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ORIGINAL APPLICATION NO.319 OF 2000

Cuttack this the 25th day of May, 2001

...

-VERSUS-

...

Respondent (s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *Yes.*

(SOMNATH SOM)
VICE-CHAIRMAN

(G. NARASIMHAM)

MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.319 OF 2000
Cuttack this the 25th day of May, 2001

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)
...

Tapan Kumar Biswas, aged about 54 yrs.
Son of Late Dr.M.M.Biswas of Gait Road
PO - Krishnanagar, Dist-Nadia, West Bengal
at present Surveyor of Works (Elect),
Office of the Superintending Engineer (Elect)
Telecom Electrical Circle, 92, Saheednagar,
Bhubaneswar-751 007, residing at Qr.No. 5,
Type IV, Unit-4, P & T Colony, Bhubaneswar-751001
Dist - Khurda

...

Applicant

By the Advocates

M/s.P.K.Padhi
P.K.Panda

-Vrs.-

1. Union of India represented through the
Director General, Department of Posts,
Min. of Communication, Dak Bhavan,
Sansad Marg, New Delhi-110001
2. Director General, Telecommunication,
Ministry of Communication, Dak Bhawan,
Sansad Marg, New Delhi-110001
3. Chief General Manager, Telecommunication,
Orissa, Bhubaneswar-751001, Dist-Khurda
4. Chief Post Master General, Orissa,
Bhubaneswar-751001, Dist-Khurda

...

Respondents

By the Advocates

Mr.A.K.Bose,
Sr.Standing Counsel
(Central)

O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL): After the bifurcation of
Department of Posts and Department of Telecommunications in
the year 1985, and while the applicant was serving as Asst.
Engineer (Elect) under the Telecommunications Department at
Berhampur, he was transferred and joined at Bhubaneswar on
1.3.1996 as Asst.Engineer in the Postal Electrical Sub-division,

i.e., under the Department of Posts. In Memo dated 4.7.1996 (Annexure-A/1), Chief Post Master General, Orissa Circle, Bhubaneswar (Respondent No.4) allotted the Postal Department's quarters bearing No.5 (Type-IV R), located in Bhubaneswar, in favour of the applicant. His services were utilised by the Postal Department till 28.1.1999, on which date he was relieved because of his promotion to the grade of Executive Engineer (Elect.), i.e., Surveyor of Works (Elect) under the Superintending Engineer (Elect.), Telecom Electrical Circle, Bhubaneswar, by order dated 27.1.1999 (Annexure-A/2). On 25.2.1999, he represented to Respondent No.4 to accord necessary permission to occupy the aforesaid postal quarters allotted to him, till a quarter is allotted to him by the Telecom Department, basing his claim on the guidelines issued in letter dated 5.6.1985 (Annexure-A/3), at the time of bifurcation. However, under Annexure-A/4 dated 11.3.1999 he was directed to pay the normal licence fee from 28.1.1999 to 28.3.1999 and double the licence fee from 29.3.1999 onwards. By Annexure A/8 dated 20.8.1999, he was permitted to retain the quarters till 20.8.1999 on payment of double the licence fee, besides water charges, with further intimation that no further retention after 28.9.1999 would be allowed and that in case he did not vacate the quarters on or before 28.9.1999, damage rent would be charged. By letter dated 1.12.1999 (Annexure-A/9) he was intimated that the allotment of the quarters in his favour stood cancelled with effect from 29.9.1999 and he was directed to pay damage rent from 29.9.1999 till 30.11.1999, i.e. an amount of Rs.8777/-, besides water charges of Rs.24/-, by assessing damage rent at Rs.65/- per sq.mt. Vide letter dated

10.12.1999 (Annexure-A/10), the request of the applicant for further retention of quarters was turned down. Even then, the matter was referred to the D.G.(Posts) and in letter dated 13.4.2000, the D.G.(Posts) instructed the Chief Post Master General, Orissa Circle, to recover the damage rent for unauthorised retention beyond the permissible period of eight months and for initiation of eviction proceedings. This was duly intimated to the applicant in letter dated 25.5.2000 vide Annexure-A/12, with a direction to vacate the quarters immediately and to pay damage rent of Rs.31,264/-, besides water charges Rs.96/-.

2. The case of the applicant is that by virtue of the guidelines issued on 5.8.1985 (Annexure-A/3) at the time of bifurcation, he being an officer of the Civil Wing he is entitled to retain the allotted quarters under his occupation till the Telecom Department provides him a suitable accommodation and the Telecom Department, having not provided any quarters/accommodation to him, cancellation of allotment of the quarters, direction for vacation, recovery of double the licence fee for six months and thereafter demand for payment of damage rent are contrary to law. Hence this application for quashing of the aforesaid letters/orders, issued by the Postal Department and for direction to the Postal Department to allow the applicant to retain the quarters till an alternative accommodation is provided to the applicant by the Telecom Department on payment of usual licence fees. There is also further prayer for issue of direction to Respondent No.4 to refund the excess amounts deposited by the applicant towards double the licence fees

under Annexure-6 series or in alternative to adjust that excess amounts towards future licence fees to be recovered.

3. By order dated 17.7.2000 of this Tribunal, Annexure-A/12 dated 25.5.2000, in so far as recovery of the amount of Rs.31, 621/- is concerned, was stayed as an ad interim measure. Again by order dated 18.8.2000, when show cause was not filed by the Respondents in the matter of interim relief, we directed Respondent No.4 not to initiate any action for eviction of the applicant from the quarters till 8.9.2000. These interim orders are still continuing.

4. Respondent No.1 and 4, representing the Postal Department filed their counter. Though counter was not filed by the Telecom Department (Respondent No.3), show cause filed by this respondent opposing the interim prayer can serve the purpose of counter.

5. Both the Departments take the stand that guidelines issued under Annexure-A/3 dated 5.6.1985 was applicable as one time measure for those officials, who occupied the quarters at the time of bifurcation. This bifurcation being complete in 1986, the aforesaid concession is no more available.

6. The Department of Posts take the stand that as per D.G.(Posts) circulars dated 21.5.2991 and 17.2.1996, staff quarters can be retained for a period of two months on transfer on payment of normal licence fee, to be deposited in advance (Annexures-R/1 and R/2). At any rate, retention of quarters beyond a period of eight months from the date of transfer cannot be allowed. From the completion of the 2nd month till the expiry of eight months, as per rules,

the occupant has to pay double the licence fee and after the expiry of eight months, damage rent would be assessed till the occupant vacates and/or is evicted. Since the applicant did not vacate the quarters, the Estate Officer had issued the eviction notice in letter dated 26.7.2000 to the applicant. Since the quarter belongs to the Postal Department and since the applicant was transferred to a different Department, though at the same station, he could have no more claim for occupation of that quarters. As the applicant occupied the quarters even after the expiry of the period of eight months, the allotment in his favour was cancelled with effect from 29.9.1999. The order of cancellation under Annexure-A/9 is in conformity with the judgment of the Apex Court dated 23.12.1996 in C.W.P. No.585/94, filed by S.S.Tiwary, which was circulated by the Department to all concerned under Annexure-R/3.

7. So far as Telecommunication Department is concerned, the stand of Respondent No.3 is that on 24.11.1999, i.e., about 10 months after the applicant's joining in the Department, he had applied for allotment of quarters for the years 1999-2000, which was ^{even} not complete in all respects (Annexure-A) and as such his application could not be taken into consideration. He had not applied for allotment of quarters for the years 2000-2001 (during March, 2000) in the prescribed form. Hence, he would not be eligible for allotment of any quarters in the Telecom Wing and no further application would be entertained for allotment of quarters during the years 2000-2001, unless in case of transfer, the transferee applies within 15 days of joining.

4. The applicant filed rejoinder to show cause of Telecom Department (Respondent No.3) and a separate rejoinder to the counter filed by the Postal Department.

9. The applicant vehemently disputed the averment made by the Telecommunications Department in their show cause that he had applied for allotment of quarters only on 24.11.1999 and that his application was not complete in all respects. According to him, he had applied for the allotment immediately on his joining in that Department on transfer and the application was complete in all respects. The application was also forwarded to the higher authority, i.e. Chief General Manager, Telecommunications in Memo dated 1.2.1999 of the Superintending Engineer.

In his rejoinder to the counter of the Postal Department he specifically pleaded that he was borne in the Civil Wing of the Telecommunications Department as Assistant Engineer (Electrical). The Department of Posts and the Telecom Deptt., according to applicant, have been adopting the rules for Allocation/Allotment of quarters framed by the Erstwhile P & T Department and these rules have neither been repealed nor withdrawn. Rule 12 of those Rules provides retention of quarters when transferred from one Wing/Arm/Pool to another at the same station, is permissible. In view of that Rule he is entitled to retain the quarters in question allotted to him even on his transfer to the Telecommunications Department, and the Postal Department ought to have requested the Telecom Department to compensate the Department with another quarters of same type as and when falls vacant. He further reiterates that circular/letter dated 5.6.1985 under Annexure-A/3

protects his interest.

15. We have heard Shri P.K.Padhi, the learned counsel for the applicant and Shri A.K.Bose, learned Senior Standing Counsel appearing for the Respondents. Also perused the records.

After the closure of hearing Shri Bose filed Postal Department Rules for Allocation/Allotment of Quarters, for our reference.

16. Barring the date on which the applicant applied to the Telecom Department for allotment of quarters and whether such application was complete in all respects, the other facts relevant for the purpose of disposal of this Original Application are not in dispute. As earlier stated, in their show cause the Telecom Department (Res.3) have taken a specific stand that the applicant had applied for allotment of quarters for the first time on 24.11.1999, for the year 1999-2000, and even that application, which they have annexed as Annexure-A, was incomplete and as such the same was not taken into consideration. This show cause was verified by one Shri Nityananda Patnaik, serving as A.G.M. (Legal) in the Office of the Chief General Manager, (Telecommunications), Orissa Telecom Circle, Bhubaneswar in September, 2000. We have no hesitation to observe that this verificant signed the verification statement in a most irresponsible ^{and mechanical} manner, without going through the contents of the application for allotment of quarters under Annexure-A. This Annexure-A, xerox copy of the original had been filed by the Department. It contains several columns. The columns which are meant to be filled in by the person seeking

allotment of quarters have duly been filled in by the applicant with the signatures wherever necessary. There are certain blank spaces left corresponding to as against Column 19, which is to be filled in by the office and not by the applicant. The application contains signature of the applicant with dated 29.1.1999. The Superintending Engineer (Elect), forwarded this application to the C.G.M.T., Orissa Circle, Bhubaneswar on 1.2.1999. It is not understood from the Belthat as it may, the fact remains, Telecom Deptt. had not allotted any quarters in favour of the applicant. The applicant places reliance under Rule-12 of the Rules for Allocation/Allotment of Quarters by the Erstwhile P&T Department, which rules, according to him, having neither been repealed nor superseded is applicable to his case. Even assuming these rules have not been repealed nor superseded, we are not inclined to agree that under Rule-12 the applicant has a right to retain the Postal Department quarters, allotted to him after his transfer. We may as well quote Rule-12 as under:

"12. Retention of quarters when transferred from one Unit/Arm/Pool to another:

When an official is transferred from one unit/arm/pool to another unit/arm/pool at the same station, his allotment will not be disturbed. The unit/arm/pool to which the official is transferred will compensate the unit/arm/pool from which the official has been transferred with the same type of quarter as and when one falls vacant".

As the averments in the Original Application and rejoinder reveal, at the time of bifurcation of the two Departments in the year 1985, the applicant, who was borne in the Telecom Department as Asst. Engineer (Elect), continued

as such in that Department at Berhampur. While continuing as such at Berhampur he was transferred and joined on 1.3.1996 in the sole Postal Electrical Sub-division in Orissa at Bhubaneswar, under the Postal Electrical Division, Calcutta, forming part of the Postal Electrical Circle, Bangalore (Vide Para-4.3 of the O.A.) At Para-4.5 of the Original Application, his averment is that by order dated 27.1.1999 he was transferred on promotion as Surveyor of Works(Elect) and posted under the Telecom Electrical Circle, Bhubaneswar. This means, while he was serving in the Electrical Sub-divisional office of the Postal Department, coming under the purview of Postal Electrical Division, Calcutta and Postal Electrical Circle, Bangalore, he was transferred not to a corresponding sub-divisional level office, but to a circle office of the Telecom Department. Rule-1(v) defines as under: administrative wing at the same station like

P.M.G., Calcutta. (v) Units mean administrative units at the same station. For example P.M.G., Calcutta and G.M.T., Calcutta. Arms means the following arms in the P & T Department.

- (a) Circle Office
- (b) Postal
- (c) R.M.S.
- (d) Telegraph Engineering and A.O.T.R staff (except in the case of staff in the office of Accounts Officer, Telephone Revenue, Delhi who are entitled to general pool quarters of the Directorate of Estates)
- (e) Telegraph Traffic and Wireless

The transfer being not from one Arm/Unit of the Postal Department to the corresponding Arm/Unit of the Telecom Department, as per the averments made in the O.A., Rule-12 does not protect the applicant in retention of quarters in question

allotted to him by the Postal Department.

The contention that those Rules of the erstwhile P & T Department have neither been superseded nor repealed is also not correct. From the extract of the rules concerning allotment of quarters filed by learned Sr. Standing Counsel, on our direction at the request of the learned counsel for the applicant, it appears that after bifurcation, those rules are no longer being followed. This is clear from the circular dated 21.4.1986, issued by the Ministry of Urban Development, Directorate of Estates, which was circulated by the D.G. Telecom New Delhi, vide letter dated 14.8.1986 to all concerned, with an instruction to modify the rules of allotment to the extent indicated in that circular, which deals with the permissible period of retention of general pool accommodation on retirement/terminal leave/death. Even the D.G. Posts issued separate circulars dated 21.5.1994, 7.2.1996 (Annexures-R/1 and R/2) regarding retention of quarters on retirement/death/transfer, and there is no prayer in this Original Application to ^{strike}~~strike~~ down these circulars under Annexures-R/1 and R/2, in view of the Rules of the erstwhile P & T Department. We are, therefore, not inclined to accept the contention of the learned counsel for the applicant that this P & T Rules with regard to allotment of quarters are still in force. If, indeed those rules of allotment of quarters of the P & T Department were entitled to remain in force even after bifurcation, there was no necessity at all to issue circular dated 5.6.1986 under Annexure-A/3. In view of this contention of the learned counsel for the applicant in this regard fails.

13. As per the Postal Department Rules, as also the

circulars issued by the D.G.Posts (referred above), an officer on transfer can be permitted to retain the departmental quarters under his occupation on payment of normal licence fee for two months and thereafter on payment of double the licence fee for a period of six months more. Retention of quarters beyond the period of eight months is not permissible and in case of occupation, it will be treated as unauthorised and damage rent would be assessed till the allottee vacates the quarters and/or is evicted.

In view of these guidelines of the Postal Department, unless letter dated 5.6.1985 (Annexure-A/3), issued at the time of bifurcation really means that it would be applicable to future cases of transfer, even after 15 years, prayer for quashing of the various orders/circulars issued by the Postal Department through various Annexures, as referred above, cannot be acceded to.

It comes to this, the entire issue boils down to the interpretation to be given to the circular/letter dated 5.6.1985 (Annexure-A/3), issued by the D.G.(Posts & Telegraphs), New Delhi. In order to understand the true import of this letter/circular, it is better to quote entirety of the same as under :

" INDIAN POSTS AND TELEGRAPHS DEPARTMENT

Office of the Director General Posts and
Telegraphs, New Delhi

No.2-86/85-ND at New Delhi-110001 the 5.6.1985

To

All Heads of Postal/ Circles
All Heads of Telephone District
All Chief Engineers (Civil Wing)
Chief Architect Civil Wing

All Superintending Engineer (Civil Wing)
All Senior Architects (Civil Wing)
All Senior Architects (Civil Wings)
All Heads of Electrical Circles
All other Heads of All Administrative Units

Sub: Retention/allotment of quarters by Officers
and Staff of P&T Civil Wing as a result of
bifurcation of P & T Civil Wing

Sir,

The P & T Civil Wing is being bifurcated between the Department of Posts and Department of Telecommunications. The Officers and Staff are being allocated the two Departments. Some of the officers and staff of Civil Wing allotted to one Department may be occupying Government accommodation belonging to other Department. It is decided that in such cases the officers and staff will be allowed to retain their present accommodation until the Department to which they are posted provides with Government accommodation. Such officers may be given priority in allotment of accommodation by their respective Departments".

Yours faithfully,

Copy to CSE Section

Sd/-S.Krishan
Director (ST)

On a careful perusal of the contents of this letter/circular, we are not inclined to agree with the contention of Shri Padhi, the learned counsel for the applicant that this is still applicable in case of the applicant. This circular was issued as one time measure in order to meet the hardship of the officers and staff of the Civil Wing, who were under the occupation of quarters allotted by the P & T Department before bifurcation and on bifurcation being retained in either of the Department, and thereafter facing transfers to the other Department at the same station till the latter Department provides Government accommodation to the transferee, by giving priority in allotment. This would be evident from the expressions "may

be occupying", occurring in the 4th line of Annexure-A/3, "retain their present accommodation", occurring in the 7th and 8th line of the said Annexure and "may be given priority in allotment", occurring in the last but two lines of the said Annexure.

184. We are aware that Shri Padhi placed reliance on the common judgment dated 17.7.1997, pronounced by the Single Bench of the C.A.T., Patna in Original Application Nos. 84, 77 and 98 of 1992 (Annexure-A/7). As the facts reveal, the applicants, who were officers of the Composite P & T Deptt. before bifurcation in the year 1985, were posted in the Postal Wing at Patna and were allotted officials quarters by Respondent No.2 (apparently allotting authority of the Postal Department). Subsequently, they were transferred to Telecommunications (Civil Wing) by order dated 25.7.1990. Pursuant to this order of transfer, Respondent No.2 directed them to vacate the quarters, even though the Telecommunication Department did not arrange any Govt. accommodation in their favour. Under the circumstances, the Postal Department was directed not to evict the applicants on the ground of their transfer.

But in the case before us the applicant, who at the time of bifurcation continued at Berhampur as Assistant Engineer (Elect) in Telecommunications Department was not transferred as Assistant Engineer (Elect) to the Postal Department to be stationed at Berhampur. On the other hand he was transferred in the year 1996 to Bhubaneswar, where he was allotted with Govt. quarters of the Postal Department by the postal authorities. Thus, it is not a case of transfer,

to other Department at the same station where the applicant was continuing at the time of bifurcation. After serving under the Postal Department for some years he faced transfer on promotion to his parent Department, viz. Telecommunications on promotion on 28.1.1999 and stationed at Bhubaneswar. Hence the ratio decided by the C.A.T. Patna Bench would not protect the applicant.

15. Even otherwise, this decision of the Single Bench of C.A.T. Patna had not taken the note of the import of expressions, occurring in the circular, under Annexure-A/3, and referred by us above, even though the circular in extenso was quoted in that judgment. Sitting in Division Bench, we are, therefore, not inclined to follow this judgment of C.A.T. Patna Bench.

16. In the result, we do not see any merit in this Application which is accordingly dismissed, but without any order as to costs.

In view of dismissal of this Original Application there is no need to allow continuance of interim orders any more and the same ^{are} hereby vacated.

(Signature)
(SOMNATH SOM)
VICE-CHAIRMAN
25.5.201.

(Signature) 25.5.201
(G. NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//