

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A No. 1585/1999
T.A No.

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Date of Decision 26-2-2001

J.P.Nath

..Petitioner

Sh.G.D.Bhandari

..Advocate for the Petitioner(s)

Versus

UOI & Ors.

..Respondent

Sh.R.L.Dhawan

..Advocate for the Respondents

Coram:-

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman(J)

Hon'ble Shri Govindan S.Tampi, Member(A)

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal ?. No

Lakshmi Swaminathan

(Smt.Lakshmi Swaminathan)
Vice Chairman (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.1585/1999

New Delhi this the 26th day of February, 2001

Hon'ble Smt.Lakshmi Swaminathan,Vice Chairman(J)
Hon'ble Shri Govindan S.Tampi, Member(A)

J.P.Nath,
S/o Sh.Sukhan Nath
Retd.IOW(MG) N.Rly.
Delhi Sarai Rohila
C/O Shri Ram Chander,
A-4/100,Nand Nagri,Delhi-93

..Applicant

(By Advocate Shri G.D.Bhandari)

VERSUS

Union of India through

- 1.The General Manager,
Northern Railway/Baroda House,
New Delhi.
- 2.Divisional Railway Manager,
Northern Railway, Bikaner.
- 3.Joint Director Estt.(D&A)
Ministry of Railways/Railway Board,
Rail Bhawan,New Delhi.
- 4.The Secretary,
U.P.S.C Shahjahan Road,
New Delhi.

..Respondents

(By Advocate Shri R.L. Dhawan)

O R D E R (ORAL)

Hon'ble Smt.Lakshmi Swaminathan,Vice Chairman(J):

The applicant has impugned the order dated 22.3.1999 passed by the respondents on behalf of the President, imposing a penalty of 20 % cut in pension otherwise admissible to him for a period of two years. This order has been passed after the applicant had retired from service w.e.f. 31.5.1994 under the provisions of Rule 9 of the Railway Servants (Pension) Rules,1993.

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2. Shri G.D.Bhandari, learned counsel has drawn our attention to the fact that in the previous application filed by the applicant (OA 1736/1993), the relevant facts have been noted, including the fact that the Railway quarter which was earlier allotted to him had been cancelled by the Respondents' order dated 16.8.1993. We also note that three elements of the charges issued by the respondents against the applicant as the basis for issuing the impugned cancellation order dated 16.8.1993, which have been impugned in the present OA are the same, namely, that he had allowed his married son to share his Railway quarter unauthorisedly ;(ii) construction of jhuggis along the wall of his quarter, and (iii) collection of illegal money from the jhuggi occupants. The Memo. of charges were issued to the applicant on 10/9/1993. The Tribunal, while passing the order dated 28.10.1994 was aware that the charge-sheet against the applicant on the aforesaid charges was issued. It was also noted in Paragraph 5 of that order, on the submissions made by the learned counsel for the parties, that a letter dated 22.8.1994 had been issued from the Divisional Superintending Engineer, Bikaner, Northern Railway addressed to the Assistant Engineer (Northern Railway), Delhi, informing him that "the competent authority had permitted the applicant to retain the said quarter for a period of four months from 1.6.1994 on normal rent." Shri Bhandari, learned counsel has argued that in view of this authorisation, the impugned order cancelling the allotment of the quarter must be held to be null and void.

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3. Paragraph 7 of the Tribunal's order in OA 1736/1993 reads as follows:-

This O.A. to quash the respondents' order dated 16.8.1993, whereby the allotment of Quarter No. T-II/D, Pul Mithai had been cancelled and the applicant had been ordered to vacate the same, was filed on 24.8.1993. Interim orders restraining the respondents from implementing the impugned order dated 16.8.1993, were passed on 26.8.1993 which were extended from time to time and eventually made absolute on 27.10.1993. Meanwhile, the applicant has superannuated on 31.5.1994 and the period of four months from 1.6.1994 to 30.9.1994 during which he was permitted to retain the premises on normal rent has also expired. Under the circumstances, nothing survives in this application and the same is dismissed with this observation that while enquiring into the charge against the applicant under Rule 9(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, the respondents will keep in view the contents of their own letter dated 22.8.1994, which has not been controverted during hearing, allowing the applicant to retain the quarter beyond four months after his retirement, on normal rent."

4. The applicant had filed another OA 2048/97 which was disposed of by order dated 11.11.1998 (Annexure R.2 to the counter affidavit). Shri R.L.Dhawan, learned counsel has submitted that in this application, the main grievance of the applicant was noted by the Tribunal itself that the aforesaid disciplinary proceedings initiated against the applicant on 10/9/1993 were still pending against him and not finalised although the applicant had retired from service w.e.f. 31.5.1994. After hearing the learned counsel for the parties a direction was given

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to the respondents to conclude and finalise the disciplinary proceedings and pass a final order within a period of eight months from that date i.e.11.11.1998.

5. Shri R.L.Dhawan, learned counsel has submitted that the present impugned order has been passed within the time granted by the Tribunal in OA 2048/1997, after considering all the relevant documents, including the letter dated 22.8.1994 referred to in OA 1736/1993. He has submitted that in the representation made by the applicant (copy placed at Ann.A.39) he has mentioned the relevant facts, namely, that he had vacated the Govt. quarter in question on 22.11.1994 after his retirement on 31.5.1994. Permission was granted to him to retain the said quarter on payment of normal rent for a period of four months from 1.6.1994 to 30.9.1994 by the respondents' letter, which he states that the letter was dated 22.8.1994. He has further submitted that the contents of the letter dated 22.8.1994 have been referred to in the Inquiry Officer's report as well as the Tribunal's order in OA 1736/1993. Accordingly Shri R.L.Dhawan, learned counsel submits that there is no infirmity in the impugned order dated 22.3.1999.

6. Shri G.D.Bhandari, learned counsel for the applicant, on the other hand submits that when the respondents have relied on the cancellation of the allotment of the quarter by their letter dated 16.8.1993, the respondents could not at the same time permit the applicant to continue staying in the Railway Quarter on payment of normal rent for four more months

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from 1.6.1994 to 30.9.1994 after his superannuation on 31.5.1994. He has also submitted that in the impugned order dated 22.3.1999, the competent authority has failed to take into account the observations of the Tribunal in its order dated 22.8.1994, that is to keep in view the contents of their own letter dated 22.8.1994. Apart from this, learned counsel has also assailed the validity of the penalty order on a number of other grounds. He has submitted that the President himself has dropped the first charge, namely, that the Railway quarter in question had been occupied by the applicant's married son, daughter-in-law and grand children which has been directed to be disregarded. He has submitted that in the letter written by the then Hon'ble Minister of Surface Transport to the Hon'ble Minister of Railways dated 8.9.1992, a reference has been made to the fact that the Jhuggis were in existence" for more than 15 years or so", that is much prior to the applicant's occupation of the Railway quarter in 1983. He has, therefore, submitted that the applicant could not be charged for allowing the Jhuggis to be constructed adjacent to his railway quarter, as according to him, they existed long before that. This has been controverted by Shri R.L.Dhawan, learned counsel who has relied on the findings of the Inquiry Officer in his report that the Jhuggis have been constructed at the instance of the applicant.

7. During the hearing, Shri G.D.Bhandari, learned counsel has also submitted that the applicant's gratuity and other retiral benefits due

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to him under the Rules have not been released so far. We find that this has not been specifically mentioned in Paragraph 8 of the O.A, wherein the main relief of the applicant is to set aside the impugned order dated 22.8.1999 and any other reliefs as deemed fit by the Tribunal.

8. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

9. The relevant portion of the impugned order dated 22.3.1999 reads as follows:-

"The President is of the opinion that first part of the charge relating to occupation of quarter by married son, daughter in law and grand children of Sh.J.P.Nath needs to be disregarded because this charge has only been partly proved as there is documentary evidence that charged officer's son was away residing at Bijnor. As far as articles 2 and 3, relating to sub-letting of the quarter and of charging rent for occupation of jhuggies constructed adjacent to his quarter are concerned, the President has held that these are fully proved on the basis of statements of occupants of quarter and jhuggies. The President has not accepted Sh.Nath's defence and has observed that points put forth by Sh.Nath rely primarily on procedural aspects viz. that he was not present during inspection of his premises that Vigilance team was inimically disposed towards him and there should have been a different Inquiry Officer to eliminate bias and that several material witnesses were not examined. The President has held that there are plenty of witnesses in support of charges since inspection was carried out by a number of people collectively and there is nothing to substantiate Charged Officer plea of any bias against him or that proceedings were, in any way flawed. The President is therefore, of opinion that charges proved against Sh.Nath constitute a grave misconduct on his part. The President has decided to impose penalty of 20% cut in.

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pension otherwise admissible to Sh.Nath for a period of 2 years. This order of the President is hereby conveyed."

10. The above order has been passed after consultation of the UPSC as required under the Rules. There is no reference made in the impugned order whatsoever that the competent authority has taken into account the Tribunal's order dated 28.10.1994 in OA 1736/1993 or their own letter dated 22.8.1994. No doubt, Shri R.L.Dhawan, learned counsel had tried to show that these relevant documents were placed before the competent authority when the applicant had made his representation. Even if that is so, considering the specific order of the Tribunal dated 22.8.1994, the competent authority ought to have referred to the respondents letter dated 22.8.1994 which had admittedly granted permission to the applicant to retain the Railway quarter in question for a period of four months on payment of normal rent after his date of superannuation. This facility is granted by way of a concession to a Railway servant/ Govt.servant retiring on superannuation in normal circumstances. In this case, according to the respondents, they had issued the letter cancelling the allotment of the Railway quarter to the applicant on 16.9.1993. By virtue of the interim order passed by the Tribunal on 22.10.1993, the applicant was allowed to continue in the house till further orders. This has apparently continued till OA 1736/1993 was disposed of. Learned counsel for the respondents has pleaded that he may be given further time to bring the

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relevant records to show that the disciplinary authority, while passing the impugned penalty order, had taken into account the directions of the Tribunal. In the facts and circumstances of the case and in the interest of justice we are not inclined to grant any further time to the respondents for this purpose because whatever documents they are relying upon should have been kept available with them to be produced at the time of final hearing. This case is listed at serial No.4 today in the Regular hearing list, under the heading "matters will be taken up serially and no adjournment will be granted".

11. Shri R.L.Dhawan, learned counsel further contends that the Tribunal's order only required the respondents to keep in view the aforesaid order dated 22.8.1994, which had been done by the Inquiry Officer and, therefore, there was no further obligation on the part of the disciplinary authority to consider the matter further. We are unable to agree with this contention because what appears from the facts is that on the one hand, they have cancelled the allotment of the Railway quarter to the applicant by the impugned order dated 16.8.1993 on the aforesaid three charges; on the other hand they have acceded to his request for retention of the same Railway quarter after his superannuation, and that too on payment of normal rent, for a period of four months under the Rules. We are, therefore, unable to agree that the competent authority has taken into accounts the relevant facts

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of the case or acted in accordance with law or followed the observations of the Tribunal in its order dated 28.10.1994 in OA 1736/1993. In the normal course, we would have remanded the matter to the respondents to re-consider the matter in terms of the Tribunal's order in the aforesaid case. However, considering the fact that the applicant has already retired from service w.e.f. 31.5.1994 and he had earlier filed OA 2048/1997 in which it was ordered to conclude the pending departmental proceedings which remained pending for more than 5 years after he had retired, we are not inclined to do so. The respondents had sufficient time to consider the relevant facts, the evidence, including the relevant documents and pass a reasoned and speaking order, which they have failed to do. The impugned order does not refer to the respondents earlier letter dated 22.8.1994 in any way and, therefore, it does not show any application of mind on the issues referred to and discussed above.

12. In the result, taking into account the particular facts and circumstances of the case, the impugned orders are quashed and set aside; The applicant shall be entitled to the consequential benefits, including the retiral benefits in accordance with law and relevant Rules within two months from the date of receipt of a copy of this order.

No order as to costs.

(Govindan S. Tampi)
Member (A)

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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