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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.593/2011

Jodhpur this the 27th day of August, 2013

CORAM

Hon'ble Mr.Justice Kailash Chandra Joshi, Member (J),

Uma Ram Parihar S/o Shri Mala Ram, aged about 53 years, by caste Parihar, R/o C/o Telecom Colony, Sumerpur, Housing Board Area, Sumerpur, District Pali (Raj.). Presently working as Telecom Technical Assistant (TTA), BSNL, Sumerpur.

.....Applicant
Mr. Manoj Bhandari, counsel for applicant.

Versus

1. The Union of India through the Secretary, Ministry of Telecommunication and Information Technology, Bharat Sanchar Bhawan, Janpath, New Delhi.
2. The Chairman & Managing Director, 304, BSNL, HC Mathur Lane, Janpath, New Delhi.
3. The Chief Engineer, BSNL, Office of the CGMT Administrative Building, Jala Dungri, Jodhpur.
4. General Manager, Telecom District, GMTD, Pali-Marwar.
5. The Assistant General Manager (Planning), Office of GMTD, Pali-Marwar.
6. The Accounts Officer, BSNL, GMTD, Pali-Marwar.

.....Respondents
Mr. S.K. Mathur, counsel for respondents.

ORDER (Oral)

Applicant, Uma Ram Parihar, has filed this application under Section 21 of the Administrative Tribunals Act, 1985 challenging

Ann.A/1 by which he was asked to pay Rs.17,746/- as damage rent charges for over stay in government accommodation/staff quarter at Rani.

2. The short facts of the case are that the applicant was initially appointed as Technician in the year 1987. He was subsequently promoted as Telecom Technical Assistant (TTA) in April, 2010 and posted at Rani, District Pali. On 02.11.2011, recovery of damage rent charges for the unauthorized occupation of the government quarter at Rani was made against the applicant to the tune of Rs.17,746/- and it was stated that the said amount shall be deduced from his salary for the month of December, 2011. It has been averred in the application that when the applicant was transferred, he vacated his residential quarter in the colony and in this regard, he made specific communication to the respondent BSNL on 22nd September, 2010 that he is vacating the premises and is putting the official lock on the said house. This communication was sent in the present of two witnesses namely Shri Sultan Khan Ghanerao working as JTO, NW-OP Rani and Shri Pabu Singh Nadole working as Telecom Mechanic. The applicant had joined at Sumerpur on 01st Sept., 2010 and vacated the said premises on 22nd Sept., 2010 and his entire luggage was also shifted after vacating the premises from Rani to Sumerpur. The Annexure-A/7 has been

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filed with the application, which is a TA bill along with the letter of Ganesh Goods Transport Company dated 25.09.2010. It has been averred that in spite of the written submissions made by the applicant, the respondent department issued the order at Annexure-A/1 and thereby asked the applicant to pay Rs.17,746/- as damage rent for the unauthorized occupation of the Government staff quarter at Rani. Hence, the applicant by way of this application has prayed for the following reliefs:-

- “(i) By an appropriate order or direction, the impugned order dated 2nd Nov., 2011 passed by the respondent No.4/5 (Annexure-A/1) may kindly be declared illegal and be quashed and set aside.
- “(ii) by an appropriate order or direction the impugned order dated 1st December, 2011 passed by the respondent No.6 (Annexure-A/2) may kindly be declared illegal and be quashed and set aside.
- “(iii) Any other appropriate order or direction which this Hon’ble Tribunal may deem fit just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.”

3. The respondent department by way of reply denied the fact of vacation of the Government quarter in September, 2010 and further averred that applicant came on 22nd of May, 2011 at Rani and opened the quarter No.III/1 and transported the luggage in tempo, and then he locked the said quarter and handed over key to the electrical maintenance staff for placing it in the guard room. The respondents further averred that since the quarter was not vacated by the applicant in accordance with the rules and key was not handed over to the competent authority and he unauthorizedly remained occupying the staff quarter, therefore, Annexure-A/1 has been rightly passed by the competent authority. It has been further

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averred that both the witnesses Sultan Khan Ghanerao and Pabu Singh Nadole contradicted the fact of vacation of the premises in the month of September, 2010.

4. By way of rejoinder, the applicant while reiterating the same facts averred that the order at Annexure-A/1 is ab initio void for the reason that no opportunity of hearing is provided to the applicant before passing the impugned order at Annexure-A/1.

5. Heard both the parties. Counsel for the applicant contended that as opportunity to hear the applicant has not been provided by the respondent department, therefore, the order at Annexure-A/1 has been passed by violating the principle of natural justice and further simply on the basis of the statements of two witnesses namely Sultan Khan Ghanerao and Pabu Singh Nadole, the competent authority came to the conclusion that the applicant did not vacate the premises in the month of September, 2010, whereas any other infirmity, evidence like electricity bills and water bills, have not been considered, because had it been a case of over stay in the said quarter, the electricity and water bills ~~are~~ ^{would have} most important relevant documents for consideration. But the same have not been procured by the department and simply on the basis of statements

of two witnesses viz. Sultan Khan Ghanerao and Pabu Singh Nadole, the order at Annexure-A/1 has been passed.

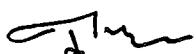
6. Per contra, counsel for the respondents contended that key of the said quarter has not been handed over to the competent authority, and further the statements of two witnesses namely Sultan Khan Ghanerao and Pabu Singh Nadole are the most relevant facts for consideration of over stay and unauthorized occupation of the said premises and after considering all these relevant facts, the Annexure-A/1 has been rightly passed.

7. I have considered the rival contentions of both the parties and also perused the documents available on record. From bare perusal of the record, it clearly reveals that before passing the impugned order at Annexure-A/1, no show cause notice or opportunity of hearing was provided to the applicant. Further, the respondent department passed the order at Annexure-A/1 relying only upon the statements of two witnesses viz. Sultan Khan Ghanerao and Pabu Singh Nadole. No other documents like electricity and water bills of the said premises, receipt of the Genesh Goods Transport Company and the TA bill were procured and considered, as is clear from the impugned order at Annexure-A/1.

8. In the light of the above facts and circumstances, I am proposing to this disposed of this application.

9. Accordingly, the OA is disposed of with direction to the respondent department to pass a fresh reasoned and speaking order after giving ample opportunity of hearing to the applicant and procuring all other relevant documents for the decision in the matter. The respondent department is directed to pass a fresh reasoned and speaking order within a period of three months from the date of receipt of a copy of this order and till then the operation of the order at Annexure-A/1 is stayed.

10. The OA stands disposed of accordingly with no order as to costs.


(Justice K.C. Joshi)
Judicial Member