

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/26/2016

Date of Reserve: 03.02.2020
Date of Order: 13.03.2020

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Sri Jadunath Mallik, aged about 54 years, S/o. Late Sambhunath Mallik – at present working as Sr.Sub Divisional Engineer in the office of the Telecom District Manager, Bharat Sanchar Nigam Ltd., Baripada – at present residing in Ward No.15, Janardhanpur, Baripada, District-Mayurbhanj-757 001.

...Applicant

By the Advocate(s)-M/s.A.K.Mohanty
P.K.Kar
D.K.Mohanty
R.C.Jena

-VERSUS-

1. Chairman-cum-Managing Director, Bharat Sanchar Nigam Ltd., Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi-110 001.
2. The Chief General Manager, Bharat Sanchar Nigam Ltd., Orissa Circle, BSNL Bhawan, Near Indira Park, Bhubaneswar-751 002.
3. The General Manager, Telecom District, Bharat Sanchar Nigam Ltd., Balasore-756 001.
4. The Telecom District Manager, Bharat Sanchar Nigam Ltd., Baripada, Mayurbhanj-757 001.

...Respondents

By the Advocate(s)-M/s.P.R.Barak
P.Choudury

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is presently working as Sr. Divisional Engineer in the Office of Telecom District Manager, BSNL, Baripada. In this Original Application under Section 19 of the A.T.Act, 1985, he has sought for the following reliefs:

- i) To quash the order of Respondent No.2 dated 24.11.2015 as per Annexure-A/9 being illegal, irregular and not sustainable in law and consequently quash the order of

Respondent No.3 dated 18.8.2015 as per Annexure-A/6 which is illegal, irregular, iniquitous and arbitrary.

- ii) Pass such other order(s)/direction(s) as may be deemed fit and proper in the bona fide interest of justice.
- iii) To order and direct that the cost of litigation be paid to the applicant by the respondents.

2. The short fact leading to filing of this O.A. is that while working as SDE in the office of GMTD, Balasore, the applicant had been allotted a departmental quarters bearing No.IV/2 at Coaxial Compound, Balasore with effect from 27.09.2008. While working as such, he was transferred to Baripada, as a result of which, he was relieved of his duties at Balasore with effect from 01.06.2012. Since her daughter is mentally retarded and getting treatment and education on daily living activities and social activities etc. at Balasore, applicant was permitted to retain quarters at Balasore for a period of two months from the date of relief, i.e., 01.06.2012 with payment of normal rate of Licence Fee and in respect of additional six months, on payment of double the rate of normal Licence Fee, vide letter dated 09.01.2012 (A/2). Before expiry of the period of eight months as indicated above, the applicant submitted an application on 26.6.2012 (A/4) to the Chief General Manager, BSNL, Odisha Circle, Bhubaneswar through GMTD, Balasore for retention of quarters for a further period of two years on the ground of his mentally retarded daughter's treatment as well as for her education in SADVABANA at Balasore, which is the only Institution in North Eastern Odisha. Subsequently, he also submitted reminder letters on 10.12.2012 and 5.1.2013, but the same were not considered and disposed of. On an assumption that the competent authority has accorded approval, the applicant continued to retain the said quarters. The authorities recovered license fee and water charges from

1.2.2013 from the salary of the applicant as per BSNL circular letter dated 31.10.2011. However, all on a sudden, the GMTD, Balasore issued instructions to the applicant on 18.10.2014 (A/5) for vacation of the said quarters stating that no intimation had been received from the Circle Office granting permission for retention of quarters beyond permissible period of eight months. On receipt of the above instructions, the applicant vacated the quarters on 31.01.2015. On 18.08.2015, the applicant received a letter from GMTD, Balasore imposing penal rent on license fee @ 40 times the normal license fee thereby treating the period of 01.02.2013 to 31.01.2015 as unauthorized occupation and an amount to the tune of Rs.4,79,400/- was sought to be recovered from him. Aggrieved with this, the applicant submitted an appeal dated 22.8.2015 to the Chief General Manager, BSNL, Odisha Circle, Bhubaneswar with a request to set aside the levy of penal rent/damage rent as imposed by the GMTD, Balasore and to issue permission for retention of the quarters from 1.2.2013 to 31.1.2015 on payment of rent and license fee as per BSNL circular letter dated 31.10.2011. Since he did not receive any response and on the other hand, an attempt was made to recover the penal rent from his salary, the applicant approached this Tribunal in O.A.No.636 of 2015. This Tribunal vide order dated 22.09.2015 disposed of the said O.A. with direction to Respondent No.2 to dispose of the representation dated 22.8.2015 through a reasoned order within a period of sixty days. Complying with the aforesaid direction, Respondent No.2 vide order dated 24.11.2015 (A/9) rejected his appeal petition. Hence, this Application with the aforesaid prayer.

3. The grounds urged by the applicant in support of his claim are that imposition of penal rent is arbitrary and contrary to the provisions of BSNL

Corporate Office Circular dated 31.10.2011, which clearly provides for grant of permission for retention of staff quarters on educational and medical grounds for a period of two years beyond the permissible period of eight months. Secondly, it has been submitted that for retention of quarters beyond the permissible period of eight months as requested by the applicant vide his application 26.6.2012 followed by reminder letters dated 10.12.2012 and dated 5.1.2013 were not rejected and in the absence of any such rejection order, his request is deemed to have been acceded to by the respondents. Besides, it has been contended that in the absence of any rejection of his request, there was no objection for retention of quarters beyond the permissible period by the GMTD, Balasore at any point of time and the licence fee and water charge were being recovered regularly from the salary of the applicant @ Rs.420/- per month for more than two years period without payment of any house rent allowance to him as prescribed in BSNL Circular. According to applicant, by not intimating him the retention of quarters or otherwise, the respondents created a reasonable expectation that his representation had been considered favourably. Applicant has pointed out that damage rent @ 40 times of normal license fee is applicable in Metro cities like, Calcutta, Hyderabad, Chennai etc. and is not applicable at place like Balasore.

4. Respondent-BSNL have filed a detailed counter opposing the prayer of the applicant. According to respondents, permission for retention of quarters beyond the permissible limit is to be considered by the High Power Committee of BSNL Corporate Office, New Delhi on proper recommendation of Circle Heads sent in the prescribed proforma. It has been submitted that the representation of the applicant vide A/4 deserves no consideration inasmuch

the rules on the subject prohibit retention of quarters beyond a period of eight months. The presumption of the applicant that the authorities allowed him to retain the quarters beyond the period of eight months is baseless and misconceived and the applicant having held the post in an executive cadre is supposed to know the rules and regulations of the Company in this regard. However, in compliance with the direction of this Tribunal in O.A.No.636/ of 2015, applicant's representation has been rejected by a speaking order dated 24.11.2015. As regards imposition of penal rent, it has been submitted that the Ministry of Urban Development, Government of India, CPWD, Bhubaneswar vide OM No.1(4)/BCD-III/2013/1244 dated 07.09.2013 (R/3) has fixed the rates for unauthorized occupation of Government residential accommodation at Bhubaneswar at 41 times the normal license fee with effect from 01.01.2013. The damage rents are uniform in all cities and towns including Metros. Respondents have stated that there was no vacant Type-IV staff quarters at Balasore and there was also a waiting list. Therefore, the applicant should have vacated the quarters at Balasore on completion of the permissible period.

5. Applicant has filed rejoinder to the counter in which it has been submitted that for the first time he was intimated on 18.10.2014 by the GMTD, Balasore to vacate the quarters as no information was received from the Circle Office regarding retention of his quarters, although, there was no order rejecting his request. However, on 31.01.2015, he vacated the quarters. In the rejoinder, the applicant has brought to the notice of this Tribunal a communication dated 16.12.2015 (A/10) addressed to the Deputy General Manager (SR), Corporate Office, New Delhi by the General Manager (CFA), Odisha Telecom Circle, Bhubaneswar regarding issuance of

guidelines/clarification on revision of penal rent of damages/unauthroized occupation of BSNL staff quarters and according to him, the penal rent @ 40 times the normal license fee as has been imposed, is not applicable to his case.

6. It is to be noted that vide order dated 01.03.2016, as an interim measure, this Tribunal had directed the Respondents not to take any action in pursuance of the order dated 18.08.2015 passed by Respondent No.3 under Annexure-A/6 without the leave of the Tribunal and this interim order is in force as on date.

7. We have heard the learned counsels for the parties and perused the records. We have also gone through the written notes of submission filed by the parties. In support of his case, the applicant has relied on the orders of this Tribunal dated 23.03.2018 in O.A.No.260/286 of 2016. From the pleadings of the parties, the short point to be decided herein is whether the applicant was on unauthorized occupation of quarters beyond the permissible period of eight months and if so, whether the imposition of penal rent @ 40 times the normal license fee has been correctly assessed by the Respondents.

8. Admittedly, the applicant had been allowed to retain quarters at Balasore for a period of two months from the date of his relief, i.e., 01.06.2012 on payment of normal rate of license fee and for additional period of six months on payment of double the rate of normal license fee. According to applicant, he had submitted a representation dated 26.6.2012 followed by reminder letters dated 10.12.2012 and dated 05.01.2013 to the CGM, BSNL, Odisha Circle, Bhubaneswar, with a request for retention of quarters for a period of two years, over and above the permissible period, i.e., from 1st of February, 2013 onwards, inter alia citing therein his family problems. There is no doubt that there was no response to those representations. While the

matter stood thus, vide A/5 dated 18.10.2014, the applicant was communicated by the office of GMTD, BSNL, Balasore regarding vacation of quarters, which reads as follows:

"Sub: Vacation of Dept. Quarter No.2/Type-IV, Block-3 at Co-axial compound, Station Square, Balasore.
 Ref: This Office letter no. (i) H-30(4)/Part-V/12-13/299 dtd. 09.01.13.
 (ii) E-13(1)/Part-IV/12-13/335 dtd. 01.06.12.

With reference to the above cited letter no.(ii) above, you have relieved and struck off from this SSA from 01.06.2012 A/N & posted as SDE under TDM, Baripada. With reference to letter (1) above you have been allowed normal rate of license fee and additional 6 months with payment of double the rate of normal license fee on ground of your education of children. Your representation regarding retention of quarter was forwarded vide H-30(4)/Part-V/12-73/296 dtd. 07.01.13 to circle office, but no information received till date by this office. The letter no.H-42(Part-V)/2012-13/66 dtd. 06.07.12 of TDM Baripada regarding your retention application forwarded to CGMT, Odisha Circle, Bhubaneswar, but till date no information received in this regard from circle office. As you have not yet vacated the said Qtr. Till date, you are instructed to vacate the Qtr. Immediately otherwise necessary action will be taken as per Dept. Rules".

9. On receipt of the above, the applicant vacated the quarters at Balasore on 31.01.2015. While the matter stood thus, the applicant received a communication dated 18.08.2015 (A/6) from the Office of GMTD, BSNL, Balasore under intimation to the Accounts Officer (Cash), Office of TDM, Baripada to take necessary action for deducting the quarter rent of Rs.479400.00 from the salary of the applicant, as per the detailed mentioned therein. Against this, the applicant submitted an appeal petition to the CGMT, BSNL, Odisha Circle, Bhubaneswar, who, in complying with the direction of this Tribunal in O.A.No.636 of 2015 passed a speaking order dated 24.11.2015 (A/9), the relevant part of which reads as follows:

"With reference to the above cited letter on captioned subject, it is to intimate that this office received your application for retention of quarter on 16.07.2012 from TDM, Baripada and a query had already been issued to TDM, Baripada on 02.08.2012 if sufficient quarters were vacant and waiting list is available. GMTD, Balasore reported that there was a waiting list for allotment of quarter.

SINCE there was waiting list for quarters and SINCE you were already given opportunity to enjoy the facility of the quarter as per rule it was not proper to order extension of your enjoyment at normal rent at the COST OF RIGHT OF OTHER EMPLOYEES TO ENJOY THE SAME FACILITY. Now a days every employee is having some kind of problem and it is not possible for BSNL to take care of every problem of every employee. 8 months time is sufficient for a person to arrange for an alternative accommodation at Balasore and any further extension is non-reasonable. If at all you continued your stay, you are liable to pay to BSNL as per the rules.

Considering your problem we have taken a soft view towards your overstayed in BSNL quarters and have not initiated any disciplinary proceedings against you. However, you are liable to pay the penal rent as per rules as proposed as you have taken facility of the company.

You have written in your representation that you presumed the permission of the department since you did not receive any response which is not correct because an employee is expected to know the rules and regulations and the law is well settled that the silence of the employer cannot be taken as approval.

Even though a provision exists for granting permission to an employee to continue in the quarters on medical/educational ground by paying normal license fee the same cannot be claimed as a matter of right when there is waiting list.

In view of above reasons you are liable to pay the damage rent as communicated to you as per rules and you are also liable to pay penal interest in case of late payment".

10. We have considered the rival submissions. It is to be noted that BSNL Corporate Office, New Delhi has issued guidelines dated 31.10.2011 (A/3) on the subject of cases/requests for retention of staff quarters beyond

permissible period at stations where sufficient quarters are vacant –

Delegation of Powers to Circle Heads. Guideline (vi) states as follows:

"In cases where permission for retention of staff quarter is not granted and the occupant of the quarter continues beyond permissible period, the entire period after permissible period shall be treated as unauthorized and penal rent charged for the period of over-stay, i.e., till quarter is physically vacated by the allottee and possession of vacant quarter handed over to the administration.

.....

11. Paragraph-3 thereof reads as follows:

"3. The above guidelines are to be followed where vacant quarters are available and waiting list is not there. However, in cases of waitlist, if the Circle head is personally convinced with the grounds for retention of quarter beyond permissible period, he may forward the request with his recommendations/comments to the BSNL Corporate Office in prescribed pro-forma observing/complying the guidelines circulated vide this office letters No.(i)BSNL/6-1/SR/2006 dated 22ND July, 2008 & (ii) BSNL/6-1/SR/2011 dated 24th March, 2011".

12. In the speaking order dated 24.11.2015 (A/9) it has been indicated that on a query being made, the GMTD, Balasore reported that there was a waiting list for allotment of quarters. If that be so, there was no embargo on the part of the Respondent-BSNL to decline the request of the applicant for retention of quarters beyond the permissible period of eight months. However, CGMT being the Circle Head may have forward the request with his recommendations/comments to the BSNL Corporate Office for consideration had he been personally convinced with the grounds for retention of quarters by the applicant. While there were two options available to the respondent-BSNL, they did not take recourse to either of the said provisions. There no doubt that the Respondent-BSNL were not under an obligation to allow extension of retention of quarters over and above the permissible period of

eight months nor the applicant has a right to retain quarters beyond the permissible period. But the fact remains, as already mentioned above, the CGMT, BSNL, Odisha Circle was not divested with the authority to reject the representation of the applicant dated 10.12.2012, which had admittedly been received on 16.07.2012 and thereafter, on a query being made regarding the vacancy position of quarters, it was intimated by the GMTD, Balasore that there was a waiting list for allotment of quarters. Applicant may not have a right to retain the quarters beyond the permissible period, but under the facts and circumstances, he had a right to receive a suitable reply in response to his representation. This apart, at it reveals from the record, the applicant vide communication dated 18.10.2014 (A/5) was intimated to vacate the quarters in question since no information had been received from the circle office for retention of quarters, failing which necessary action will be taken as per the departmental rules and on receipt of the same, the applicant vacated the quarters on 31.01.2015. Viewed from this angle, we are of the opinion that the question of unauthorized occupation of quarters will come into being when an employee despite direction to vacate the quarters on or before a particular date, continues to remain in occupation of the same. As mentioned above, the applicant has never been issued with any notice to vacate the quarters on or before a particular date and on the contrary, under the relevant guidelines issued by the BSNL Corporate Office, New Delhi vide A/3 dated 31.10.2011, he had a right to make an application for retention of quarters beyond the permissible period. Therefore, a reasonable expectation had cropped up in the mind of the applicant that his application should favourably be considered and under the circumstances, a duty was cast on the Respondent – BSNL to take a decision, on the request of the applicant for retention of quarters

beyond the permissible period. Having regard to this, we are of the considered view and find that the applicant cannot be said to have occupied the quarters unauthorizedly till 18.10.2014, i.e., the date when letter vide A/5 was issued.

13. Coming to the question of imposition of penal rent, we have perused the Office Memorandum dated 07.09.2013 (R/3) issued by the CPWD, Bhubaneswar. The rates of damages for unauthorized occupation as quoted therein are in respect of Government residential accommodation at Bhubaneswar covered under Bhubaneswar Municipal Corporation and not in respect of any other cities/towns in Odisha. Probably this is the reason why the General Manager (CFA), Odisha Telecom Circle, Bhubaneswar has addressed a letter dated 16.12.2016 (R/10 to the rejoinder) with a request to issue guidelines/clarification regarding revision of penal rent of damages/unauthorized occupation of BSNL staff quarters, the relevant portion of which reads as follows:

"Hence, you are requested to kindly issue the guideline/clarification regarding applicability of penal rent of unauthorized occupation of BSNL staff quarter for Bhubaneswar and other cities of Odisha (other than metropolitan states) so that action will be taken to recover the penal rent from unauthorized occupants.

This may be treated as 'MOST URGENT'.

14. From the above, this Tribunal finds that the basis on which penal rent and/or damage rent have been levied on the applicant, is not proper, as it shows lack of due application of mind by the Respondents.

15. Having regard to what has been discussed above, we quash the impugned order dated 18.08.2015 (A/6) and the speaking order dated 24.11.2015 (A/9) and remand the matter to the Respondents for reconsideration of the matter afresh within a period of three months hence

and shall communicate their detailed decision to the applicant by passing a reasoned and speaking order within that period. The respondents are at liberty to assess and recover such rent as is applicable, from the applicant in accordance with the relevant rules and circulars and the findings and observation as made above by this Tribunal. The shall be provided with the details of amounts due and payable by him on various counts.

16. In the result, the O.A. is allowed to the extent indicated above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

BKS

