

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.3157/2013

Wednesday, this the 1st day of June 2016

Hon'ble Mr. P.K. Basu, Member (A)

Qutbul Alam
S/o Mr. Mohd. Tahir Hussain
R/o Jawahar Navodaya Vidyalaya
Baklana, Distt. Bulandshahar (UP). .. Applicant

(By Advocate : Shri Yogesh Sharma)

Versus

1. Navodaya Vidyalaya Samiti
Through its Commissioner
Noida, G B Nagar (UP).
2. The Deputy Commissioner
NVS Regional Office
Lucknow (UP).
3. The Deputy Commissioner
NVS Regional Office
Jaipur (Raj.)
4. The Principal
Jawahar Navodaya Vidyalaya
Mothuka, Faridabad (Haryana). .. Respondents

(By Advocate : Shri S Rajappa)

O R D E R (ORAL)

The applicant had been transferred from Navodaya Vidyalaya (NV), Mothuka, Faridabad to Jawahar Navodaya Vidyalaya (JNV), Dantawada, Chhattisgarh on administrative ground. His wife fell ill and ultimately died due to Lungs Cancer. Keeping in view his wife's

illness, the applicant had requested for consideration of his transfer. Ultimately, the respondents modified the transfer order from Dantawada to JNV, Bulandshahar vide order dated 08.12.2011. He joined at Bulandshahar on 21.12.2011. He was provided an accommodation in Bulandshahar. However, the authorities permitted to continue the accommodation provided to him in his earlier place of posting, viz. Faridabad, upto 31.03.2012 on the condition of payment on market rent.

2. On 19.09.2012, the respondents issued a notice to the applicant stating therein that he has been continuously occupying the quarter at Faridabad, which has not been vacated till date and, therefore, he was asked to immediately vacate the quarter. The applicant vacated the quarter on 01.11.2012.

3. The case of the applicant is that, first of all, he should not be charged market rent as the respondents themselves have allowed him to retain the quarter in the painful circumstances as his wife was ill with a normal rent for the aforesaid period. Secondly, it is stated that the respondents have charged market rent from the date of his first transfer, i.e. 08.07.2011 till 01.11.2012, i.e. the date on which he actually vacated the quarter. Whereas since the letter dated 19.09.2012 was the final order asking to vacate the quarter, the rent, which has been asked, should be only from 19.09.2012 to 01.11.2012.

4. Learned counsel for the applicant also pointed out that the second transfer vide order dated 08.12.2011 was only a temporary transfer for one year and in case of temporary transfer, the employee is permitted to retain the Govt. accommodation in his last place of posting from where he has been transferred on temporary basis. Therefore, in any case, that period should be excluded.

5. The learned counsel for the applicant further states that the respondents have charged the rent/damages on retention of quarter at market rate, whereas his school is situated in Village Mothuka - a rural area, which is totally arbitrary.

6. Per contra, the learned counsel for the respondents pointed out that the applicant's conduct has not been above board. When he was transferred vide order dated 08.07.2011, first of all, he refused to accept the transfer order till 18.07.2011 and on 18.07.2011, he submitted leave application for three days. It is also pointed out by the learned counsel for the respondents that the applicant was allotted quarter at the new place of posting at Bulandshahar in January, 2012, but despite that he did not vacate the quarter allotted to him at JVC, Mothuka, Faridabad.

7. I have seen the transfer order dated 08.12.2011, wherein it has been mentioned that it is for a period of one year, after which it would be reviewed. Therefore, it is wrong to conclude that it was

only a temporary transfer. Rules regarding retention of quarter provide that an employee cannot retain two quarters, and in the present case, the employee retained two quarters for the period from January, 2012 to November, 2012, i.e. almost 11 months, which is not permitted by any authority under Rule 15 pertaining to relaxation of rules.

8. I have also gone through the facts of the case. The respondents were sympathetic to the applicant due to the fact that applicant's wife was suffering from Cancer and subsequently died and, therefore, changed the transfer order from Dantawada, Chhattisgarh to Bulandshahar, which is close to Delhi. The applicant's conduct was not above board for the following reasons:

- (i) by not accepting the transfer order;
- (ii) he went on leave; and
- (iii) he retained quarters at two places for about eleven months, when there was no such provision.

The learned counsel for the respondents has also pointed out that it was only for a limited period that the rules permit retention of a quarter in special circumstances and beyond that period, it has to be at market rent. Even in the facts and circumstances, I find that the steps taken by the respondents cannot be faulted. However, the issue of the exact amount of market rent, which has been raised by the applicant on the

ground that the school was actually not situated in an urban area but in a rural area, needs to be examined.

9. The O.A. is, therefore, disposed of with the only direction to the respondents that they would examine the issue regarding the exact amount of market rent/damages, which is applicable to JNV, Mothuka in Faridabad District, specifically whether the market rent, as applicable in cities, is applicable or there are separate rules for rural areas, and pass a reasoned and speaking order within a period of one month with a copy to the applicant. No order as to costs.

(P.K. Basu)
Member (A)

/Jyoti/