

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH ALLAHABAD**

ALLAHABAD THIS THE 17th DAY OF April 2018

PRESENT:

HON'BLE DR. MURTAZA ALI, MEMBER (J)

ORIGINAL APPLICATION NO.330/01541 OF 2009
(U/s, 19 Administrative Tribunal Act.1985)

Jai Narayan Pandey, S/o Shri Bhagwat Prasad Pandey, presently working as Financial Advisor & Chief Accounts Officer (P), Chittaranjan Locomotive Works, Chittaranjan.

.....Applicant

By Advocate: Shri S.K. Om

Versus

1. Union of India, through General Manager, North Eastern Railway, Gorakhpur.
2. Chief Manager, Chittaranjan Locomotive Works, Chittaranjan.
3. Secretary, Railway Board, Rail Bhawan, New Delhi.

..... Respondents

By Advocate: Ms. Shruti Malvia

O R D E R

The applicant has filed this O.A under section 19 of the Administrative Tribunals Act, seeking following reliefs-

"(i) To issue a writ order or direction in the nature of certiorari quashing the order dated 23.9.2009 (Annexure No.1) passed by respondent No.3.

- (ii) To issue a writ order or direction in the nature of mandamus commanding the respondents not to charge any damaged rent to the tune of Rs. 6,98,224/- in pursuance to order dated 23.09.2009 passed by respondent No.3.*
- (iii) To issue any other writ order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case.*
- (iv) To award the cost of present petition in favour of the applicant.*

2. Brief facts of the case are that while posted as Deputy Chief Vigilance Officer (Accounts) at Gorakhpur, the applicant was allotted a Railway Quarter (Bungalow No. 18B, Kawa Bagh Railway Colony, Gorakhpur) on 2.4.1996. The applicant was sent on deputation to Department of Telecommunication on 12.9.2000 as Director (Finance) and posted at Gorakhpur itself. Thereafter he was transferred to B.S.N.L on its incorporation on 1.10.2000 and remained posted at Gorakhpur as Junior Accounts Officer till 11.9.2004. The Department of Telecommunication/B.S.N.L. has reimbursed the rent of said quarter plus other charges to Railways. It is further stated that the General Manager had permitted him to retain the Railway Quarter w.e.f. 13.9.2000 to 15.5.2001. He made an application on 4.2.2002 requesting the Railway Board to grant permission to retain

the Railway Quarter allotted to him. The Railway Board had sought certain information from General Manager, B.S.N.L. in respect of date of incorporation of B.S.N.L vide letter dated 5.9.2002 (Annexure A-4). The General Manager informed the Railway Board about the date of incorporation of B.S.N.L as 1.10.2000 vide letter dated 4.10.2002 (Annexure A-4). The respondent No. 2 issued a letter dated 15.3.2005 (Annexure A-7) directing the General Manager, B.S.N.L Gorakhpur to reimburse a sum of Rs. 1,06,754/- as House Rent Allowance from 13.9.2000 to 12.9.2004 which was payable to applicant but it was not paid to him as the applicant was residing in the accommodation allotted to him by the Railways. The respondent No.2 issued a letter dated 28.8.2008 (Annexure A-9) for recovery of damage rent shown to be outstanding against the applicant and the Finance Advisor and Chief Accounts Officer (Construction), N.E.R Gorakhpur has also issued an order dated 1.9.2008 (Annexure A-8) by which the recovery of Rs. 8224/- was proposed for the month of September 2008 and thereafter Rs. 10,000/- per month from the salary of applicant. It has been alleged that no details of damage rent was given in the said letters and no show cause notice or any opportunity of hearing was provided before issuing the order of recovery of damage rent from

the applicant. It has also been alleged that he was entitled to retain the allotted accommodation in view of Railway Board letter dated 1.6.2001 (Annexure R-1) as he was sent on deputation to a Public Sector Undertaking (B.S.N.L) within a period of 5 years from the date of its incorporation. The applicant preferred a representation dated 5.9.2008 (Annexure A-10) against the order of recovery dated 1.9.2008 requesting therein not to charge any damage rent from the applicant. It is also stated that the respondents were under obligation to consider the applicant's request for regularization of allotment of accommodation in view of Railway Board Circular dated 1.6.2001. As no action was taken by the respondents, he had preferred OA NO. 995 of 2008 and the Tribunal directed the respondents to decide his representation vide order dated 30.9.2008 (Annexure A-11). The said representation of applicant was rejected vide order dated 30.12.2008 (Annexure A-12) and another recovery notice was issued to the applicant vide order dated 2.1.2009 (Annexure A-13). The said order of recovery was stayed vide order dated 16.4.2009 (Annexure A-14) passed by this Tribunal in OA No. 995 of 2008. The applicant preferred a fresh representation dated 25.4.2009 (Annexure A-15) requesting to regularize the allotment of quarter as he was sent on deputation to a Central

Government Undertaking (BSNL) which has not completed 5 years of its incorporation and therefore, he claimed exemption as provided under Circular dated 1.6.2001. The Railway Board has rejected the request of applicant for regularization of quarter vide order dated 23.9.2009 (Annexure A-1) mainly on the ground that the applicant was on deputation from 12.9.2000 to 11.9.2004 and since the circular dated 1.6.2001 was issued afterwards, thus it has no retrospective effect and inapplicable to the case of applicant. It has further been stated that the said Circular dated 1.6.2001 was actually given effect retrospectively w.e.f. 28.9.1999 vide circular dated 20.11.2006 (Annexure A-16) wherein it has clearly been stipulated that those officers who are on deputation between 28.9.1999 and 1.6.2001 would also be entitled to avail the benefit of circular dated 1.6.2001 subject to the condition that officer must have been on deputation on 1.6.2001. Thus it has been submitted that the Circular dated 1.6.2001 having retrospective effect is applicable in the case of applicant and he cannot be treated as unauthorized occupant of the quarter on 1.6.2001. It has also been stated that the Circular dated 20.11.2006 was not within the knowledge of applicant while preferring representation dated 28.10.2008 and the

respondents have decided his representation without taking into account its own circular dated 20.6.2006.

3. In the counter reply, the averments made in respect of allotment of quarter, permitted retention, period of deputation etc. have not been disputed. It has been admitted that the normal rent was mentioned in the L.P.C and the amount of H.R.A. payable to the applicant has already been reimbursed by the B.S.N.L. It is further stated that as B.S.N.L. came into existence on 1.10.2000 and till then the Railway Board Circular dated 1.6.2001 was not in existence, therefore, the applicant is not entitled to get the benefit of Railway Board Circular dated 1.6.2001. It is also stated that the said circular does not apply for B.S.N.L as B.S.N.L. does not fall in the categories mentioned in the said circular. It has further been stated that the representation of applicant has rightly been rejected and he is liable to pay damage rent which is deductible from his salary.

4. In the rejoinder, the applicant has reiterated the averments made in the O A and further stated that even on deputation to B.S.N.L through D.O.T. the applicant remained posted at Gorakhpur and he was entitled to keep

the house allotted to him as the other officers of the Railways were permitted to retain the quarters if they are transferred to different Organizations at the same station. It is further stated that normal rent of the quarter was reimbursed by the D.O.T/B.S.N.L which was never objected by the respondents. It has further been reiterated that the applicant is entitled to get the benefit of circular dated 1.6.2001 as the BSNL was incorporated on 1.10.2000 and it has not completed 5 years of incorporation. It is also stated that during the period of deputation, the applicant was neither required to pay damage rent nor he was given any notice regarding payment of such damage rent. It has been alleged that while passing the impugned order dated 23.9.2009, the respondents have failed to consider its own circular dated 20.11.2006, whereby, the Circular dated 1.6.2001 has been given retrospective operation w.e.f. 28.9.1999.

5. In the supplementary counter reply dated 6.7.2011, the respondents have filed copies of circular dated 1.6.2001 and circular dated 20.11.2006 as Annexure SCA-1 and SCA-2 respectively and submitted that the claim of applicant is not tenable in view of para 2 and 3 of said circular dated 1.6.2001 as it is applicable to only those

Railway officers posted on deputation to newly formed Railways, Public Sector Undertakings/Societies only and B.S.N.L does not fall in any of these categories.

6. In the supplementary rejoinder filed on 28.10.2013, it has been stated on behalf of applicant that circular dated 20.11.2006 (Annexure No. SCA -2) is not relevant in the case of applicant rather circular dated 20.11.2006 (Annexure A-6) is relevant in his case. It has further been alleged that the respondents are not entitled to recover any damage rent from the applicant as he was entitled to retain the allotted quarter in view of circulars dated 1.6.2001 read with circular dated 20.11.2006.

7. Heard Shri S.K. Om counsel for the applicant and Ms. Shruti Malvia counsel for the respondents and perused the record.

8. The sole controversy involved in this OA is whether B.S.N.L. is a Public Sector Undertaking (P.S.U) of Government of India and circular dated 1.6.2001 issued by the Railway Board is applicable in the case of applicant.

9. Learned counsel for the applicant has drawn our attention to a list of Public Sector Undertakings in India from the official Website of Government of India which shows that B.S.N.L. is a Public Sector Undertaking owned by Government of India and runs under Ministry of Communication and Information. He has also drawn my attention to the official Website of B.S.N.L. which states that B.S.N.L. is one of largest and leading Public Sector Units providing comprehensive range of telecom services in India. He has also drawn my attention to an order and judgment dated 6.8.2004 delivered by Hon'ble Delhi High Court in P.S.J Communications Ltd. Vs. Bharat Sanchar Nigam Ltd. and another and also an order and judgment dated 3.8.2017 delivered by Hon'ble Allahabad High Court in Bharat Sanchar Nigam Ltd. Vs. Rameshwar Dayal. It has categorically been held in these judgments that B.S.N.L. is a Public Sector Undertaking. Thus, the contentions of respondents that B.S.N.L does not come under the purview of circular dated 1.6.2001 cannot be accepted.

10. The relevant abstract of Railway Board Circular dated 1.6.2001 (Annexure R-1) is given as under –

*"Sub: Retention of Railway Quarter on transfer,
deputation, retirement etc.*

1.....

2 *Railway Officers/staff proceeding on deputation to newly formed Railway Public Undertakings/Societies .*

Railway Officers/staff posted on deputation to newly formed Railway Public Sector Undertakings/Societies may be permitted to retain Railway accommodation but this facility can be provided by the Board on merits on a request by the PSUs and will be applicable only for a period of five years from the date of incorporation of the PSU/Society. Rent chargeable will be at normal rate (Out rate of licence fee) for a period of two months. On request of the employee, the period of retention of railway accommodation may be extended for an overall period upto five years from the date of incorporation of the PSU/Society, on payment by the PSU/Society to the Railways, an amount equivalent to the house rent allowance admissible to the officer plus the flat rate of licence fee prescribed by the Railways from time to time in respect of the said Railway accommodation. The concerned PSU/Society may, however, recover normal licence fee from the Railway employee".

3. *Railway Officers/Staff proceeding on deputation to other PSUs etc.*

Railway Officers/staff posted on deputation to other railway and non-railway PSUs/Societies already established for more than five years would be permitted to retain the Railway quarters only for a period of two months on normal rent chargeable from the date they have joined Public Sector Unit. After this

period, they will be treated as unauthorized occupants and action taken accordingly.

4.....

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7.....

8.....".

The said circular was made effective retrospectively w.e.f. 28.9.1999 vide circular dated 20.11.2006 (Annexure A-16). The relevant extract of said circular is being reproduced below –

"(1)

(2) All the cases of Railway officers who proceeded on Central Staffing Scheme Deputation to Central Ministries/Departments between the period 28.9.1999 and 1.6.2001 and also those officers who proceeded on such deputation prior to 28.9.1999 but were on deputation on 1.6.2001 may be treated as a class and their cases may be regulated in terms of instructions contained in Board's letter No. E(G)2000 QR1-23 dated 1.6.2001. To this extent the instructions dated 1.6.2001 shall have retrospective effect.

Cases of employees falling under the above categories may be regulated accordingly.

This issues with the concurrence of Finance Directorate of Ministry of Railways".

11. From the perusal of circular dated 1.6.2001 read with circular dated 20.11.2006, it is evident that those officers who are on deputation between 28.9.1999 and 1.6.2001 are entitled to avail the benefit of circular dated 1.6.2001, if such officer was on deputation on 1.6.2001. It is not disputed that the applicant was initially sent on deputation to the Department of Telecommunication on 12.9.2000 and he was on deputation in B.S.N.L on its incorporation w.e.f. 1.10.2000 till 11.9.2004. Thus, as the applicant was on deputation on 1.6.2001 and his lien was remained with the Railways, the circular dated 1.6.2001 read with circular dated 20.11.2006 is fully applicable to the applicant. Learned counsel for the applicant has drawn my attention to letter dated 4.2.2002 (Annexure A-3) by which a request was made by the applicant to the Railway Board for permitting him to retain the said quarter till the deputation is over. The Railway Board requested the General Manager, N.E. Railway, Gorakhpur to furnish the date of incorporation of B.S.N.L vide letter dated 5.9.2002 (Annexure A-4). The General Manager, B.S.N.L informed the General Manager, N.E. Railway, Gorakhpur vide letter dated 4.10.2002 (Annexure A-5) about the date of incorporation of B.S.N.L and ultimately General Manager,

N.E Railway, Gorakhpur sent the copy of letter of General Manager, B.S.N.L to the Railway Board vide letter dated 8.11.2002 (Annexure A-6). Thereafter General Manager, N.E. Railway, Gorakhpur asked the General Manager, B.S.N.L for payment of house rent amounting to Rs.1,06,757/- payable to the applicant as the applicant was residing in the quarter of Railway while he was on deputation in B.S.N.L. It can clearly be inferred from the perusal of correspondence exchanged between Railway Board, General Manager, N.E. Railway, Gorakhpur and B.S.N.L that Railway Board might have accorded permission to retain the Railway quarter as sought by the applicant. The B.S.N.L has also reimbursed the amount of house rent to the Railway payable to applicant for deputation period and the Railway had never issued any notice claiming damage rent for the period of deputation in B.S.N.L and accepted normal rent from the B.S.N.L. for the said period.

12. Under these circumstances, I am of the considered view that Circular dated 1.6.2001 read with Circular dated 20.11.2006 is fully applicable in the case of applicant and it was the legitimate expectation of applicant that he was duly granted permission to retain the quarter while working on

deputation in the B.S.N.L. The conduct of Railway Board and General Manager, N.E. Railway, Gorakhpur clearly shows that the request of applicant for retention of said claim might have been accepted by the Railway Board in view of application of applicant dated 04.02.2002.

13. In view of the above, I am of the considered view that since B.S.N.L. is a Public Sector Undertaking incorporated on 1.10.2000, and therefore, circular dated 1.6.2001 read with circular dated 20.11.2006 is applicable to the case of applicant and he was entitled to retain the allotted accommodation of Railways as he was posted at the same station while working on deputation in B.S.N.L.

14. Accordingly, O.A. is allowed and the impugned orders dated 23.09.2009 (Annexure A-1) and 08.08.2005 (Annexure 1A) are quashed and set aside and quashed. However, the respondents are entitled to recover any amount of normal rent still due against the applicant. No order as to costs.

Member(J)

Manish/-