

(2024) 01 CAT CK 0035

In the Central Administrative Tribunal

Case No : Original Application No. 97 Of 2023

Rakesh Kumar Maurya

APPELLANT

Vs

C.M.D., B.S.N.L, Bharat Sanchar Bhawan, H.C. Lane, Janpath,
New Delhi. & Ors.

RESPONDENT

Date of Decision : 23-01-2024

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2024) 01 CAT CK 0035

Hon'ble Judges : Dr. Sanjiv Kumar, Member (A)

Bench : Single Bench

Advocate : Dharmendra Srivastava, D.S. Shukla

Final Decision : Allowed

Judgement

Dr. Sanjiv Kumar, Member (A)

1. This original application has been filed under section 19 of Administrative Tribunals Act 1985 seeking relief to set aside the order dated 11.01.2023, demand letter dated 27.03.2023 29.03.2023 and 03.04.2023 and to direct the respondents to not cancel allotment order dated 22.03.2011 issued in favour of the applicant. Prayer has also been made for a direction to the respondents not to disturb the applicant's possession or compel him to vacate the quarter no. 3 type III and to stay the realization of arrear of the rent according to 3 times of license fee.

2. The facts of the case, in brief, are that the applicant, who is presently posted as Office Superintendent in the office of D.G.M., B.S.N.L., Gazipur, was allotted quarter no. 3 type III vide letter dated 22.03.2011 by the Divisional Engineer (Admn.), office of TDM, Gazipur after obtaining consent of the applicant vide letter dated 23.11.2010. Thereafter, the applicant took possession of the aforesaid quarter and accordingly as per rules necessary deduction of rent was started from his salary. It is contended by the applicant that he continued to

reside in the aforesaid quarter but all of sudden, the Assistant General Manager (Admn.), Office of Deputy General Manager (Pracha), B.S.N.L., Gazipur, issued order dated 11.01.2023 cancelling the allotment of quarter no. 3 Type III and ordered for recovery of three times of rent from the date of possession of the quarter. The applicant has further contended that the aforesaid quarter was allotted to him by the department as per rules and with the consent of the higher authorities he is living in the aforesaid quarter since 2011. The applicant vide his letter dated 16.01.2023 agreed to deposit three times fee for the quarter no. 3 type III but he stated that the recovery of 3 times rent since the date of possession is illegal and without basis as it was allotted by the department itself vide order dated 22.03.2022 and there is no condition for deduction of the 3 times license fee and also no any condition to vacate the aforesaid quarter on the availability of eligible person hence, the action of the respondents is illegal and the OA should be allowed.

3. Upon notice, the respondents have filed counter affidavit wherein they have denied the claim of the applicant by stating that the applicant is not entitled to avail facility of residential quarter type-III as he is entitled for the facility of residential quarter type-II, therefore, the competent authority has rightly initiated proceeding for vacation of aforesaid residential official accommodation from the applicant. The respondents contended that the BSNL Corporate Office, New Delhi issued guidelines vide letter dated 29.07.2010 in which the eligibility criteria for allotment of BSNL residential accommodation is provided and as per this letter, the applicant is not entitled to avail the facility of type III quarter as he is entitled to type II quarter. Hence, the authorities took action to get it vacated from the applicant. The respondents have further stated that the quarter allotment letter was issued to deduct rent alongwith license fees as per the department rules and they have enclosed the said rules at page 21 of the counter reply wherein following is mentioned: -

"License fee in case of allotment of higher accommodation: - Where, due to adequate availability of quarters of a particular type, a Government servant is allotted accommodation of a type higher than his entitlement, only flat rate of license fee relevant to that type of accommodation is to be charged from such allottee. However, if an allotment of a higher type is made out of turn, at their own request, despite there being no surplus quarters in that higher type, three times the normal rate of license fee is to be charged."

4. The respondents further stated that the deduction for quarter rent was not done as per the department rules due to mistake for which relevant instruction was issued on 11.01.2023. The respondents also contended that if the applicant agrees to pay three times of license fees with effect from the order dated 16.01.2023 as per the rule, then under what clause, he denies for three times license fee from beginning? Thus, the respondents have rightly taken action in accordance with existing rules of the department and there is no illegality or infirmity in their action, hence the OA should be dismissed. .

5. Rejoinder Affidavit has been filed by the applicant where he reiterated his stand in the OA. However, the applicant emphasized that the Tribunal vide order dated 09.02.2023 granted interim relief and during the pendency of the OA, the A.G.M. (Admin) by letter dated 17.02.2023 directed for recovery of three times of license fee from 01.08.2022 and also directed to allot Type-II quarter to him within three months after repairing of the type-II quarter. The applicant has vehemently contended that the type-II quarter is not in position to live any person, hence his shifting from type -III is illegal. The applicant also informed the competent authority vide letter dated 27.02.2023 stating that inspite of the interim relief granted, T.O.D Department recovered 3 times license fee for the month of February 2023 and recovered Rs. 5640/- since August 2022. It is also contended that the respondents issued letter dated 27.03.2023 and 29.03.2023 to the applicant to recover damage charge and to shift the applicant in type-II quarter no. 5 as per eligibility on 30.04.2023 positively. The applicant also contended that by letter dated 03.04.2023, D.E (Admn.) O/o D.G.M (OP), Gazipur revised the penal damage charges shown in the aforesaid letter. The applicant contended that he is not residing in the quarter in question unauthorizedly as it was allotted by the department itself in the year 2011, hence the department cannot remove him from quarter and also they cannot charge penal rent upon him and thus prayed that the relief claimed in the OA should be allowed.

6. Suppl. Affidavit has also been filed by the applicant wherein, in support of his contention, he has filed number of documents.

7. The case came up for final hearing on 08.01.2024. Shri Dharmendra Srivastava, learned counsel for the applicant and Shri D.S. Shukla, learned counsel for the respondents were present and both were heard. I have carefully gone through the entire record, and considered the rival contentions.

8. From the averments of the parties and facts on record, it is not denied that the applicant is the employee of BSNL and he is presently residing in quarter no. 3 type III, which was allotted to him vide order dated 22.03.2011 which reads following:

9. Before issuance of aforesaid allotment order, a letter was issued from the office of Divisional Engineer (Admn.), TDM, Gazipur on 23.11.2010 to the applicant seeking his consent regarding allotment of quarter no. 3 type III and thereafter, the applicant had been living there for almost a decade. The said letter is also reproduced below: -

10. But, on 11.01.2023 the respondents issued a letter mentioning therein that Shri Rakesh Kumar Maurya is not entitled for type III quarter and ordered for recovery of three times license fee from his salary. The letter dated 11.01.2023 reads following:

11. On the other hand, the respondents have filed a departmental rule regarding charging of license fee for government accommodation at page 21 of counter

reply, which is reproduced below: -

"GOVERNMENT QUARTERS

Hostel Accommodation

-GIO, Rule 74 (1) and (2).

These rates would be subject to a maximum ceiling of 10% of monthly emoluments of the allottee.

The above rates of licence fee for "Hostel Accommodation" are also applicable in respect of Transit Pool Accommodation throughout the country.

-OM, dated 28-4-2011, SR 317-B-5, FR 45-A.

Special Licence Fee under FR 45-B to be charged from allottees for short/temporary allotment of GPRA on special purposes.

-GIO 1 (b) below FR 45-A.

Revised higher rates of rent to be charged under FR 45-B for the period of overstay in the Government accommodation in respect of Ministers / Supreme Court Judges with effect from 26-2-2016.

-GIO (5), FR 45-B.

Working Girls Hostel. All lady officers without limit of emoluments will be eligible.

Licence fee in case of allotment of higher accommodation. Where, due to adequate availability of quarters of a particular type, a Government servant is allotted accommodation of a type higher than his entitlement, only flat rate of licence fee relevant to that type of accommodation is to be charged from such allottee. However, if an allotment of a higher type is made out of turn, at their own request, despite there being no surplus quarters in that higher type, three times the normal rate of licence fee is to be charged. -OMs, dated 13-10-2003, 28-10-2010 and 12-1-2012.

Allottees need not wait for clearing the licence fees dues of previous occupied accommodation in the event of allotment of higher type of accommodation allotted or on change request. GIO (1), Rule 81.

Payment of Licence Fee.- (1) When an allotment of accommodation or alternate accommodation is accepted, liability for licence fee will commence from the date of occupation or the eighth day from the date of receipt of the allotment, whichever is earlier."

12. Now, the question for my consideration is if the departmental rules are as such is claimed by the respondents at page 21 of the counter reply, then whether the action of the department after allotting the quarter vide their order dated 23.11.2010 followed by letter dated 22.03.2011 and handing it over to the applicant and charging him normal rent for all the succeeding years and suddenly

vide impugned order dated 11.01.2023 asking to charge three times of license fee from the applicant is justified ? My finding for this is in negative and, I have no doubt in my mind that the department is not justified to ask the applicant to vacate, and or to pay three times the normal rent to be paid by him retrospectively, for reasons given in the following paragraphs.

13. On 11.01.2023, another order was also issued to the applicant, which is at page 54 of OA, asking him to vacate the quarter no. 3 type III within a month and to occupy type II quarter no 1. On perusal of the letter dated 11.01.2023, it appears that before this letter, a notice was also issued to the applicant vide letter dated 01.10.2022 to the same effect. From another document at page 59 of OA, one can gather that on 31.08.2022 a letter was issued from the General Manager (Admn.) to Dy. General Manager (Operation), where it was said "ineligibly allotted type III quarter to Shri Rakesh Kumar Maurya either to be vacated in the event of non-payment of three times license fee as per rules and he may be allotted type II quarter and type III quarter may be allotted to the eligible candidate who is in waiting list.

14. From the rules filed by the respondents themselves at page 21 of counter affidavit about license fee in case of allotment of higher type of accommodation, it is mentioned that Where, due to adequate availability of quarters of a particular type, a Government servant is allotted accommodation of a type higher than his entitlement, only flat rate of license fee relevant to that type of accommodation is to be charged from such allottee. However, if an allotment of a higher type is made out of turn, at their own request, despite there being no surplus quarters in that higher type, three times the normal rate of license fee is to be charged as per the OMs dated 13.10.2003, 28.10.2010 and 12.01.2012 but the copy of these OMs are not made available by the respondents.

15. From the allotment order dated 22.03.2011, it is evident that nothing is mentioned which indicates that the allotment of higher type of quarter is offered to the applicant made out of turn on his request despite there being no surplus quarters in higher type. As the department did not impose three times of license fee at that point of time when it was allotted to him and continued to charge normal rent for more than a decade, one can infer from the letters dated 23.11.2010 and 22.03.2011 that there would have been surplus quarters in type III at that point of time, and because of which the applicant was allotted and continued for so long in that quarter, hence at present, post facto the respondents cannot be having authority to impose three times normal rent of license fee as a charge retrospectively from the date of his occupation. I have no doubt in my mind that retrospective imposition of three times license fee by the department is without authority and against the rules.

16. The respondents have also not shown any rule on record which deals with such contingency if later there are claimants for the higher type of quarters, under what circumstances it can be reclaimed from an allottee, who is not eligible for that type of quarter and what is the process for this and how notices

can be given by the department. And can the department impose penal rent prospectively and whether the department direct the occupant for shifting from higher type quarter to a lower type of eligibility as obviously shifting of house requires certain expenditure and inconvenience . In the absence of any rule being shown by either sides, based on the inherent power of the sovereign and the respondents government, in the fitness of things can it be presumed that the authorities have power to resume a higher type of quarter allotted to any of their employee which subsequently are needed for an eligible person, if the allottee is ready to pay three times penal rent, as is the case of the present applicant?

17. As the respondents have failed to show any such rule then in the fairness of things it would be inferred that the applicant by continuing legitimately in the quarter for more than a decade, getting allotted the said quarter as per rules, and charged as per rules normal rent in the past, has perfected his right to continue in this quarter till he is transferred or he superannuates from his position, or if any rule is framed laying down a clear process to vacate such occupants of higher level quarters. And as the applicant agrees to pay three times the rent prospectively, he may be charged accordingly. With these observation, I pass following order: -

"The OA is allowed setting aside the impugned orders dated 11.01.2023, 27.03.2023, 29.03.2023 and 03.04.2023. The respondents are directed to prospectively charge three times the rent as imposed by the respondents and agreed by the applicant, if the applicant chooses to continue in the higher level quarter than his entitlement or, if he chooses to vacate and shift to the quarter of his entitlement, the respondents may facilitate his transit making available to him transfer allowance amounting to 50% of his salary (basic + DA). The applicant shall give his clear choice in writing within two weeks of this order, and thereafter, in another 15 days, the authorities shall act to facilitate the implementation of his choice."

18. All associated Misc. Applications stand disposed off.

19. No order as to costs.