makes suitable arrangements. More than one year has lapsed after his posting out from DGQA, Secunderabad, however, complainant still continues to occupy the DGQA accommodation which is causing avoidable inconvenience to other posted officers of the DGQA.

8. The respondent further submitted that there is no provision of cross-allotment and cross-holding between separate pools of different organization because same is unpractical. His own

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organization has also advised the complainant accordingly. Accommodation pool of Army and DGQA are located in same general area. Also Military Hospital and National Institute of Mentally Handicapped (NIMH) and ASHA School remain almost equidistant (approx.) even if the complainant shifts from DGQA pool to Army Pool. As such there is no disturbance to the major support systems. Second para of O.M. dated 06.06.2014, it is stated that rehabilitation is a process aimed at enabling persons with disabilities to reach and maintain their optimal physical, sensory, intellectual, and psychiatric or a social functional level. The support system comprises of preferred linguistic zone, school/academic level, administration, neighbours, tutors/special educators, friends, medical care including hospitals, therapists and doctors, etc. Thus, rehabilitation is a continuous process and creation of such support system takes years together. DoP&T's OM has been fully honoured and complied with by the organization so that the care giver remains within same Station and gets adequate retention of DGQA quarters to allow him to make suitable arrangements before shifting to an accommodation in the Army Pool. As per DGQA rules in case of tenure officers posted back to parent organization retention of quarter is not permitted unless when the tenure officer is being posted out to a field station in which case maximum extension of five months is permissible. Para 24 of Special Army Order, July, 1986 is very clear which says that "all accommodation (Government, owned/hired/requisitioned) in the Station will be kept in the Station Pool at a station where more than one Service has constructed accommodation. Accommodation built by a particular Service at the station will be allotted primarily to officers belonging to that service, subject to the provision that no accommodation in the respective pool in the station remains vacant at any time. Any accommodation lying vacant/surplus with either service will be offered for allotment to officers of other service on the waiting list irrespective of the Service one belongs to. All other Government owned accommodation i.e. hired, requisitioned etc. will be merged in a common pool to be allotted to service officers irrespective of the service based as a common seniority roster at that station. We cannot overrule the Army Order. However, the officer has sought a permanent retention till his next transfer. One quarter of DGQA cannot be permanently blocked for this purpose by forcing other Army/Civilian officers to accept a lower class quarter/outliving. He further submitted that SAO 10/S/86 will apply to this case only if the officer was being posted from one Army Unit to the other Army Unit within the same station as the officer is being posted out from a non-Army unit to Army Unit. DGQA Station Headquarter has been very compassionate and sensitive in this case. No unilateral action has been initiated till date so that the care giver (officer concerned) is not caused stress for any reason whatsoever.

9. This Court after hearing both the parties, put a query to the parties whether it is possible to

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E-mail: ccpd@nic.in; Website: www.ccdisabilities.nic.in

(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)

(Please quote the above file/case number in future correspondence)



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mutually transfer the flat allotted by DGQA as a special case to Shri Sunil Kumar Uniyal with same category of the flat transferred by the Army to DGQA, as this Court has to look after the welfare of the child with disability. This arrangement should be made for the period till Mr. Uniyal is posted at Secunderabad. When Shri Uniyal would be transferred out of Secunderabad, the flat could be mutually inter-transferred by the respective Departments. This Court also advised that this should not be treated as a precedent in future. A copy of this Record of Proceedings alongwith copy of complaint, DGQA's reply, DoP&T's O.M. dated 06.06.2014 was forwarded to the Secretary, Ministry of Defence and Secretary, Department of Defence Production to explore the possibility of accommodating Shri Uniyal at the present accommodation which will help him in the rehabilitation of his daughter. The comments/views may be sent to this Court within 30 days from the receipt of these Record of Proceedings.

10. The case was fixed for further hearing on 18.04.2016 The respondent was directed to bring all the relevant documents and instructions in the matter.

11. The copy of the Record of Proceedings dated 03.03.2016 was forwarded to the Secretary, Ministry of Defence and the Secretary, Department of Defence Production, New Delhi vide this Court's letter dated 31.03.2016 for exploring the possibility of accommodating Shri Uniyal at the present accommodation which will help him in the rehabilitation of his daughter.

12. The complainant vide its letter dated 29.03.2016 addressed to Adm. Comdt. Station HQ Cell, Secunderabad informing him inter-alia that the Hon'ble Court has fixed the next hearing on 18.04.2016 suggesting the following solution as per para 01 of the Record of Proceedings dated 03.03.2016:-

- (a) Keeping in view of welfare and rehabilitation of his 100% physically and mentally challenged 12 years old daughter explore possibility of mutual transferring of Govt. accommodation (of same category) of Army pool to DGQA service officer posted in the Station.
- (b) The above arrangements to be made for the period till he is occupying DGQA pool service officers accommodation and remains posted in Military Station, Secunderabad.
- (c) On transfer out of undersigned from Secunderabad, the Govt. accommodation can be mutually inter-transferred between Station HQ and DGQA, Secunderabad of their respective pool accommodation.
- (d) The above solution shall not be treated as a precedent in future.

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13. He also submitted that the suggestion as given vide Para 4 of Station HQ Cell letter as referred at para 1(b) above is not suitable and viable for undersigned, considering the existing and well established rehabilitation and welfare process (of past 3 years) of my 100% physically and mentally challenged daughter would adversely get affected. It is intimated that same proposal from Station HQ Cell was earlier also not agreed upon by the undersigned on above ground and under the provision of SAO 10/S/86, which has already been communicated to the Station HQ Cell vide this office letter dated 25.05.2015 as referred at Para 1(a) above. In view of the above, it is requested to furnish the comments on the solutions suggested at Para 8 of the Hon'ble Court of Commissioner for Persons with Disabilities letter as referred at para 1(c) above, which has been reproduced at Para 3 above, latest by 13.04.2016, so as to place before the honourable Court during the hearing schedule on 18.04.2016 please. The copy of the letter has been endorsed to this Court for information.

14. The complainant further vide his letter dated 05.04.2016 addressed to Admn. Comdt. Station HQ Cell, Secunderabad inter-alia submitted that since the subject matter on ground can only be resolved mutually by Station HQ Cell, Secunderabad and DGQA/CQA(S), Secunderabad, it is requested to consider the option as given at Para 8 of Court of Chief Commissioner for Persons with Disabilities in their letter No.4642/1024/2015/PG dated 03.03.2016, forwarded vide this office letter of even number dated 29.03.2016. The relevant content of Para 8 of above Court's letter dated 03.03.2016 has been reproduced at Para 3 of this office letter dated 29.03.2016 and comments on the same have been sought from Station HQ Cell latest by 13.04.2016, so that it can be produced in the next hearing at the above Hon'ble Court on 18.04.2016. The copy of the letter has been endorsed to this Court for information.

15. The complainant vide his letter dated 14.04.2016 submitted that subsequent to the issue of directions by the Hon'ble Court to both Secretary, MoD and Secretary, Department of Defence Production to explore the feasibility of retention of existing Government accommodation (of DGQA pool i.e. 37/2 DGQA Officers Enclave, Secunderabad) by the undersigned vide their letter's as referred at Para 1 (a) above, so as to facilitate rehabilitation of 12 years old 100 differently able daughter of undersigned suffering from Cerebral Palsy, the undersigned approached the Station HQ Cell, Secunderabad to furnish their comments on the same vide letters as referred as Para 1 (b) above. He also enclosed copy of letter dated 06.04.2016 of Station HQ Cell, Secunderabad with the letter. He requested this Court to issue necessary decision in the matter and to provide him natural justice.

16. The representative of the respondent No.2 vide its letter No. 6630/Maj-Brig/Qtrs dated

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13.04.2016 has informed the Station Headquarters Cell, Secunderabad that the proposal of mutual inter transfer was made by Hon'ble Court of Chief Commissioner for Persons with Disabilities, Ministry of Social Justice & Empowerment, Department of Empowerment of Persons with Disabilities, Government of India on 24.02.2016 during the last hearing of the case. Hon'ble Court has asked for the comments/views on their above proposal from Secretary, MoD and Secretary MoDP. However, you vide your above letter under reference, have directly forwarded the comments to the Hon'ble Court. As per requirement of the Court, the comments/views should have been routed through proper channels. The matter is sub-judice and no further action can be taken in this regard by this office.

17. No reply in response to this Court's Record of Proceedings dated 03.03.2016 forwarded vide letter dated 31.03.2016 has been received from the Secretary, Ministry of Defence. However, the representative of the respondent No.2 submitted a copy of the reply/comments of Department of Defence Production filed vide letter No. 43(14)/2016/D(QA) dated 18.04.2016, which was taken on record. Under Secretary, Department of Defence Production vide letter No.43(14)/2016/D(DA) dated 18.04.2016 had submitted as under:-

- (a) The case has been examined in the office of ADGQA, DQA(R&S), Secunderabad. Lt. Col. S.K. Uniyal is holding the accommodation based on the contention that as per SAO 10/S/86, DGQA quarters are part of Army Station Pool and, therefore, he need not shift out from DGQA Residential Quarters. The contention of the officer has been scrutinized in detail and it is intimated that DGQA has independent pool of quarters in all stations and SAO 10/S/86 does not apply to DGQA in toto. Therefore, the contention of the officer based on which he has requested retention of the DGQA quarter has been found to be invalid.
- (b) Officer has further argued that DOP&T O.M. No.42011/3/2014/Estt(Res) dated 06.06.2014 prohibits even local displacement within the same station. It emerges very clearly that the above referred DoP&T OM applies only for out of station transfers where the support system of the child has to undergo complete overhaul. In this case, officer is required to shift to any army pool quarter in the near vicinity which in any manner does not cause any change to the support structure of child to include Military Hospital, National Institute of Mentally Handicapped etc. In fact even his own organization i.e. Army Station HQ, Secunderabad has advised the officer to vacate DGQA quarter and apply for an Army Pool quarter. However, officer has ignored their

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advice also and has chosen to represent. Therefore, officer's contention that as per above referred DoP&T O.M. he need not to vacate DGQA quarter, is incorrect.

- (c) Officer's own organization i.e. Station HQ (Army), Secunderabad has also correctly interpreted the case and has advised the officer as discussed above in para 3. Clearly, officer has violated direction of his own organization also in this case. In fact the officer has applied to DGQA on individual basis and has chosen not to route his requests through proper channel. In case, the officer had routed his complaint through proper channel, his parent organization would have interpreted the rules correctly. Notwithstanding above, DGQA has been very sensitive to the case and despite an ongoing overstay only of 1-1/2 years approximately, till date, DGQAS has not taken any action against the officer.
- (d) Lastly the Hon'ble Court has suggested that possibility of mutual inter transfer of same category accommodation be explored by both departments i.e. DGQA and Indian Army. . Same has also been examined in accordance with DGQA Policy dated 28.09.2012. It is once again reiterated that DGQA has independent pool of accommodation to accommodate their own officers and mutual transfer of DGQA quarter with Army pool quarter, as desired by the Hon'ble Commission has wide ramifications. It is intimated that Lt. Col. S.K. Uniyal has already completed most part of his tenure and has already overstayed by almost 1-1/2 years. At this delayed stage, DGQA will get a quarter from Army only for a few months and DGQA will not be in a position to allot the same in any of their officer. Therefore, at this stage, implementation of the suggestion made by the Hon'ble Court is not feasible.

18. Therefore, it is submitted that all contentions of the officer to seek permanent retention of DGQA quarter have been found to be invalid. The officer has, therefore, no grounds to continue his stay in DGQA quarter, any further than 30.06.2015, upto which he was allowed retention. The complainant should honour the direction of his own organization i.e. Indian Army and vacate the quarter in accordance with rules. At this delayed stage, mutual inter-transfer of quarters is not found to be practical. Therefore, it is prayed to the Hon'ble Court that the grievance petition made by the complainant be disposed off accordingly.

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19. During the hearing on 18.04.2016, the complainant submitted that the issue is local Station matter and has to be resolved mutually by both Station HQ Cell, Secunderabad and DGQA / CQA (S), Secunderabad, who are the respective competent authorities for allocation of Government married accommodation to service officers in the station i.e. Secunderabad. Both the Secretaries of MoD & Dept of Defence Production will ultimately seek comments from the above respective establishment (through proper channel), which would take more time. Hence, he requested the Hon'ble Court, that the recommendation / proposals of Station HQ vide their letter dated 06 Apr 2016, may be considered as final from the Army authority. He also reiterated that the Hon'ble Court may take necessary decision on the subject matter based on above inputs of Dept of Def production & Station HQ Cell, Secunderabad as deemed appropriate and justifiable.

20. The representative of the respondent no. 2 has submitted that all the information as asked by the Court from time to time has been made available to the Court. In the last hearing, the Hon'ble Court had directed that Secretaries of both the Departments i.e. Ministry of Defence and Department of Defence Production may consider this case and submit their views to this Court. The Department of Defence Production have submitted their views/comments to this Court. Regarding the version of the complainant before the Court on today that Station Headquarters Cell, Secunderabad vide their letter dated 06.04.2016 have informed that they are ready for inter-transfer, this fact as per the directions of this Court, has been considered by the Department of Defence Production and did not find mutual inter-transfer as practical. Therefore, it is requested that based on the views expressed in the letter of Department of Defence Production, the case may be disposed off accordingly.

21. After hearing both the parties and perusal of the record available on file, this Court is of the view that the complainant has been allowed extension/relief as per the rules, there is no violation of any provision of Persons with Disabilities Act, 1995, DoP&T's O.Ms. or Government instructions in not permitting further retention of Govt. accommodation to a transferred Govt. servant. Therefore, no direction can be given in the matter to the respondent. The case is accordingly disposed off.

(Dr. Kamlesh Kumar Pandey)
Chief Commissioner
for Persons with Disabilities