

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Writ Petition No.14289 of 2021

Date of Decision: 28.02.2023

S.K.Bhasin

.....Petitioner

Vs.

**Central Administrative Tribunal, Chandigarh Bench, Chandigarh &
others**

.....Respondents

**CORAM: HON'BLE MR. JUSTICE M.S.RAMACHANDRA RAO
HON'BLE MRS.JUSTICE SUKHVINDER KAUR**

Present: Mr.Karamveer Singh Banyana, Advocate for the petitioner.

Mr.K.K.Thakur, Advocate for respondents No.2 to 4.

Mr.Pankaj Gupta, Sr.Panel Counsel for respondent No.5-UOI.

M.S.RAMACHANDRA RAO, J.(ORAL)

In this writ petition, petitioner challenged order dated 20.04.2021 Annexure P-5) in OA No.060/00909/2020 passed by Central Administrative Tribunal, Chandigarh Bench.

The said Tribunal was approached by the writ petitioner seeking setting aside of order dt. 23.09.2020 passed by the Accounts Officer (Pensions) addressed to the Manager, CPPC, PNB, Sector 17-B, Chandigarh directing the latter to recover ₹29,48,340/- from the pension of the petitioner, who retired on 28.02.2006 from BSNL, and credit to the account of BSNL. The petitioner also sought setting aside of notices dt. 26.08.2019 given by the AGM (CFA-1) office of GMTD Ambala of BSNL and another similar notice issued on 19.09.2019 informing the petitioner that the petitioner is liable to pay ₹8,50,130/- for the period from 01.10.2016 to

31.10.2017, and further sum of ₹25 lacs for the period of 01.07.2017 to 31.07.2019 alongwith water charges @ ₹10/- for 34 months amounting to ₹340/-, and asking the petitioner to deposit the same within 15 days and threatening to initiate proceedings for contempt of Court if the petitioner do not do so and recover the amount with interest @ 6% p.a.

Respondent-BSNL had approached the Estate Officer, DGM Planning II BSNL, Ambala Cantt exercising the power under the Public Premises Act, 1971 for eviction of the petitioner from public premises No.C-5, Type IV, GPO Compound, part of the property survey No.269, Ambala Cantt and for recovery of damages from 1.10.2016 to 31.10.2017 amounting to ₹13,00,000/- and ₹130/- as water charges from 1.10.2016 to 31.10.2017 @ of ₹100000/- per month and ₹130/- as water charges from 1.10.2016 to 31.10.2017 @ ₹10/- p.m. respectively total amounting to ₹1300130/- with interest on account of payment of damages of unauthorised occupation and use of public premises by the petitioner, who had retired on 28.02.2006 from employment of BSNL.

An order was passed on 27.09.2018 by the Estate Officer, BSNL holding that the petitioner is entitled to be evicted from the said premisses and directing the petitioner to pay ₹1300130/- as payment of damages of unauthorised occupation including water charges from 1.10.2016 to 31.10.2017 @ Rs.100000/- per month with interest @ 6% p.a. till the date of payment to the BSNL within one month from the said order.

The petitioner assailed the same before the District Judge, Ambala in CIS Registration No.404/2018. The appeal was partly allowed

confirming the order of eviction of the petitioner from the premises in question, but directing that damages be assessed as per circular dated 30.10.2015 (Annexure P-6) which provided for a telescopic method of assessment of damages. The Civil Court held that damages cannot be assessed at a flat rate of ₹1 lac per month from the very beginning as was done by the Estate Officer.

The petitioner questioned the same in CWP No.20517 of 2019 before this Court and this Court by passing order on 26.07.2019, granted 15 days' time to the petitioner to vacate the premises from 10.08.2019.

Admittedly, the petitioner vacated the premises in question on 31.07.2019.

Thereafter, on 26.08.2019 the BSNL served a notice on the petitioner to pay ₹8,50,130/- said to be damages and water charges calculated in a telescopic manner as per the order passed by the District Judge, Ambala in CA No.404/2018.

This was followed up by another notice issued on 19.09.2019 modifying the previous demand and demanding the total amount of ₹29,50,340/- and in particular for the period from 01.07.2017 to 31.7.2019 demanding ₹1 lac per month as damages amounting to ₹25 lacs.

Thereafter, on 23.09.2020, Accounts Officer (Pension) addressed letter to Manager, CPPC, PNB, Sector 17-B, Chandigarh asking to recover the amount of ₹29,48,340/- from the pension of the petitioner, who had retired on 28.02.2006, and credit the same to the account of BSNL directly.

This was challenged by the petitioner before Central Administrative Tribunal, Chandigarh Bench, Chandigarh which dismissed the OA without granting any relief and held that calculation of damage – rent done by the BSNL was not over and above the damages as given in the office memorandum governing the field.

Assailing the same, this writ petition has been filed.

Heard both the learned counsel for the parties.

It is a matter of record that the respondent-BSNL approached the Estate Officer of BSNL for eviction of the petitioner from the premises in question invoking the provisions of the Public Premies (Eviction of unauthorised Occupants) Act, 1971 and secured the order of eviction and also order of payment of damages from 01.10.2016 to 31.10.2017.

The order passed by the Estate Officer was later modified to some extent on 16.07.2019 by the District Judge, Ambala in CA No.404 of 2018, but there is no assessment by the Estate Officer, under the said Act of damages under Section 7(2) thereof for the period from 01.11.2017 to 31.07.2019 because no such request had been made by the respondent-BSNL before the Estate Officer subsequently seeking assessment of damages.

We are of the opinion that the BSNL, being claimant of the said damages, cannot unilaterally decide for itself how much damages it is entitled to and it is for the Estate Officer to determine the same under Section 7(2) of the Act which states as under:-

“7. Power to require payment of rent or damages in respect of public premises:-

(2)“Where any person is, or has at any time been, in unauthorised occupation of any public premises, the estate officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order.”

This aspect of the matter seems to have totally escaped the attention of Central Administrative Tribunal and it could not have therefore, upheld the fixation of damages unilaterally by the BSNL without BSNL approaching the said officer for the said relief.

Accordingly, the writ petition is allowed; order dated 23.09.2020 passed by the Accounts Officer (Pension) addressed to the Manager, CPPC, PNB, Sector 17-B, Chandigarh as well as notices dated 26.08.2019 and 19.09.2019 insofar as they fix damages for the period from 01.11.2017 to 31.07.2019 are set aside; and liberty is granted to the respondent to make an appropriate application before the concerned Estate Officer for calculation of damages for use and occupation by the petitioner in accordance with Section 7(2) of the Act and proceed to recover the same against the petitioner for the said period. No further recovery be made from petitioner till there is an adjudication by the Estate Officer.

The amount already recovered from the petitioner shall be adjusted depending upon the decision of the Estate Officer in the

application to be filed by BSNL for determination of the charges for the period from 01.11.2017 to 31.07.2019.

No costs.

(M.S.Ramachandra Rao)
Judge

(Sukhvinder Kaur)
Judge

28.02.2023
Meenu

Whether speaking : Yes/No
Whether reportable : Yes/No