

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH
- - - -

O.A. No. 977 of 1996.

Present : HON'BLE DR. B.C. SARMA, ADMINISTRATIVE MEMBER.
HON'BLE MR. D. PURKAYASTHA, JUDICIAL MEMBER.

Tapan Kr. Roy,
S/o- Late. Harendra Nath Roy,
working as U.D.C. in Buniadpur
Central Divn. C.P.W.D, Indo-Bangladesh
Border Zone, PO. Buniadpur,
Dist- Dakshin Dinajpur,
West Bengal

... Applicant.

Vrs.

1. Union of India,
Service through the -
Secretary to the Govt. of India,
Ministry of Urban Dev.
Nirman Bhavan, New Delhi.
2. Executive Engineer,
Balurghat Central Divn No. I,
CPWD. Indo-Bangladesh Border Zone,
Balurghat.
3. Exectuve Engineer,
Buniadpur Central Divn, CPWD.
Indo-Bangladesh Border Zone,
Buniadpur.

... Respondents.

For applicant : Mr. R.K. De, Counsel.

For respondents : Mr. B. Mukherjee, Counsel.

Heard on : 22.7.97.

Ordered on : 22.7.97.

O R D E R

B.C. Sarma, AM.
- - - -

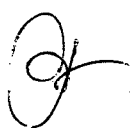
1. The dispute raised in this application is about the realisation of damage and penal rent from the applicant by the respondents.
2. The applicant is an Upper Division Clerk under the respondents and he was posted at Balurghat. Subsequently, on his transfer to

Contd...P/2.

to
Buniadpur, to which posting he volunteered to go, he was relieved from Balurghat on 30.3.1994. However, the applicant continued to retain the quarter at Balurghat. The respondents had asked him to vacate the quarter and since the applicant did not do so, by an Order dated 1.2.1995, it was ordered by the respondents that at the rate of 680/- per month will be deducted as penal rent from his pay bill w.e.f. 1.6.1994. By that date, earlier, the applicant was directed by a letter dated 22.6.94 to vacate the quarter within 10 days. Being aggrieved by these Orders, the applicant had earlier filed an O.A. bearing No. 528 of 1995 which was disposed of by an Order dated 18.1.1996 in the following terms :-

" In view of the above discussion the application succeeds. The impugned order dated 1.2.1995 by which penal rent is ordered is hereby quashed and set aside. However, we give liberty to the respondents to proceed as per law in the matter by approaching the appropriate forum which is the Forum of the Estate Officer. In case the respondents decide to approach the forum of the Estate Officer and pass appropriate order thereafter such action will be taken within 6 months from the date of communication of this order. In this matter we direct the applicant to co-operate. The period of 6 months is extendable on valid grounds. We also find that by the order dated 1.2.95 the penal rent has been levied from 1.2.95 whereas a notice dated 22.6.95 reads to vacate within 10 days from the date of issue of the order. This being the position we direct that the penal rent is not to be levied prior to 2.7.94, if, of course, there is a decision taken by the Estate Officer, No order as to costs is passed."

3. Pursuant to the said Order passed by this Tribunal, the respondents have now issued the impugned Order, dated 30.4.96, as set out at Annexure 'A-III' to the application. The respondents have also directed in that Order that the arrear amount from 2.7.94 till the date should be deposited in the Office immediately and the rent of Rs. 680/- per month is payable in excess of the H.R.A. /Project Allowance. Being aggrieved thereby, the instant application has been filed with the prayer that a declaration be issued to the effect that the impugned Order, dated 30.4.96, is not tenable in the eye of law and that the applicant be allowed to retain the quarter at Balurghat so long he serves at Indo-Bangladesh Border Zone of C.P.W.D. which is a difficult area.



Contd...P/3.

4. The case has been opposed by the respondents by filing a reply. The stand taken by the respondents has been that - the impugned Order has been passed pursuant to the liberty given by this Tribunal in the Order dated 18.1.1996 passed in the earlier O.A. filed by the applicant. According to them, the applicant is not entitled to retain the quarter since he has been transferred from Balurghat to Buniadpur, which is a new Divn. The applicant had also exercised an Option by which he had volunteered to vacate the quarter allotted to him at Balurghat if he is transferred to Buniadpur. They have, therefore, prayed for diemissal of the application since it is devoid of merit.

5. During hearing, Mr. De, ld. Counsel for the applicant, emphasises the fact that the applicant was posted to a difficult area near Indo-Bangladesh Border at Balurghat, which was subsequently trifurcated as Balurghat Central Divn. I, Balurghat Central Divn. No. II and Buniadpur Central Divn. But the character of the entire area being difficult area along the Indo-Bangladesh Border zone remains same. According to Mr. De, therefore, the applicant is entitled to retain the quarter on being transferred to Buniadpur. Mr. De also submits that in a similar matter in the case of Krishna Kanta Mondal Vs. Union of India & Ors. (reported in 1997 (1) ATJ 220) this Bench of the Tribunal had held that the applicant cannot be asked to vacate the quarter so long as he is posted in any of the three divisions which comprised the erstwhile Balurghat Divn. and, therefore, the Orders cancelling the allotment and charging damage rent was quashed. Mr. De submits that on the basis of the said decision the instant application deserves to be allowed. Mr. De further submits that the case of the applicant has to be dealt with in the manner it has been directed to be adopted in para-7 of the Judgement/Order of this Tribunal on 18.1.1996, which according to him, has not been done.



Contd...P/4.

6. We have heard the submission of the learned Counsel for both the parties, perused records and considered the facts and circumstances of the case. We have also perused the files produced by the ld. Counsel for the respondents. We find in this case that the applicant had volunteered to go on transfer to Buniadpur Division which is a new Division. We find from a letter written by the applicant with reference to No. 21(4)/SCC.II/94/Slg/740 dated 28.2.1994 that the applicant will have no objection to vacate the Govt. accommodation at Balurghat if he is transferred to Buniadpur and he has also requested the authorities to kindly allow him to retain the quarter at Balurghat unless it is absolutely impossible to allow him to stay there. It, therefore, appears that the applicant knew that he will be required to vacate the quarter at Balurghat and he had also expressed his intention. But at the same time he made a request to the respondents that whether they may permit him to retain the quarter. We find that this case was already gone into by us in O.A. No. 528 of 1995 and in our Judgement dated 18.1.96 we had given liberty to the respondents to proceed as per law against the applicant and it was also directed therein that the penal rent, if it is to be levied as per the decision taken by the Estate Officer, shall not be levied prior to 2.7.94. We have perused the contents of the impugned Order passed by the respondents and we find that an arrear of penal/damage rent has been levied w.e.f. 2.7.94 and the order has been passed by the Estate Officer, who is the Executive Engineer, Balurghat Central Division-I, CPWD, Balurghat.

7. In this connection, Mr. Mukherjee also produced before us the relevant rules called as - "Allotment of Govt. Residences (Under the Control of the Central Public Works Deptt.) Rules, 1981. In this Rules, the term 'Residence' has been defined as follows :

"Residence means any residence for the time being under the administrative control of the divisional officer"

The term 'Transfer' has been defined therein as follows :

"Transfer means a transfer from a station or post where the officer is working at any other station

Contd.....P/5.

or any post at the station for which the accommodation in occupation of the officer is not intended and vis-versa".

We find that the applicant is now working under the divisional Executive Engineer, C.P.W.D of Buniadpur Division. We have been given to understand that the said officer resides at Buniadpur. The quarter which is now being occupied by him is at Balurghat, which is outside the area of jurisdiction of the Buniadpur Division. Therefore, there can be no question of occupying the quarter by the applicant at a place which is outside the administrative control of the concerned divisional officer and also outside the area of jurisdiction of the division in which the applicant works. A Govt. officer is given accommodation in connection with duties and the duties are supposed to be performed at a particular place where he normally resides. It is a common knowledge that only at the head-quarter the Govt. officer is given accommodation and if there is no accommodation, it may at least be given at near-by place. We have been given to understand that Buniadpur is at a distance of about 55 Kms. from Balurghat, which is not a near-by place. A Govt. officer cannot be expected to reside at such a distant place for which he need to undertake a trip to Buniadpur to do work, specially, a station where the applicant is discharging his duties in a project near Indo-Bangladesh Border. We, therefore, cannot see any reason why the applicant should be permitted to reside at Balurghat and to work at Buniadpur by doing a daily journey. The fact also remains that Buniadpur is not connected with Balurghat by a fast mode of transport. We find that in the Judgement rendered in Krishna Kanta Mondal case this matter was not gone into by this Tribunal and, therefore, we will have to observe with due respect that we are unable to agree ^{to} with the decision rendered in that case.

8. We find in this case that the applicant had made a request to the concerned authorities to retain the said accommodation at Balurghat unless it is absolutely impossible to allow him to stay.

Contd...P/6.

Since further proceedings were initiated by the respondents in the matter and he was also given various notices prior to the proceedings on different dates, we are of the view that this matter was already considered by them. In any event, in view of the analysis done by us, the respondents cannot lawfully allow the applicant to stay at Balurghat indefinitely and to do work at Buniadpur. Moreover, the allotment of accommodation was also cancelled by the respondents, which means that his request was not acceded to.

9. In view of the above, we do not find any merit in the application. It is, therefore, dismissed. No order is passed as regards costs.



(D. Purkayastha)
Member (D)



(B.C. Sarma)
Member (A)