

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW**

Original Application No. 159/2008

This, the 1st day of March, 2012.

HON'BLE SHRI NAVNEET KUMAR, MEMBER (J)

Bharat Bhushan Singh, aged about 51 years, son of Late Shri B. N. Singh, R/o F-501, Utsav Enclave, Halwasiya Bulding, Indira Nagar, Lucknow.

Applicant

By Advocate Sri A. K. Verma.

VERSUS

1. Union of India, through Secretary, Ministry of Communication, Sanchar Bhawan, New Delhi.
2. The Chief General Manager, Telecom (U.P. East), Circle Lucknow, Bharat Sanchar Nigam Ltd.
3. The Deputy General Manager Finance (U.P. East), Circle Lucknow, Bharat Sanchar Nigam Ltd.
4. The Accounts Officer (Cash), Telecom District Manager, Sitapur.

Respondents

By Advocate Sri G. S. Sikarwar.

ORDER (ORAL)

By Hon'ble Shri Navneet Kumar, Member (J)

The applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985 with the following relief(s):

- (i) Order/direction be issued to the respondents to consider and decide the representation of the applicant (contained in annexure-14 and 15 to the Original Application).
 - (ii) Order/direction be issued to the respondents not to make any deductions from the salary of the applicant and to make payment of full salary admissible to the applicant in each and every month.
 - (iii) Quash the orders dated 25.11.2002 and 23.2.2006 (Contained in Annexure-9 & 13 to this Original Application).
 - (iv) Order/direction to refund the excess amount recovered from the salary of the applicant as damages.
 - (v) Any other order or direction as the Hon'ble tribunal deems fit and proper under the facts and circumstances of the case be issued."
2. The brief facts of the case are that the applicant after due selection by Union Public Service Commission, was appointed as Assistant Divisional Engineer in the year 1984. Subsequently, he was transferred to Sitapur in 1993 as Telecom District Engineer and where he was provided government accommodation. On 29.3.1995, the

applicant was promoted as Deputy General Manager, Telecom and was transferred from U.P. East Circle to Jammu & Kashmir Circle and the applicant has joined in the office of the CGMT, Jammu as Deputy General Manager operations & Area Director. The applicant has also pointed out that at the time of his transfer from Sitapur to Jammu and Kashmir, the family members of the applicant remained stayed at Sitapur and his three children were studying at Sitapur and being a tenure posting, the applicant is entitled to retained the accommodation at his last place of posting at Sitapur and the applicant remained posted at Jammu & Kashmir till 31.8.1998. On being completion of tenure posting, the applicant is being transferred to U.P. East once again and has joined on 1.9.1998 at Lucknow as Director Telecom Central Area, Lucknow where he is remained posted up to 30th June, 1999 and subsequently, again he was shifted from Lucknow to Sitapur as Telecom District Manager. The applicant submits that during his posting at Lucknow i.e. from 1.9.1998 till 30th June 1999, he made requests for retaining the government accommodation. The applicant also pointed out that he has neither been provided any government accommodation nor he has been paid any house rent allowances under these circumstances, the applicant continued to retain the government accommodation at Sitapur. But the applicant was compelled to pay the double license fee. The applicant also pointed out that from 1.7.1999 to 29.2.2000, he remained posted at Sitapur and thereafter he has been transferred at Basti on 29.2.2000. The applicant subsequently being transferred from Basti to Mainpuri and he has made certain requests for retention of the government accommodation at Sitapur beyond the normal permissible period. But the requests of the applicant was rejected for retention of the government accommodation at Sitapur. Suddenly, the applicant was served with an order dated 25th November, 2002 imposing a penal rent amounting to Rs. 1,97,194 towards occupying unauthorisedly

- 3 -

the government accommodation at Sitapur. But this order was passed without affording any opportunity to the applicant. Subsequently, the applicant has been transferred to Lucknow and in the meantime, the applicant made again request for retention of the government accommodation and when finally it was not accepted, the applicant vacated the quarter and handed over to the concerned authorities. The main grievance of the applicant is that the impugned order has been made without affording any opportunity to the applicant and the mode of recovery of damage rent is also unfair and the learned counsel for the applicant relied upon the decision rendered by the Hon'ble High Court in the case of Mahesh Lalwani vs. Sardar Uttam Singh, reported in 1989(7) LCD-1.

3. Learned counsel appearing on behalf of the respondents pointed out that the applicant being an unauthorisedly occupying the government accommodation without any permission to retain it is found guilty. As such, the impugned order dated 25.11.2002 and 23.2.2006 were issued and recovery of certain amount from the salary of the applicant was ordered. The learned counsel on behalf of the respondents also pointed out that the letter was written to the applicant, but that letter does not show that he has been asked to give explanation as to why he has not vacating the government accommodation.

4. The learned counsel for the respondents also pointed out that that there is no discrepancy in the orders passed by the respondents recovering the damage rent from the salary of the applicant. As such the present O.A. is liable to be dismissed.

5. Heard the learned counsel for the parties and perused the record.

6. Admittedly, the applicant who was in service, and has joined the Postal Department by means of a selection has been put to transfer to certain places and finally, when he failed to vacate the government

accommodation, he was penalised. The averments made by the applicant appears to be justified that any recovery which is affecting the applicant is required to be communicated and opportunity of hearing is required to be given to the applicant and which appears to have not given to the applicant. It is also well settled that any order affecting an employee is required to be communicated and opportunity of hearing is basic fundamental principle and without affording any opportunity of hearing is bad in the eyes of law.

7. At the outset, the learned counsel appearing on behalf of the respondents has categorically submitted that in case, the applicant wishes, he may file a detailed representation to the authorities concerned and after the said representation is received, the applicant would be given an opportunity of hearing and thereafter the authorities may take a decision.

8. In the light of the observations made above and fair submissions of the respondents counsel, it appears to be justified that the applicant may submit a detailed representation to the authorities concerned indicating all the grievances within a period of one month. In case, the same is given to the respondents within the stipulated period as provided above, the same would be considered and decided by the respondents in accordance with law within a period of three months after providing a reasonable opportunity of hearing to the applicant. Till the disposal of representation, the interim order granted on 9.1.2009 staying the further recovery shall remain operative.

9. In view of the above, the O.A. stands disposed off. No order as to costs.


(Navneet Kumar)
Member-J