

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1565/1999

New Delhi, this ^{13th}~~23rd~~ day of February, 2001

Hon'ble Shri Kuldip Singh, Member(J)
Hon'ble Shri M.P. Singh, Member(A)

Ved Prakash Aggarwal
B-7/204, Sector IV
Rohini, Delhi-85

.. Applicant

(By Ms. Raman Oberoi, Advocate)

versus

Union of India, through

1. Defence Secretary
South Block, DHQ PO
New Delhi

2. Chief Administrative Officer & JS(Trg)
Ministry of Defence
C-II, Hutments
South Block, DHQ PO, New Delhi .. Respondents

(By Shri R.V. Sinha with Shri R.N.Singh, Advocates)

ORDER(oral)

By Shri Kuldip Singh

The applicant was proceeded against in a departmental enquiry (DE, for short) on the charge that he unauthorisedly sublet the government accommodation No.736/S-III, R.K.Puram allotted to him and he acted in a manner unbecoming of a government servant and thereby violated the provisions of Rule 3(1)(iii) of CCS (Conduct) Rules, 1964. An enquiry was conducted against him and the Enquiry Officer (EO) in his findings held the article of charge stands proved and the applicant acted in a manner unbecoming of a government servant. The disciplinary authority passed an order inflicting penalty of dismissal upon the applicant. Applicant filed a review and the penalty of dismissal was modified

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to the extent of reduction of pay by three stages from Rs.12600 to Rs.11625 in the time scale of pay of Rs.1000-15200 for a period of two years with further direction that the applicant will not earn the increments of pay during the period of reduction and that on the expiry of period, the reduction will have the effect of postponing the future increments of pay, vide order dated 2.4.1998. Thereafter, another order was passed on 7.7.98 to the effect that the period between the date of dismissal and date of reinstatement be treated as duty for the purposes of pension only and that pay and allowances for the said period will not be allowed to him.

2. The applicant has assailed the impugned orders on the ground that subletting was not a misconduct as on 24.5.96 when the charge-sheet for DE was issued to him, while OM clarifying that the same would amount to misconduct was issued only on 31.12.97. Since these instructions did not exist on the date when DE was initiated against the applicant, sub-letting prior to that date would not amount to misconduct. In view of this the enquiry is vitiated. The next ground taken by the applicant is that the punishment is too harsh.

3. During the course of the argument, learned counsel of the applicant has taken the plea that the finding arrived at by the EO is ^{based on} ~~of~~ "no evidence." The material witnesses were not produced during the enquiry. EO has relied upon the hearsay evidence and the inspection report of the Dte. of Estates. Also it was not

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established that the entire quarter was sublet as the statement of Ms. Neeru Sharma is vague. The learned counsel for the applicant has relied upon the judgement of Ernakulam Bench of this Tribunal in the case of P. Moosa Vs. UOI 1990(1)(CAT) 701 wherein it was held that sub-letting of railway quarters cannot be construed as a clear case of misconduct; in such a case, it is open to the respondents to initiate proceedings against the erring railway servant under PPE Act, 1971. The counsel also relied upon the judgements in Hardwari Lal Vs. State of UP & Ors. (1999) 8 SCC 582 and Kuldeep Singh Vs. The Commissioner of Police & Ors. JT 1998(8) SC 603 to contend that the enquiry is vitiated and it is a case of "no evidence."

4. We have considered this aspect. Here we have to consider the question whether it is a case of hearsay evidence or no evidence or some evidence was available to the EO to arrive at a finding whether the government servant has unauthorisedly sublet the house. On going through the enquiry report at page 37 of the paper book, we find that in this case the EO has relied upon various documents which have been produced before him by the department. One such document marked as D1 which was demanded by the charged officer (applicant) as an additional document and obtained from the Dte. of Estates, it is found that the house was fully sublet during the inspection on 21.8.1995. The applicant himself has ~~demanded the document but could not challenge his stand~~ ^{demanded the document but could not challenge his stand} maintained this stand. He did not produce any documentary evidence in support of his stand. Further during the course of mandatory questions before EO the applicant replied that the entire episode had

taken a period of 3 to 4 years and that he did not report the matter to office of JS and CAO for fear of disciplinary action and defamation among colleagues and subordinates. It was expected of the applicant that he would report such a vital issue like grabbing of a duly allotted government accommodation by a third party to administration which was not apparently done by him during the long span of 4 years. In the circumstances, the EO had drawn a conclusion that the whole house was sub-let. (11)

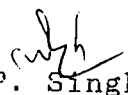
5. Applicant has examined two witnesses in the enquiry namely Shri Ram Ratan and Shri R.K. Gupta. Shri Ram Ratan stated that he found someone else sitting in the house of the applicant. The second witness Shri R.K. Gupta stated that the applicant had given the key of his house to a person for white washing. The fact remains that the house was forcibly occupied by some other person but the applicant did not go to higher police authorities for seeking their intervention in the matter. The question now arises whether the house was not sub-let by the applicant and the finding of the EO is vitiated or perverse. Our answer to this is NO. Further it is stated that strict rule of evidence in domestic enquiry is not necessary. Pre-ponderance of probability is the rule. The EO has concluded that the applicant had sublet the house allotted to him based on the evidence and material available before him and thus applicant acted in a manner unbecoming of a government servant.


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6. In so far as the case of P.Moosa (supra) is concerned, the Ernakulam Bench has stated that subletting of railway quarter is not a clear case of misconduct. A perusal of the file shows that a circular to this effect was issued by the DoPT in March, 1986 itself much prior the DE against the applicant. In this circular, it is specifically stipulated that the disciplinary authority after considering the facts of the case may take suitable departmental disciplinary action under the disciplinary rules for imposition of a suitable penalty on grounds of unbecoming conduct of the government employee involving violation of Rule 3(1)(iii) of the CCS(Conduct) Rules, 1964 or any other similar rule governing them. This circular was not made available before the Ernakulam Bench in the case of Moosa (supra). To that extent, the reliance of the applicant on this judgement does not render him any assistance.

7. In view of the above position, the OA is without any merit and the same is dismissed. No costs.


(M.P. Singh)
Member(A)


(Kuldip Singh)
Member(J)

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