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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A. NO.1189/2001

Wednesday the 23rd day of October, 2002

HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (A)  
HON'BLE MR. SHANKER RAJU, MEMBER (J)

Shri Kamal Saini  
Clerk,  
P-14 Section,  
Divisional Railway Manager Office  
Northern Railway  
New Delhi

(By Advocate : Shri M.K. Bhardwaj)

... Applicant

Versus

Union of India through

1. The General Manager,  
Northern Railway,  
Baroda House, New Delhi
2. The Divisional Railway Manager,  
Delhi Division, Northern Railway  
Divisional Office,  
Pahar Ganj, New Delhi
3. The Addl. Divisional Railway Manager,  
Delhi Division, Northern Railway  
Divisional Office  
Pahar Ganj, New Delhi
4. The Divisional Personal Officer,  
Delhi Division, Northern Railway  
Divisional Office,  
Pahar Ganj, New Delhi
5. The Enquiry Officer,  
Asstt. Personal Officer (E),  
Northern Railway,  
New Delhi


(By Advocate : Shri V.S.R. Krishna)

... Respondents

O R D E R (Oral)

By Govindan S. Tampi, Member (A):

Aggrieved by the orders dated 31.3.2000 and 23.4.2001 passed by the respondents removing him from service and also ordering recovery at the rate of Rs.500/- per month from his emoluments, the applicant has come




before the Tribunal.

2. Heard S/Shri M.K. Bhardwaj for the applicant and V.S.R. Krishna for the respondents.

3. The applicant, who joined as a Clerk with the Railways, was allotted to Delhi Division in 1980. The applicant's wife also working with the Railways had got Railway accommodation allotted to her father regularised in her name. The applicant's father himself was a Railway employee, having got accommodation in 1955 with whom the applicant was staying earlier even after joining the Railways but he had not received any HRA. In 1984 after his father's death he started getting HRA from the Railways and no objection of any sort was raised against the fact of his wife being employed or having got an accommodation from the Railways. The applicant used to make occasional visits to his father-in-law's house and this could not be considered as a misconduct as the respondents have sought to make. From 1984 to 1997 the respondents had recovered Rs.500/- per month from his pay, which itself was a punishment and, therefore, they could not have charge sheeted him as it amounted to double jeopardy. Still the respondents did the same by SF-5 dated 20.3.1998. According to the applicant the recovery of HRA and also penal proceedings against him which resulted in his removal from service was improper. Hence the OA.

4. The grounds raised in this OA are that -



(3)

- (a) the Divisional Personnel Officer who imposed the penalty was not competent to do so,
- (b) as the Railway accommodation which stood in the name of his father-in-law had been regularised in his wife's name before his own marriage, the applicant could not have been blamed,
- (c) The applicant had not received any HRA while he was staying with his father who himself was a Railway employee entitled to Railway accommodation. The applicant himself has never represented the release of HRA to him. The applicant and his wife were staying in separate houses. The disciplinary and appellate orders were totally non-speaking and harsh.

5. During the oral submission, Shri M.K. Bhardwaj, learned counsel for the applicant prayed that in view of the various grounds raised in the OA, the same should be admitted and the extreme and harsh penalty of removal from service imposed on him should be set aside with full consequential reliefs.

6. In the reply filed on behalf of respondents, duly reiterated by Shri V.S.R. Krishna, learned counsel, it is pointed out that the disciplinary proceedings had been initiated, gone through and culminated in the imposition of the penalty of removal of the applicant in a manner established in law. It has been proved that the applicant was in receipt of HRA in violation of the rules when he

(4)

was staying with his wife who was herself an allottee of Railway accommodation. The applicant could not have drawn the same and, therefore, the disciplinary proceedings were called for. The recovery of the HRA wrongly paid at the rate of Rs.500/- per month was not to be constituted as a penalty as proceedings were being separately drawn otherwise. The applicant's plea that the Divisional Personnel Officer was not competent to proceed against the applicant was totally improper. The allegation that initiating proceedings for the misconduct after starting recovery amounted to double jeopardy was also not correct as the action of the respondents in recovering the amount wrongly paid, was legal and conducted in a proper manner. The same did not warrant any interference from the Tribunal, is what Shri Krishna says.

7. We have carefully perused the records of the case and considered in depth the rival contentions. The impugned order dated 31.3.2000 has very clearly pointed out that the applicant was in possession of a Railway accommodation and had still drawn HRA was established. Therefore, the proceedings were initiated and at the end of which the extreme penalty of removal from service was imposed on him. This order of the disciplinary authority has been upheld by the appellate authority as receiving HRA when one avails himself of the facility of staying in the accommodation allotted to one's wife definitely amounts to improper and incorrect action unbecoming of a Government servant and also points to lack of integrity.

The respondents' action in dealing with the applicant in disciplinary proceedings cannot be called in question.

*in addition to ordering recovery of HRA wrongly paid*

However, we find for this offence having drawn/paid HRA while staying in a Govt. accommodation allotted to his wife, the respondents have imposed on him the extreme penalty of removal from service. This, in our considered view, is highly un-questionable and is far out in proportion to the gravity of the misconduct. This decision, shocks our judicial conscious as brought out in the case of B.C. Chaturvedi vs. Union of India & Others (JT 1995 (8) SC 65). At the same time, we do not intend to substitute our opinion for the opinion/judgement of the executives. Therefore, we would only suggest to them that the penalty imposed on the applicant is too harsh and dis-proportionate to the gravity of the offence to escape our opprobrium and hence remedial action is called for.

8. In the above view of the matter the OA succeeds, but partially and accordingly disposed of. The impugned orders dated 31.3.2000 and 23.4.2001 are quashed and set aside and the matter is remanded to the disciplinary authority with the direction to consider the imposition of any penalty less severe than removal from service. The applicant shall be reinstated in service. The regularisation of the period of service between the date of his removal from service and ultimate reinstatement in terms of this order, shall be determined by the respondents in accordance with law, at the culmination of the disciplinary proceedings, ordered de novo now. This order does not in any way disturb the respondents' action in recovering the HRA wrongly paid, which was correct.

No costs.

S. Raju  
(SHANKER RAJU)  
Member (J)

(GOVINDAN S. TAMPI)  
Member (A)

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