

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

OA No. 42/2001

DATE OF ORDER 21/7/2002

Manohar Ahuja son of Shri P.M. Ahuja aged about 54 years, resident of Flat No. 44, Telecom Staff Quarters, Bajaj Nagar, Jaipur and working as Executive Engineer, Postal Electrical Division in the Office of Executive Engineer, Postal Sub Division, Jawahar Nagar, Head Post Office Building, Jaipur.

....Applicant.

VERSUS

1. Union of India through Secretary Ministry of Communication, Department of Telecommunications, 1300-A, Sanchar Bhawan, 20, Ashoka Road, New Delhi.
2. Bharat Sanchar Nigam Ltd. (BSNL) through Principal General Manager, Rajasthan Circle, Jaipur.
3. Chief General Manager, Bharat Sanchar Nigam Ltd., Rajasthan Telecommunications Circle, IIInd Floor, Bajaj Nagar, Telephone Exchange Building, Jaipur.
4. Chief Post Master General, Rajasthan Circle, Jaipur.
5. Sub Divisional Engineer (BO), Office of Principal G.M., Telecom, Ist Floor, Admn. Building, Lal Kothi, District Jaipur.

....Respondents.

Mr. S.K. Singh, Counsel for the applicant.

Mr. R.L. Agarwal, Proxy counsel for

Mr. Bhanwar Bagri, Counsel for the respondents.

CORAM

Hon'ble Mr. A.P. Nagrath, Member (Administrative)

Hon'ble Mr. J.K. Kaushik, Member (Judicial)

ORDER

PER HON'BLE MR. A.P. NAGRATH, MEMBER (ADMINISTRATIVE)

The applicant as an Executive Engineer (Electrical) in the Postal Wing had joined the services of Postal & Telecommunication Department as a Section Officer in the Civil Wing. Telecommunication Wing has now taken the name &



shape of Bharat Sanchar Nigam Ltd. (BSNL). Long before coming into existence of BSNL i.e. in the year 1986, Telecommunication Department had been separated from the Postal Department. However, Civil Wing of these two separated departments continued to have a common cadre. While being posted in the Telecom Department, the applicant was allotted a Type V quarter in the Telecom Colony, Bajaj Nagar, Jaipur by order dated 5.3.1998. In the year 2000, applicant was posted in Postal Department at Jaipur itself. In terms of order dated 3.4.2000, he was permitted to retain the said quarter. By order dated 29.11.2000 (Annexure A/1), issued by General Manager, BSNL, the applicant was served with a notice for vacating the said quarter on the ground that the same was required by the Telecom Wing. Thirty days' time was given to the applicant for vacating the same. The applicant submitted a representation dated 3.1.2001 seeking to continue to retain the accommodation. By order dated 12.1.2001 (Annexure A/2), his request was turned down. He was also informed that the allotment of the quarter in his name would stand cancelled w.e.f. 1.2.2001 and that from that date onwards, he will be considered in unauthorised occupation for which BSNL would take action. Further by order dated 18.1.2001 (Annexure A/3), it was deiced to charge penal rent of Rs. 8493/- per month from the applicant w.e.f. 1.1.2001. By filing this OA, the applicant has challenged these three orders dated 29.11.2000 (Annexure A/1), 12.1.2000 (Annexure A/2) and 18.1.2001 (Annexure A/3) and has prayed that these orders be declared illegal and quashed and respondents be directed to charge only normal rent till the said quarter is under his possession.

2. Reply has been filed on behalf of respondents No. 1 to 3 and 5. It is interesting to note that the respondents in their reply had raised no plea challenging the jurisdiction of this Tribunal in this matter but learned counsel on their behalf, Shri Bhanwar Bagri, and Proxy counsel, Shri R.L. Agarwal, have raised the plea that controversy involved in this OA is beyond the jurisdiction of this Tribunal. In support of this contention, reliance has been placed on



Delhi High Court's judgement in the case of Smt. Babli & Another vs. Government of NCT of Delhi & Others, 2002 LAB. I.C. 4 decided on 31.8.2001 and also on the Apex Court order Union of India vs. Rasila Ram (2000)IOJT(SC)503. we find the learned counsel for the respondents missed the core of the matter in those cases. Proceedings there in had been initiated under the PPE Act and as held by Hon'ble the Supreme Court in Rasila Ram's case, the C.A.T. had no jurisdiction in the matter as the remedy lies only under the PPE Act. It is pertinent to reproduce the observation of Apex Court in the matter Rasila Ram's case in Para 2.

"The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the Eviction Act) was enacted for eviction of unauthorised occupants from public premises. To attract the said provisions, it must be held that the premises was a public premises, as defined under the said Act, and the occupants must be held unauthorised occupants, as defined under the said Act. Once, a Government servant is held to be in occupation of a public premises as an unauthorised occupant within the meaning of Eviction Act, and appropriate orders are passed thereunder, the remedy to such occupants lies, as provided under the said Act. By no stretch of imagination the expression, "any other matter," in Section3(q)(v) of the Administrative Act would confer jurisdiction on the Tribunal to go into the legality of the order passed by the competent authority under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act 1971. In this view of the matter, the impugned assumption of jurisdiction by the Tribunal, over an order passed by the competent authority under the Eviction Act, must be held to be invalid and without jurisdiction. This order of the Tribunal accordingly stands set aside. The appeals are accordingly allowed."

4. The matter before us is not an order issued under the PPE Act. The issue for our consideration relates to Housing Allotment Rules of the Department. As observed by Delhi High Court in the case of Smt. Babli. Central Administrative Tribunal can have jurisdiction in such matter if claim is related to a condition of service or there are relevant service rules covering the subject. In this case, there are specific rules, which were issued on 25.6.1966 by Director General, Postal & Telecommunication Department, a copy of which has been made available to us by the learned counsel for the respondents. Thus the issue before us is not an order issued under the PPE Act but the matter to be decided under Housing Allotment Rules, as applicable to the employees of Postal & Telecommunication Department. We, therefore, reject the ground of jurisdiction raised by the learned counsel for the respondents and proceed to decide the controversy before us on its merits.

5. We have carefully perused the records, averments made in the OA and the reply of the respondents. We have also given our anxious consideration to the arguments advanced on either side, which were primarily based on the grounds adopted or reasons advanced by the opposite sides in the OA and the reply. It is not in dispute that the applicant belongs to the Civil Wing of Postal & Telecommunication Department and even after separation of the departments to Postal & Telecommunication in 1986, the Civil Wing remains as a common cadre for both the departments. After formation of BSNL, there is no decision as to how further deployment of the officers employed will be regulated. Till then, the present rules will be applicable to officers of the civil wing.

6. In terms of the provisions of rules for allocation and allotment of quarters issued vide letter dated 25.6.66, we find from para 1(v):

(v) Units mean administrative units at the same

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station. For example PMG Calcutta and GMT Calcutta Arms means the following arms in the P&T Department.

- (a) Circle Offices
- (b) Postal
- (c) RMS
- (d) Telegraph Engineering & AORT 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

Obviously in this case, the applicant has been transferred from Telecom Unit to Postal Unit and has continued to be posted at Jaipur. When the transfer takes place from one Unit/arm/pool to another unit/arm/pool at the same station, Rule 12 of the Rules provides as under :-

"12. 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 communicate the unit/arm/pool from which the official has been transferred with the same type of quarter as and when one falls vacant."

This clearly supports the case of the applicant that the allotment made in favour of the applicant cannot be disturbed on his transfer from Telecom to Postal department. It appears that the applicant was permitted to retain this quarter on

normal licence fee till he is posted in the Department of Postal at Jaipur vide order dated 3.4.2001 (Annexure A/10) only under this rule. This letter has been issued by the Office of General Manager, Telecommunication. It is amazing to note that after having issued such categorical order, which is also as per rules, relating to Housing Allotment, how the respondents have now ordered the applicant to vacate the said accommodation without providing him any alternative



accommodation at that place.

7. The learned proxy counsel, Shri R.L. Agarwal, emphasised during the arguments that the quarter was required by BSNL for its own use. Mr. Arun Kumar, PGMTD, who is posted at Jaipur is having no accommodation and this quarter was required to be allotted for his use. The learned counsel contended that since the applicant had been posted in the Postal Department, he cannot have a claim to continue in the quarter meant for the Telecom department where a very senior officer is deprived of proper accommodation. We find from the rules that such a situation is covered by Rule 26, which is reproduced below:-

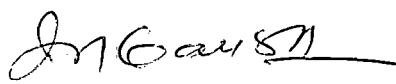
"Any existing allotment of a residence which may be required by the Department for some other purpose or which might have been declared dangerous may be cancelled by providing alternative residence of the entitled class or the next below class."

If the department was in such a need of accommodation, they should have provided alternative accommodation to the applicant under the rules. The learned counsel for the respondents stated that the department was ready to allot alternative accommodation but this argument is neither here nor there. If the department was serious, they should have issued a formal allotment order to that effect. Without having done that, they had no right to declare him as unauthorised occupant of the quarter. The learned counsel for the applicant, Shri S.K. Singh, assured us that if the applicant was allotted alternative accommodation, he would have readily shifted and vacated the quarter in question but the same was not done. Instead a penal rent was ordered to be recovered. We were also informed that by order dated 16.5.2002, the applicant has been ordered to <sup>be</sup> transferred to Bangalore. The learned counsel assured us that the applicant will abide by rules as applicable to a transferee in respect of the accommodation. We find from the facts and the rule

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position as discussed in the preceding paragraphs, the action of the respondents in directing the applicant to vacate the said accommodation without giving him any alternative accommodation is not sustainable. Similarly, the action of ordering recover of the penal rent is also against the rules and is liable to be set aside. However, now that the applicant has been transferred, rules in respect of Housing Allotment and Vacation, as applicable to a transferee shall operate.

8. We find considerable force and merit in the case of the applicant and we allow this OA. Impugned orders dated 29.11.2000 (Annexure A1), 12.1.2001 (Annexure A/2) and 18.1.2001 (Annexure A/3) are all quashed and set aside. The applicant shall be treated as inauthorised occupation of Quarter No. V/44, which was allotted to him while working in the Telecommunication Department and which he was permitted to retain vide order dated 3.4.2000 (Annexure A/10). The interim orders passed on 25.1.2001 are made absolute upto the time the applicant is relieved on transfer to Bangalore in terms of order dated 16.5.2002. From the date of his being spared on transfer retention of quarter by the applicant shall be regulated as per the Housing Allotment Rules, 1966. No costs.



(J.K. KAUSHIK)  
MEMBER (J)



(A.P. NAGRATH)  
MEMBER (A)

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