

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

(13)

O.A./~~XXXX~~ No. 636 of 1995 Decided on: 18/2/92

Shri Liaquat AliApplicant(s)

(By Shri S.K. Sawhney Advocate)

Versus

U.O.I. & OthersRespondent(s)

(By Shri R.L. Dhawan Advocate)

CORAM:

THE HON'BLE SHRI DR. JOSE P. VERGHESE, VICE CHAIRMAN(J)

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter *13*
2. Whether to be circulated to the other Benches of the Tribunal?

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(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 636 of 1995

NEW DELHI THIS THE 18th DAY OF DECEMBER, 1997

HON'BLE DR. JOSE P. VERGHESE, VICE CHAIRMAN (J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Shri Liaquat Ali
S/o Shri Mahboob Ali,
R/o Block 21, Quarter No.191,
Kalyanpuri,
Delhi-110 091.

..Applicant

By Advocate Shri S.K. Sawhney.

Versus

1. Union of India through
General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Assistant Engineer,
Northern Railway,
Panipat.
3. Divisional Superintending Engineer (I),
Northern Railway,
D.R.M. Office,
New Delhi.

... Respondents

By Advocate Shri R.L. Dhawan

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

This application is directed against the order of penalty of removal from service. The above penalty was imposed on the applicant in pursuance of the disciplinary proceedings initiated against him. The applicant was charged that he forcibly and unauthorisedly occupied one unit Type-I Raiwaly Quarter at Sonepat which was still under construction and despite a notice to him, he did not vacate the quarter and with the result, the construction of the quarter by the contractor was also delayed.

2. The main grounds taken by the applicant were that

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the procedure laid down in the Railway Servants (Discipline & Appeal) Rules, 1968 were not complied with and that no show cause notice was also issued to the applicant after submission of the findings of the Enquiry Officer. It is also contended that the disciplinary authority had passed the impugned orders in breach of Rule 10(1) and 10(4) of the Discipline and Appeal Rules which were not supported by any evidence on record and also that the occupation of quarter unauthorisedly would not amount to a misconduct and no disciplinary action could be taken against him on this account. On the averment that it is not a misconduct, the applicant also relies on a decision of this Tribunal in Hamender Nath Mishra Vs. U.O.I. & Another, SLJ 1991(2) page 479. The applicant also mentions that the penalty awarded was too severe and was not commensurate with the charge. It is also stated by the applicant that his appeal against the order was received by the respondents on 29.4.1994 but was not disposed of.

3. In the counter-reply, the respondents have denied the allegations of the applicant. They have pointed out that the applicant himself had admitted that he forcibly occupied the Railway quarter at Sonepat and, therefore, he was served with the memo of charges. All the relevant documents were duly received by the defence assistant on behalf of the applicant. It is stated that the enquiry report was sent to his quarter by the letter dated 29.9.95 which was received back undelivered with the remarks of the postal authorities. They have also submitted that the application is not maintainable under Section 20 of the Act. The enquiry report was also again furnished to the applicant vide their letter dated 29.9.95 and

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he was given necessary opportunity to submit his representation to enable his appeal being considerd by the appellate authority.

4. When the respondents took a preliminary objection that the application was premature as the appeal was stated to be pending, this was duly taken into account by our order dated 2.5.1996, the preliminary objection was overruled and the application was admitted.

5. We have heard the learned counsel for the parties and have perused the record.

6. We find that the applicant himself had admitted that he had occupied the quarter on his own and that he was forced to do so under some compelling circumstances. The circumstances, as explained by him in para 4.4. of the application, were that in those days he under threat of eviction of his private accommodation by the landlord and, therefore, he sought refuge in one of the the quarters under the respondents. The respondents have averred that the quarter in question was not completed and was actually under construction and was not allotted to the applicant at all and this is not claimed by the applicant. Thus, it is an admitted position that quarter under construction was occupied by the applicant unauthorisedly, for which he was served which a charge-sheet. The applicant contends that his act for which he was charged, did not constitute a "misconduct" and he relies on several decisions in this behalf. In the case of H.N. Mishra (Supra), relied upon by the counsel for the applicant what was considered was non-vacation of quarter. The relevant portion of para 8 and para 9 are quoted as under:-

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.....In the circumstances we find that since the disciplinary proceedings were not being done on account of actual misconduct or for lack of integrity and the orders passed by the disciplinary authority and the appellate authority show only the anxiety to get the eviction of the quarter and obtain the possession of the same, the orders cannot be supported and have to be quashed. When the removal from quarters could be done by other procedures, the procedures laid down for such eviction in the normal course, the action of the respondents cannot justify itself by the ends of the justice."

"9. We hardly see any reason to take a different view from the views referred to the above. If it is impermissible to initiate disciplinary proceedings against a government servant for unauthorised occupation instead of taking recourse into the eviction proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, it is even more impermissible to suspend him as a short-cut for accomplishing eviction, which is what has been admittedly sought to be done in this case. On this ground also, the impugned orders of suspension is liable to be quashed".

7. In the same case, the Tribunal in para 10 held " As we have already pointed out, that the eviction of the applicant from the quarters on the ground of unauthorised occupation has to be done in accordance with the law". Thus, this decision is not directly on the point whether unauthorised occupation itself was a misconduct. No ruling has been cited on this point.

8. We consider that what is to be seen is that whether unauthorisedly occupying a quarter by a Government servant, amounts to a conduct unbecoming of a Government servant. We are of the considered view that any Government servant has to subject himself to rules and procedure and in the matter of Govt. accommodation, can occupy a Govt. accommodation only on his being properly authorised by the competent authority to



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occupy the same. Any other unilateral act of the Government servant without any authority for whatever reasons, has to be construed as an act unbecoming of a Government servant and has, therefore, to be treated as a misconduct. If every Government servant takes law in his own hands and goes about occupying any vacant quarter, then this will give rise to total indiscipline, nullifying the very need for formulating rule and procedure for allotment of Government accommodation. In view of this, we have to reject the contention of the applicant that unauthorised occupation was not a misconduct.

9. We have, however, carefully perused the record in regard to the disciplinary proceedings placed before us. From this, it is seen that the applicant was proceeded against under the relevant provisions of Railway Servants (Discipline & Appeal) Rules, 1968 and on the basis of the enquiry conducted by the Enquiry Officer. The findings of the Enquiry Officer were also furnished to the applicant and he was asked to give his defence to the Divisional Superintending Engineer. The reply to the Memorandum of the charge dated 15.9.1992 SF-5 and the Enquiry Officer's report dated 13.12.1993 were seen to have been considered by the disciplinary authority before issuing the impugned order of penalty, Annexure A-1. It is not clear from these proceedings that whether the applicant had filed any defence statement as directed by the impugned order dated 29.9.1995 at Annexure R-1. However, from the impugned order it appears to us that some representation by him has been considered by the disciplinary authority. However, the disciplinary authority passed the following orders:-

" I do not find your representation to be satisfactory due to the following reasons:-

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.....As Annexure A.1 and A.2....."

10. In the Annexures A-1 and A-2 we find that the disciplinary authority had simply reproduced the Articles of Charge and statement of imputations. The reasons cannot be the same as the Articles of Charge and statements of imputations. This, in our view, does not constitute a reasoned order passed by the disciplinary authority after the conclusion of the enquiry and after taking into account the representation against the findings of the Enquiry Officer. On this ground, we hold that the disciplinary proceedings is vitiated by the manner in which the impugned orders have been passed without its being a reasoned order and without application of mind by the disciplinary authority, with reference to the findings of the Enquiry Officer and also with reference to the defence afforded by the delinquent official on the aforesaid findings.

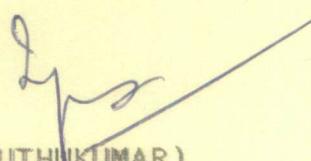
11. In view of the above, the impugned order cannot be sustained and has to be quashed and accordingly the order is quashed. We direct the respondents to reinstate the applicant forthwith. It is open to the respondents to pass fresh orders including any consequential orders on the manner of treating the period from the date of removal to the date of reinstatement in accordance with law, within a period of two months from the date of receipt of a copy of this order. We make it clear that in passing such an order, our other observations on the contentions raised by the applicant, will not preclude the respondents from passing a reasoned and

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speaking order.

12. With the above directions, the application is disposed of. No order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)


(DR. JOSE P. VERGHESE)
VICE CHAIRMAN

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