

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.**

OA No.21/2020

This the 03rd day of February, 2020

Shri Nooralam Khan
Son of Shri Alamkhan Pathan
Age : 61 years
Ex.Khalasi of the respondents,
Residing at Block No.231,
Roshan Park, Nr. Amarnagar,
New Yard, Vadodara 395 621. Applicant

(By Advocate : Shri M.S.Trivedi)

VERSUS

1. The General Manager
Western Railway, Churchgate
Mumbai 400 020.
2. The Divisional Railway Manager
O/o. DRM, Western Railway,
Divisional Office, Vadodara Division,
Vadodara 395 623.
3. Senior Divisional Mechanical Engineer
O/o. Sr. DME, Western Railway,
Divisional Office, Vadodara Division,
Vadodara 395 623.
4. Addl. Divisional Mechanical Engineer
O/o. ADME, Western Railway
Bajwa, Vadodara 395 621. Respondents.

O R D E R – ORAL
Per : Hon'ble Shri M.C.Verma, Member (J)

Matter is at the motion hearing stage. Learned counsel Shri M.S.Trivedi while pressing the OA submits that applicant, vide Judgment dated 24.01.2004 was convicted by the Trial Court for the

offences under Section 302 of IPC and said Judgment has since been challenged by applicant in appeal and that the appeal preferred is still pending. That after his conviction applicant, vide Order dated 07.03.2006 was dismissed from service by the Disciplinary Authority. That appeal of applicant, preferred against the Order of dismissal, was rejected on 16.5.2007 and thereafter applicant preferred Revision but Revisionary Authority, vide its order dated 16.3.2009 upheld the Order of dismissal but granted 2/3rd compassionate allowance to the applicant.

2. Learned counsel apprising backdrops facts of matter added that vide letter dated 29.3.2010, Annexure A-9, applicant was informed about recovery of damage rent, worked out of Rs.1, 85,644/, for non vacation of Railway quarter and for occupying the same from July, 2006 to September, 2009 and was directed to give consent for deduction of said amount from his arrears of compassionate allowance. That applicant never gave any consent, however the amount of Rs. 2,74,355/- was recovered. Learned counsel to buttress his submission that amount of Rs. 2, 74,355/- was recovered referred to PPO, Annexure A-7 and note endorsed therein.

3. Learned counsel referring the Orders of Disciplinary Authority, Appellate Authority and Revisionary Authority urged that the applicant on 04.10.2019 gave representation to the respondents to convert the punishment of dismissal into the punishment of

compulsory retirement and when no decision was taken on his said representation, he gave another representation, on 04.10.2019. Learned counsel invited attention of undersigned to the said representations, which is at Annexure A-1 colly. and added that respondents have not taken any decision on said representations. He requested to issue notice to respondents.

4. Considered the submissions made at Bar. Two orders, namely (i) Order of dismissal from service (inflicted by the Disciplinary Authority on 07.03.2006, upheld by the Appellate Authority on 16.5.2007 and confirmed by the Revisionary Authority on 16.3.2009) and the order of recovery of damage rent issued by the letter dated 23.10.2010 & affecting of recovery have been assailed and impugned in this OA. Prayer as has been made, verbatim runs as under :

- "(A) That the Hon'ble Tribunal be pleased to allow this petition.*
- (B) That the Hon'ble Tribunal further be pleased to hold/declare that inaction on the part of the respondents not considering and not taking any decision on applicant's request dated 29.4.2019 and dated 04.10.2019.*
- (c) That the Hon'ble Tribunal further be pleased to quash and set aside the inaction on the part of the respondents recovering an amount of Rs.2,74,355/- on the ground of unauthorized retention of Railway quarter by the applicant, from the applicant illegally, arbitrarily and contrary to the settled principles of natural justice.*
- (D) That the Hon'ble Tribunal further be pleased to direct the respondents to refund the amount of Rs.2,74,355/- with interest to the applicant by way of giving liberty to the respondents to regularize*

the period of retention of Railway quarter from July, 2006 till the decision is taken as per rules, instructions on the subject matter.

(E) Such other and further relief/s may be deemed just and proper in view of the facts and circumstances of the case may be granted.”

5. Order impugned in the OA are of year 2009 and of year 2010 and there is no application for condonation of delay, much-less having convincing reason for delay. Learned counsel vehemently has also argued that applicant on 04.10.2019 & on 04.10.2019 gave representation to the respondents to convert the punishment of dismissal into punishment of compulsory retirement but no decision was taken on his and respondent at least may be directed to take decision on his representations. Said representations, which are at Annexure A-1 colly. merely, are mercy appeal. How a direction to decide representation in form of mercy appeal can be given when after Order of dismissal from service inflicted by the Disciplinary had been upheld by the Appellate Authority and had also been confirmed by the Revisionary Authority also , and that too before more than ten year ago.

6. Having found no justifiable ground to entertain the OA and being not maintainable on the ground of delay and laches also, the OA is dismissed.

**(M.C.Verma)
Member (J)**

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