

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

O.A.No.310/01015/2016

Dated Wednesday, the 28th day of November, Two Thousand Eighteen

PRESENT

**HON'BLE MRS.JASMINE AHMED, MEMBER(J)
&
HON'BLE SHRI R.RAMANUJAM, MEMBER(A)**

P.Selvaraj,
S/o.K.Pitchai,
Sub-Divisional Engineer (Civil),
No.25, Vaibhavai Apartments,
Balaji Nagar First Street,
Royapettah, Chennai-14.

... Applicant

By Advocate M/s R.S.Anandan

Vs.

1.Union of India rep., by
Chief General Manager,
BSNL, Chennai Telephones,
No.78, Purasawakkam High Road,
Chennai 600 010.

2.The High Power House Allotment Committee,
Rep., by the General Manager (Development),
BSNL, Chennai Telephones,
No.2, Kush Kumari Road,
Nungambakkam, Chennai-34.

3.The Assistant General Manager (B&EO),
BSNL, Chennai Telephones,
No.2, Kush Kumari Road,
Nungambakkam, Chennai -34.

... Respondents

By Advocate Mr.K.Parameshwari

ORDER**(Pronounced by Hon'ble Mrs.JASMINE AHMED, Judicial Member)**

The applicant has filed this OA under Section 19 of the Administrative Tribunal's Act, 1985 seeking the following relief:

“(i)To call for the records relating to the third respondent herein in No.BP (AQ)/HAC/2015-16/2 dated 8.4.2016 issued pursuance to the order of the second respondent herein and the consequential order in No.BP(AQ)/HAC/2015-16/20 dated 28.05.2016 issued pursuance to the order of the second respondent herein and quash the same and allow the applicant to pay normal rate of rent till 15.04.2016 and pass such further or other order as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case and thus render justice.”

2. The applicant herein joined services as Junior Engineer now redesignated as Junior Telecom Officer on 15.07.1994. He was promoted to the post of Sub Divisional Engineer (Civil) on 11.08.2014. It is contended by the counsel for the applicant that the applicant was allotted with Type IV staff quarters by the BSNL at JJR Nagar BSNL Staff quarters, Chennai-14 and accordingly he was not getting any HRA. In the meantime, the applicant was transferred to Vijayawada on promotion, vide order dated 11.08.2014. It is also contended that the applicant sought permission for retention of quarter because of his children's education and also on the medical ground of his aged mother beyond the period of eight months on 06.04.2015 to the 3rd respondent which was recommended. He also contended that since no order was passed on the request for retention of quarters beyond eight months, the applicant again submitted a representation on 24.07.2015.

3. As there was no reply received by the applicant, he made a further representation to the second respondent on 15.02.2016. But the third respondent has passed an order dated 08.04.2016 directing to pay the penal rent of Rs.20,000/-(40 times of licence fee) from 11.04.2015 till the date of vacation. After receiving the impugned order dated 08.04.2016 the applicant immediately submitted an appeal to the 1st respondent wherein he has taken

the plea that the permission to retain official quarter beyond permissible period should be disposed of within a reasonable period. He also stated that a specific notice on vacation of the quarters immediately after the expiry of the permission should be issued indicating the date from which the allottee should be treated as unauthorized occupant of the quarters. He also contended that no HRA was being paid from May 2015 onwards to him or his wife. Hence, the applicant was in conception that the respondents are allowing him to retain the quarter.

4. Suddenly, without any show cause or any notice, the respondents came out with the impugned order, it is alleged. The counsel for the applicant also stated that impugned order is dated 08.04.2016 and immediately after the passing of the impugned order he has vacated the quarter on 15.04.2016 and also preferred a representation dated 21.04.2016 and the respondents in pursuance of that have passed the order dated 28.05.2016 signed on 02.06.2016 wherein in the second para it is stated as under:

"Hence, the period of occupation from 11.04.2015 to the date of vacation, i.e., 15.04.2016 is treated as unauthorized. It is hereby directed to pay the penal rent for the said period, amounting to a sum of Rs.2,43,333/- (Rupees Two Lakhs Forty Three Thousand Three Hundred and Thirty Three only) to the Accounts Officer (C&A), HQ, Flower Bazaar Telephone exchange building, No.1, N.S.C.Bose Road, Chennai 600 001 at the earliest."

The counsel for the applicant states that the respondents have come out with this order without following the proper procedure of law and arbitrarily calculated the amount of Rs.2,43,333/- as penal rent to be paid by the applicant.

5. Per contra, learned counsel for the respondents argues that this Tribunal had no jurisdiction to entertain this matter as the orders dated 08.04.2016 and 28.05.2016 were passed by Assistant General Manager (B&EO) who is also working as an Estate Officer. An order passed by the

Estate Officer cannot be assailed here before this Tribunal. She also states that the proper place of adjudication is before another court of law but not this Tribunal as it falls under The Public Premises (Eviction of Unauthorized Occupants) Act, 1971. In this regard she also contends that for anybody who is aggrieved by action against unauthorized occupation of any public premises, the redressal lies before another court of law and not before this Tribunal. She places reliance on the judgment of the Hon'ble Apex Court in the case of **UOI Vs. Rasila Ram & Ors dated 06.09.2000 reported in 2001 10 SCC 623**, and states that the Hon'ble Apex Court has decided that the eviction matter does not come under service matter and accordingly cannot be entertained by this Tribunal.

6. Learned counsel for the respondents also places reliance on the judgment of the Hon'ble Allahabad High Court in **Writ A.No.44397 of 2015 dated 14.08.2015 in the case of Satis Chandra Yadav Vs. State of UP & 7 Ors.** She also places reliance on the order passed by the Principal Bench of this Tribunal in OA 1705/2013 dated 10.07.2013 and states that this Tribunal had no jurisdiction to entertain this matter concerning eviction. The counsel for the respondents also contends that as the applicant was illegally/unauthorizedly continuing in the official accommodation after the normal period of eight months. The respondents have, therefore, imposed a penal rent upon him as the applicant was informed by the respondents about non-extension of his retention of Government accommodation. Although the applicant was formally informed of the decision by the High Powered Committee to reject his case on 08.04.2016, it is evident from the applicant's representation dated 15.02.2016, that he had already been informed orally of the decision. He still chose not to vacate the accommodation and submit a pointless representation. Accordingly, she states that imposing a penal

rent on the applicant on the basis of unauthorized occupation of a Government accommodation was nothing arbitrary or illegal. Hence, the OA is liable to be dismissed, it is contended.

7. We have considered the pleadings and submissions. Undisputedly the applicant was transferred and was retaining the Government accommodation for which he sought permission and the permission was accorded for eight months. After that it is seen that the applicant had preferred representation dated 06.04.2015 for extension of retention of the official accommodation. He pursued it by representations dated 24.07.2015 and 15.02.2016. The impugned orders were passed on 08.04.2016 and 28.05.2016. If the respondents would have informed him immediately about the non-extension of the Government quarter soon after the expiry of the normal period, the applicant could have vacated immediately and no question of payment of penal rent would have arisen. But the respondents took more than one year to take a decision on the representation.

8. A regards the contention of the counsel for the respondents that the impugned orders were passed by the Assistant General Manager who was working as the Estate officer and, therefore, could not be agitated before this Tribunal, we do not find any procedure adopted by the respondents under The Public Premises (Eviction of Unauthorized Occupants) Act, 1971 while passing the impugned orders. It is seen that straight way respondents have calculated the penal rent for the period from 11.04.2015 to 15.04.2016 and imposed the penal rent of Rs.2,43,333/- upon the applicant. If the order could only be assailed under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, the respondents ought to have followed the procedure prescribed in the Act which is not evident in the impugned order. The respondents would have given a notice/show cause to the applicant

mentioning the period of unauthorized occupation and directed him to vacate the quarter failing which proper legal procedure for eviction would be adopted against him. It is seen that no such document is available on record nor has been placed by the counsel for the respondents. Accordingly, we hold that the impugned order has not been passed under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, and, therefore, jurisdiction of this Tribunal could not be questioned.

9. It is clear that the respondents had failed to communicate a decision on the request for retention of residential accommodation beyond the permissible period of eight months as per Annexure R-2 guidelines of the respondents dated 31.10.2011 which provides for the constitution of a High Power Committee (HPC) to assist the Circle Head. It is seen that the guidelines were applicable to cases where vacant quarters were available and there was no waiting list to operate. Even in cases where there was a wait list, it is stated that if the Circle Head is personally convinced with the grounds for retention of quarter beyond the permissible period, he may forward the request with his recommendations/comments to the BSNL Corporate Office in the prescribed pro-forma. As such, we are unable to find fault with the action of the applicant seeking such permission although he had sought the same towards fag end of his normal period of retention.

10. The applicant was entitled to be communicated the outcome of his representation one way or the other within a reasonable period of say two months thereafter which was not done. On the other hand, the HPC met only on 26.02.2016 when it was decided not to recommend the case of the applicant which was then communicated to the applicant on 08.04.2016. The fact that the matter was submitted to the High Power Committee would indicate that the Circle Head was satisfied about the fairness of the request

of the applicant as in terms of the guidelines dated 31.10.2011, the matter could be placed before the HPC only if the Circle Head was personally convinced of the grounds for retention beyond the permissible period. Under such circumstances, we are of the view that no penal rent could be charged from the applicant for the period 11.04.2015 to 08.04.2016 when it was communicated to the applicant that his case had been rejected by the High Power Committee.

11. Much was made about the applicant filing a representation on 15.02.2016 from which it appeared that he was aware of the decision of the HPC even before it met on 26.02.2016. We fail to see how the applicant could have vacated his quarters based on an oral miscommunication to him that his case was rejected by the HPC. The applicant has submitted that once the decision was communicated to him, he vacated the quarters within a week on 15.04.2016. If this is correct, there would be no case to impose a penal rent as the delay occurred on the side of the respondents for no fault of the applicant.

12. In the above facts and circumstances of the case, we are satisfied that the impugned order dated 28.05.2016 imposing penal rent on the applicant is liable to be set aside. We do so and direct the respondents to charge rent for the period of retention beyond the permissible period at the same rate as would have been charged had he been permitted to retain the quarters till 15.04.2016. The OA is disposed of accordingly. No costs.

(R.RAMANUJAM)
MEMBER (A)

28.11.2018

M.T.

(JASMINE AHMED)
MEMBER (J)