

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/286 OF 2016
Cuttack, this the 23rd day of March, 2018

CORAM
HON'BLE MR. S. K. PATTNAIK, MEMBER(J)

Sri Satya Narayan Dash, aged about 49 years, S/o. Late Joy Narayan Dash, at present working as Sub Divisional Engineer in the office of the General manager Telecom District Andaman & Nicobar, Bharat Sanchar Nigam Ltd., Portblair-744101.

...Applicant

(By the Advocate-M/s. A.K. Mohanty, P.K. Kar, D.K. Mohanty, R.C. Jena)

-VERSUS-

Union of India Represented through

1. Chairman cum Managing Director, Bharat Sanchar Nigam Ltd, Bharat Sanchar Bhawan, Harish Chandra Mathura Lane, Janpath, New Delhi-110001.
2. Chief General Manager, Bharat Sanchar Nigam Ltd, Orissa Circle, BSNL Bhawan, Near Indira Park, Bhubaneswar-751002.
3. The General Manager Telecom District, Bharat Sanchar Nigam Ltd, Balasore-756001.
4. The Chief General Manager, Telecom District, Bharat Sanchar Nigam Ltd, Andaman & Nicobar Circle, Portblair-7441001.

...Respondents

(By the Advocate- Mr. P.R. Barik)

ORDER

S. K. PATTNAIK, MEMBER (J):

In a second round litigation, applicant seeks quashing of the speaking order dated 07.01.2016 (Annexure-A/11) passed by the Chief General Manager, BSNL, Orissa Circle, Bhubaneswar, wherein it has been reflected that since the applicant was transferred from Keonjhar SSA to Andaman & Nicobar Telecom Circle he is eligible to retain the quarter at Keonjhar only and not at Balasore as per corporate office circular, therefore the overstaying at Balasore has been treated as un-authorized occupation. The applicant also seeks quashing of the order dated

18.08.2015(Annexure-A/7) passed by AGM (Admn. & Plg.) imposing damages and market rent for the period from 01.08.2013 to 30.06.2015.

2. Applicant's case in short runs as follows.

3. The applicant while working as Sub Divisional Engineer (SDE) in the office of the GMTD Balasore, was allotted one Type-IV quarters (Qr. No.IV/2) at District Telecom Office (DTO) at Balasore. Applicant was transferred to Keonjhar and was relieved from his duties from Balasore on 31.05.2013 A.N. The applicant's two daughters, Miss Tanisha Das and Miss Titiksha Das were reading in St. Vincentt School, Balasore and his wife Smt. Anita Rath was continuing her PHD in Fakir Mohan University, Balasore, Further, applicant's mother was suffering from Cancer and was undergoing treatment at Balasore. The normal permissible period for retention of staff quarters on transfer to outstations in BSNL is eight months and BSNL Corporate office circular dated 31.10.2011 (Annexure-A/3) prescribes different period for retention of staff quarters beyond permissible period at stations where sufficient quarters are vacant. According to the applicant the prescribed period for retention of quarters on transfer to other stations is for a further period of two years on (educational/medical grounds) over and above the normal permissible period of eight months. Applicant has further pleaded that before expiry of the period of two months, he had applied on 10.07.2013 (Annexure-A/4) to the GMTD Balasore for retention of the said quarters for further period of two years on the ground of his mother's treatment as well as children's education. Subsequently, due to serious illness, mother of the applicant was shifted to Apolo Hospital Bhubaneswar where she breathed her last. However, the family of the applicant continued to occupy the said quarter at Balasore due to educational compulsion of children and spouse. At no point of time the result of the representation of the applicant was communicated to him and he presumed that his prayer for retention of quarters for a period of two years beyond normal retention period of eight months was granted by the competent authority.

While the applicant was working at Keonjhar he was transferred to GMTD, BSNL, Andaman and Nicobar with effect from 31.05.2014 and joined at Andaman on 05.06.2014. Further case of the applicant is that as per Directorate of Estate O.M. dated 07.09.1998 (Annexure-A/6), the Civilian Central Government employees who are transferred and posted at Andaman and Nicobar Islands and Lakshadweep and who desire to keep their families at the last place of their posting will be eligible to retain their staff quarters allotted to them at the old station. According to the applicant he was allotted a quarter at Balasore and had not shifted his family to Keonjhar and in view of his transfer to Andaman and Nicobar, was eligible to retain his quarter at Balasore as he was not allotted any quarter at Keonjhar. The cause of action of the present case arose on 18.08.2015 (Annexure-A/7) when the office of GMTD, BSNL, Balasore issued order for deduction of house rent at panel rate from the applicant amounting to Rs.464420.00 for unauthorised occupation beyond permissible limit. The applicant submitted his representation to the Chief General Manager Telecom, BSNL, Odisha Circle, Bhubaneswar to consider his case on sympathetic and humanitarian ground and to exempt the levied panel and damage rent issued vide letter dated 18.08.2015. Further case of the applicant is that he had made a representation to the Chief General Manager Telecom, BSNL, Odisha Circle, Bhubaneswar for retention of staff quarter at Balasore and vide order dated 05.10.2015 (Annexure-A/9) the AGM (Admn.) had conveyed sanction of competent authority for retention of staff quarter at Balasore till his hard tenure period at Portblair. According to the applicant in spite of the said approval the order passed by the GMTD Balasore dated 18.08.2015 is arbitrary and contrary to their own permission, which needs to be quashed in the larger interest of justice, equity, and good conscience.

4. Respondents contested the case by filing a counter. According to the Respondents, the applicant has never submitted the letter dated 10.07.2013 to the GMTD, Balasore and the same was never received by the office of the Respondent

No.3. The respondents further pleaded that retention of quarters beyond the permissible limit, at a Station where sufficient quarters are available and where there is no waiting list is permissible. As per the said circular, where no permission is granted for retention of quarters but the occupant continues to occupy the quarter beyond the permissible period, the said period shall be treated as unauthorized and penal rent is to be charged for the period of over stay. It is further pleaded by the Respondents that Ministry of Urban Development, Government of India, CPWD, Bhubaneswar vide O.M. dated 07.09.2013, fixed the rates of damages for unauthorized occupation of Government residential accommodations at 41 times of normal license fee w.e.f. 01.10.2013. The damage rates are uniform in all cities and towns including Metros in India. According to the Respondents retention of quarters, in the absence of written request from the applicant and permission from the competent authority, beyond the permissible period is unauthorized. The applicant was served with notices to vacate the said unauthorized occupied quarters on 27.10.2014. In the circumstances, no illegality has been committed by charging penal rent for the period the applicant retained the quarter unauthorizedly.

5. Heard the Ld. Counsel for both the sides. Perused the record.

6. The spinal issue needs to be adjudicated in this case is whether the Department is justified in imposing penal/damage rent on the applicant ?

7. Before delving into the merit of this case it may be born in mind the background facts rejecting retention of allotted quarters at previous place of posting. Admittedly the applicant was transferred from Balasore to Keonjhar on 31.05.201 and just on the day of completion of one year he was again transferred to Andaman and Nicobar Islands from Keonjhar on 31.05.2014. Time to time the applicant has made representation to retain his quarter at Balasore but no order has been communicated to him about rejection of his representation or directing him to vacate the quarter at any point of time. The question of vacation of quarter at Balasore could have been

seriously considered had the Department allotted a quarter at Keonjhar. Even there is no order of the department during 2013-14 that there are other applicants in the pipeline who had applied for quarters and due to none vacation of quarter by the applicant the request could not be acceded. The ground reality is that in 2014 the applicant was transferred and was given a hard posting which he joined on 05.06.2014. As per Directorate of Estate O.M. dated 07.09.1998 (Annexure-A/6), the Civilian Central Government employees who are transferred and posted at Andaman and Nicobar Islands and Lakshadweep and who desire to keep their families at the last place of their posting will be eligible to retain their staff quarters allotted to them at the old station. Technically the Respondents say that Keonjhar was the last place of posting and not Balasore. But it may not be the lose sight of the fact that soon after transfer from Balasore to Keonjhar within one year the applicant was again transferred to Andaman and Nicobar Islands. Instead of cooperating with the employee for honoring the administrative order and not bringing any dislocation to his public functioning, are bent upon harassing him. The cause of action in the present case arose on 18.08.2015 (Annexure-A/7). When for the first time the Respondents imposed penal rent. Had this order been passed in 2013 itself, the matter would have been different and the applicant would have been compelled to vacate the quarter. Since the department did not allot a quarter at Kenonjhar asking the employee to vacate the quarter at the previous station is also arbitrary. Since admittedly, the applicant was compelled to work in his hard working place in Andaman and Nicobar Islands charging penal rent for occupation of quarter at Orissa may be in any station becomes arbitrary, irrational and illegal and is liable to be quashed. That apart since vide order dated 05.10.2015 (Annexure-A/9) the Asst. General Manager (Admin). Of the CGMT, BSNL, A&N Circle, Portblair, accorded post facto approval and permission for retention of quarter during his hard tenure period at Portblair the charging of the penal rent under Annexure-A/7 become malafide and arbitrary. The speaking order dated 07.01.2016

(Annexure-A/11) since passed without any ground reality, the same is also quashed. Before parting with this order I would like to keep on record that the department instead of encouraging employees working at hard station acting like shylock in slicing them with penal rent. Hence ordered.

8. The O.A. is allowed. The order dated 07.01.2016 (Annexure-A/11) and order dated 18.08.2015 (Annexure-A/7) being arbitrary, unjust and being passed without affording an opportunity to the applicant to vacate the quarter in 2013 or 2014 or informing him that in the event he occupies the quarter further he will be charged with penal rent, imposition of such penal rent becomes illegal and the same are quashed in the larger interest of justice and equity. Any penal rent realized in the meantime may be refunded. However the applicant shall be liable to pay usual house rent which he was paying during his stay at Balasore. No costs.

(S.K.PATTNAIK)
Member (Judl.)

K.B.