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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.120/1996

New Delhi, this 8th day of October, 1999

Hon'ble Shri A.V. Haridasan, VC(J)
Hon'ble Shri S.P.Biswas, Member(A)

K.S.Tyagi
Station Superintendent .. Applicant
Northern Railway, Tilrath
(By Shri S.K. Gupta, Advocate)

versus

Union of India, through

1. General Manager
Northern Railway, New Delhi
2. Chief Operating Manager
Northern Railway, New Delhi
3. Divisional Rail Manager
Moradabad Division, Moradabad
4. Senior Divisional Operations Manager
Northern Railway, Moradabad .. Respondents

(By Shri B.S. Jain, Advocate)

ORDER(oral)

Hon'ble Shri S.P. Biswas

The applicant, a Station Superintendent under the Respondent-Railway, has challenged Annexure A-1 to A-4 orders. By A-1, the Chief Operating Manager has communicated that the punishment awarded to the applicant is adequate and no reduction is possible. This was at the level of the disciplinary authority (DA, for short). By A-2, the appellate authority has ~~ordered~~ reduction in lower scale for a period of 3 years to one year. By A-3, the Senior DOM has imposed upon the applicant punishment of reduction of pay from Rs.2375 to Rs.2000 for a period of three years with cumulative effect. By A-4, respondents have decided to charge damage rate of rent from the salary of the applicant with effect from 24.9.91.

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2. The applicant was issued with charge-memo as under:

"Sri K.S.Tyagi, ASM was spared on transfer from BSC to GJL on 24.10.91 but he did not vacate Railway Qr.No.T-2 A at BSC till 18.1.93 though he was allotted Railway quarter at GJL. He thus violated rule 3(i), (ii) and (iii) of Railway Services Conduct Rules, 1966".

3. Pursuant to the above charge levelled against the applicant, the Enquiry Officer (EO for short) held him responsible as under:

"In consideration of the above factors I have come to the conclusion that Shri K.S.Tyagi is indeed responsible for unauthorised occupation of Railway Quarter at BSC from 24.9.91 to 9.1.93. He is therefore awarded punishment of reduction of his basic pay to Rs.2000/- in his existing scale of pay permanently for a period of three years and his future increment shall be reckoned from the new date of his pay being fixed at Rs.2000/-."

4. Shri S.K. Gupta, learned counsel for the applicant seeks to challenge A-1 and A-4 orders on the following grounds. That the order of the DA is vitiated in terms of law laid down by the apex court in the case of Bank of India Vs B.Suryanarayana JT 1999(4) SC 489. That was the case where the Lordships held that the DA on receipt of the report of enquiry may or may not agree with the findings recorded by the latter but the said authority has to record reasons for disagreement, record his own findings if the evidence is available and inform the party accordingly. Secondly, the plea of the learned counsel is that A-4 order is in violation of provisions under Section 7(3) of Public Premises (Eviction of unauthorised occupants) Act, 1971. We are, therefore, ^{aforsaid} required to adjudicate the validity of the pleas taken by the counsel for the applicant.

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5. We find that the DA has not agreed with the first part of EO's report. For the second part, there is no difference of opinion. To appreciate the legal issues involved, we reproduce below EO's findings:

Findings

"The charge against the CO for unauthorised occupation/retention of Railway quarter at BSC till September, 1992 is not proved since he was permitted by DRM/NB (though verbally in presence of TI/HPU) and his case for retention of railway quarter at BSC could not be finalised by the competent authority.

For retention of railway quarter at BSC beyond the school session i.e. September, 1992 to the date of vacation i.e. 10.1.93 he is responsible and the charge for retaining the railway quarter from 9/92 to 10.1.93 is proved."

6. We find that as regards record part of the report, applicant's plea that he should have been given benefit of DA having different opinion cannot be sustained in the eyes of law. This is because the applicant admittedly has been held responsible for unauthorised retention of the quarter from September, 1992 to 9.1.93. This is not in dispute. It would be appropriate for us to mention that the applicant has violated the basic norms of allotment of Government quarters. None in the Government of India, not even the Hon'ble President of India, can have two Government quarters allotted simultaneously at two different places unless specific provisions/sanctions have been allowed in that respect. This is as per provisions of 1963 Allotment Rules under SR 317. It has not been denied by the applicant that he was allotted another railway waurter immediately on his transfer to Gajraula. Even for the first portion, i.e. September, 1991 to 1992, it was for applicant to obtain a written approval of DRM. Legally speaking, verbal assurance does not serve the purpose of law. Applicant's plea on the charge of

unauthorised retention therefore falls to the ground on the basis that he had held two quarters simultaneously and that his retention has not been authorised officially.

7. We now come to the legality of order at A-4. This order is to the detriment of the official concerned and it is well settled in law that such an order cannot be passed without a show cause notice. The order of recovery of damage rent has to be preceded by a formal notice as per sub-rule (iii) of Rule 7 of PPE Act, 1971. In this respect, applicant's claim merits consideration and the respondents have faltered in issuing the order of recovery at the rate as mentioned in A-4 without taking precaution of putting the applicant on notice in advance as per law on this very issue.

8. Based on the position of law and details as aforesaid, the OA is disposed of with the following orders:

- (i) Applicant's pleas of setting aside the impugned orders at A-1, A-2 and A-3 cannot be sustained in terms of law. In other words, the punishment awarded shall stand.
- (ii) A-4 orders shall stand set aside. Respondents shall issue fresh notice to the applicant in terms of law for the recovery of permissible damage rent. For this purpose, respondents are at liberty to initiate appropriate action in terms of relevant provisions of PPE Act, 1971.

No costs.

Ranamns
(S.P. Biswas)
Member (A)

Alleged
(A. V. Haridasan)
Vice-Chairman (J)

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