



CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

O.A.No.060/00909/2020

Order pronounced on: April 20, 2021
(Order reserved on: 19.04.2021)

CORAM: **HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)**

S.K. Bhasin (Retd. STM), aged about 74 years, son of Sh. S.D. Bhasin, resident of House No. 116/5, BNC, Pipli, District Kurukshetra (Haryana)-136131 (Group-C post).

Applicant

(BY ADVOCATE: MR. K.S. BANYANA)

Versus

1. Bharat Sanchar Nigam Ltd., Telegraph Office Building
Kashmere Gate, Delhi-110006 through its PGM (BW)
2. Bharat Sanchar Nigam Limited (A Govt. of India Enterprise),
office of General Manager Telecom, District Ambala, Ambala
Cantt, through its A.G.M.(Legal), District Ambala-133001.
3. Estate Officer (D.G.M. Planning B.S.N.L) Ambala Cantt.
District Ambala-133001.
4. The Controller of Communication Accounts, Haryana Telecom
Circle, Lawrence Road, Door Sanchar Bhawan, Ambala Cantt.
(Haryana)-133001.
5. The Manager, CPPC, Punjab National Bank, Sector 17-B,
Chandigarh-160017.

(BY ADVOCATE: MR. K.K.THAKUR FOR RESPONDENTS NO.1TO3
MR. SANJAY GOYAL FOR RESPONDENT NO.4
NONE FOR RESPONDENT NO.5)

.. Respondents



ORDER
HON'BLE MRS.AJANTA DAYALAN, MEMBER(A)

1. The present OA has been filed by the applicant S.K. Bhasin seeking setting aside of order dated 23.9.2020 (Annexure A-9) ordering recovery of an amount of Rs.29,50,340/- from his pension. He has also sought setting aside of notice dated 26.8.2019 (Annexure A-6) and 19.9.2019 (Annexure A-8). He has also sought direction to the respondents to refund the amount already recovered from him alongwith interest @ 18% per annum.
2. The facts of the case are not undisputed. The applicant retired from service of the respondent department on 28.2.2006. He was allotted a type IV quarter in Ambala Cantt on 20.5.1998.
3. The respondents framed a policy dated 31.10.2011 (Annexure A-1) delegating the powers to Circle Heads regarding request for retention of staff quarters beyond permissible period at stations where sufficient quarters are vacant. As per this policy, the applicant was granted retention of quarter till 30.9.2016. While conveying this extension, vide their letter dated 3.3.2016 it was also conveyed that this extension was final and the last one.
4. Thereafter the respondents had to file a petition under Public Premises (Eviction of Unauthorized Occupants) Act, 1971 for ejectment of the applicant from the premises in question and also for recovery of amount of Rs.13,00,130/- as arrears of damages for the period from 1.10.2016 to 31.10.2017 @ Rs.1,00,000/- per month. This petition was allowed vide order dated 27.9.2018



(Annexure A-3) ordering vacation of applicant from quarter in question with direction to vacate the premises and to pay the amount. The order was upheld by the District Judge, Ambala vide order dated 16.7.2019 (Annexure A-4) and respondents were directed to recalculate the damages only. The applicant thereafter approached Hon'ble High Court with CWP No.20517 of 2019 in which he gave an undertaking and vacated the quarter within 15 days. There was no observation qua other parts of the order challenged by the applicant.

5. Pursuant to the aforesaid, the applicant was issued show cause notice by the respondents on 26.8.2019 (Annexure A-6) directing him to deposit Rs.8,50,130/- as damage rent for the period from 1.10.2016 to 31.10.2017. The applicant submitted a representation dated 2.9.2019 (Annexure A-7). The applicant was again issued another notice on 19.9.2019 (Annexure A-8) that he has vacated the quarter only on 31.7.2019 and as such the damage charges worked out to Rs.29,50,340/- w.e.f. 1.10.2016 to 31.7.2019. He was asked to deposit the amount within 15 days of issue of notice failing which he was to face contempt of court. Now the applicant has approached this Tribunal seeking quashing of the decisions at Annexure A-6, A-8 and A-9, all relating to recovery of damage rent from him for the period 1.10.2016 onwards.
6. These are the facts of the case and are not disputed.
7. The case of the applicant is that he has already vacated the quarter. The penal rent being calculated against him is



Rs.1,00,000/- per month w.e.f. 1.5.2017 which is prohibitively high and is against the order of the District Judge in this very case. The applicant has pleaded that in its order the District Judge has held as follows :-

"17. The argument that damages could not have been imposed by the respondent is also devoid of merit in view of the circulars Ex. P6 and Ex.P12. Vide office memorandum Ex. P6, the Ministry of Urban Development Directorate of Estates revised the rates for damages for unauthorized occupation and subletting of general pool residential accommodation. This memorandum was issued on 07.09.2016. Vide communication Ex. P12, this office memorandum was made applicable to the unauthorized officials of BSNL pool quarters. It cannot, therefore, be said that these circulars are not applicable to the BSNL. One thing, in which the respondent erred in, was the rate of damages to be imposed. As per circular Ex. P6, the damages would have to be imposed in a telescopic method. The chart annexed with Ex. P6 also shows that for a type IV quarter, the licence fee was Rs.500/- and rate of damages was 40 times. It was laid down that for the first month, the damages would be Rs.20,000/-, for the second month, it would be Rs.22,000/- (damages + 10%) and so on. The damages, therefore, would have to be assessed in terms of this circular and not at a flat rate of Rs.01 lakh per month from the very beginning, as has been done by the respondent. Apart from this error in imposing the damages, there is no other illegality in the impugned order."

8. The applicant has, therefore, pleaded that the damages cannot be worked out at the flat rate of Rs.1,00,000/- per month. He has also stated that this order of the District Judge has already been upheld by the Hon'ble High Court and it clearly directs the respondents not to charge damage at the flat rate of Rs.1,00,000/- per month.
9. On the other hand, the respondents have contested the claim of the applicant. They have stated that the damage rent charged by them is strictly as per the above order of the District Judge, as upheld by the Hon'ble High Court. Further, they have stated that the impugned orders are as per the circular issued by them on the matter. As such,



they have concluded that the applicant does not deserve any relief being sought by him in this O.A.

10. Initially damage rent to be charged from the applicant was worked out at Rs.8,50,130/- issued vide order dated 26.8.2019 (Annexure A-6). However, this order stands merged with order dated 19.9.2019 (Annexure A-8) in which the damage rent stands enhanced to Rs.29,50,340/-
11. I have heard the counsel of opposing sides and have also gone through the pleadings. I have also given my thoughtful consideration to the entire matter.
12. First of all, I note that the facts of the case are not disputed. The fact that the applicant was allotted the government quarter right in 1998; that he retired in February 2006 and that he was granted permission to retain the quarter till 30.9.2016 are not disputed by either parties. It is also a fact that the matter has already been adjudicated by the District Judge, Ambala and the judgement which is relevant for adjudication of this Tribunal has already attained finality as the same stands upheld by the High Court.
13. In view of the above, I think the role of this Tribunal is rather limited and is to see only whether the penal rent has been calculated as per this order or not.
14. I find that this order is quite clear and it states that the damages have to be assessed in terms of the circular. The order of the District Judge nowhere desires or directs the respondents to go beyond the provisions of the Circular. It only directs them to assess damage in terms of the



circular. Further, the order goes on to say that the damages are not to be charged "at a flat rate of Rs.01 lakh per month from the very beginning". This basically means that the damages are to be calculated as given in the circular and not directly at the rate of Rs. 1.0 lac per month from the first month itself. Further, I find that the calculation sheet for the damages worked out is given in Annexure A-8. This clearly shows that the damages have been worked out for the period from 1.10.2016 onwards. For the first month of overstay, the damages are calculated at 40 times of the normal rent i.e. $\text{Rs.}500 \times 40 = \text{Rs.}20,000/-$. For the next month, the damages are enhanced by 10% bringing it to $\text{Rs.}22,000/-$. for that month. For 3rd month damages are again enhanced by another 20% to $\text{Rs.}24,000/-$. This continues for next 2 months. Thereafter, for March 2017, the damages are worked out at $\text{Rs.}52,000/-$. Then for April 2017, the damages are $\text{Rs.}84,000/-$. It is only from May 2017 onwards that the damages have been restricted to 5 times the initial damages that is $\text{Rs.}20,000 \times 5 = \text{Rs.}1,00,000/-$ per month and this rate continues till the actual vacation of the quarter.

15. It is, thus clear from the calculation sheet, Annexure A-8, that the damages have not been worked out at $\text{Rs.}1,00,000/-$ per month from the very beginning. It is only that they have raised it to that level over a period time when the applicant failed to vacate the quarter earlier. To this extent, the order of the District Judge has



been complied with by the respondents and they are not deviating therefrom.

16. During the arguments, the respondents strongly pleaded that they are acting strictly as per the general circular issued by the Ministry of Urban Development, Directorate of Estates, and they are applying the same in the instant case.
17. I also find that the circular dated 7.9.2016 of the Ministry of Urban Development, Directorate of Estates gives the rates of damages for unauthorised occupation of general pool residential accommodation. It is not the case of the applicant that he is not governed by these instructions. Further, this circular is not under challenge. As the accommodation given to the applicant was governed by these instructions, the same will be applicable in his case as well. This O.M. dated 7.9.2016 has also been adopted by BSNL and stands circulated to all CGMTs of BSNL, vide letter dated 23.9.2016 (Annexure A-12). Hence, the sole question that remains is whether the damages levied by the respondents in case of the applicant is as per this Office Memorandum or not.
18. The circular gives the rates of damages for stations at Delhi, Mumbai and stations other than Delhi and Mumbai. For Type I to IV accommodation (the applicant had type IV accommodation), the rates of damages to be charged for the first month are 40 times of normal licence fee. The Office Memorandum further states that the damages will increase in telescopic method from second month onwards



i.e. for second month – damages + 10% of rate of damages; for third month – damages + 20% of rate of damages; for fourth month – damages + 40% of rate of damages; and so on, limiting to the maximum 5 times of rates of damages charged during the first month of unauthorised occupation’. A chart is also given along with this O.M. in the Annexure showing damages for unauthorised occupation to be levied. Here also, rates for 6th month are damages + 160% and for 7th month damages+320%. Thereafter these are at five times of the damages. It is, thus, clear from a careful reading of this O.M. that the damages are to be levied starting from 40 times right from 1st month of unauthorised occupation. Thereafter these are being escalated. In the 2nd month the rate is damages+10%, in the 3rd month it is damages + 20%. In the 6th month, it is damages + 160%. In the 7th month it is damages + 320%. Hence, the escalation is not linear. Rather it is geometric progression with the increase doubling every next month. This is very clear from the O.M. as well as from the chart given along with the O.M.

19. Once this position is clear and appreciated, I find that the calculation of damage rent done by the respondent department at Annexure A-8 is not over and above the damages as given in the O.M. governing the field. If at all, the respondents have rather given some relief to the applicant by not escalating the damages for the 4th and 5th months of January and February 2017 which they were required to do as per O.M. dated 7.9.2016. But this could be because these damages are not specifically indicated in



the chart given with the O.M. But the sense of the O.M. is clear. Otherwise, there is no logic in enhancing the damages from 20% in 3rd month to 160% for 6th month and then to 320% for 7th month of unauthorised occupation. Obviously, the escalation is doubling every month. Be that as it may, I would not like to order further recovery from the applicant due to this error at this stage. The question before me is whether any relief was due to the applicant in term of the order of the District Judge on the matter. I find that this is not so. Clearly the damages are worked out as per O.M.(except for this minor variation which is to the advantage of the applicant only) and the maximum rent of Rs.1,00,000/- per month has been levied only from the 8th month onwards. This is clearly as per O.M. and as per the order of the District Judge, as discussed in detail above.

20. One point that was stressed upon by the learned counsel for the applicant was that in the information received by him in response to an RTI query raised by the applicant, it has been intimated that damages for one year are Rs.1 lac. This is based on letter dated 15.1.2018 (Annexure A-10) of the respondents. But I find that this is clearly a mistake as the earlier part of the same very letter refers to the Ready Reckoner for Type IV quarters as per which licence fee for Type IV quarters is Rs.500/- and damage charges for month are Rs.20,000/-. It also goes on to state that 'damages for one year are Rs.1,00,000/- (one lac) because damage rate is limited to maximum for 5 times of rates of damage charged during the first month



of unauthorised occupation.’ Thus the words Rs.100000/- for one year is obviously a mistake. In case the interpretation given by the applicant is accepted, then the limit being conveyed in response to the RTI query would be even less than Rs.20,000/- which are the damages for the first month itself quoted in the same response to the RTI. A mistake does not vest any right in the applicant. In any case, it is clear and obviously a mistake in the sense that instead of one month, the respondents have incorrectly written one year. This is a clerical mistake. As such, no decision can be based on this clerical mistake made by the respondents in response to a RTI query raised by the applicant.

21. Thus, I find that the impugned orders of the respondents are in line with O.M dated 7.9.2016 (Annexure A-12) and are also in line with the judgement of the District Judge dated 16.7.2019 (Annexure A-4) which has attained finality as the Writ Petition thereagainst moved by the applicant has been dismissed.
22. In addition to above, the charging of penal rent from unauthorised occupants has been upheld by the Hon’ble Apex Court also in the case of **WAZIR CHAND VS. UNION OF INDIA**, (2001) 6 SCC 596 and **SECRETARY, ONGC LTD. & ANOTHER VS. V. U. WARRIER** (2005) 5 SCC 245. It was held that when an employee continues to occupy quarter ignoring the warning given by the department, in the light of default committed by employee, the Court was unjustified in exercising extra ordinary and equitable jurisdiction.



23. In view of all above, the applicant does not deserve any relief claimed by him in the O.A. The O.A. is, therefore, dismissed.

24. There shall be no order as to costs.

(AJANTA DAYALAN)
MEMBER (A)

Place: Chandigarh

Dated: April 20, 2021.

HC*