

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No.1018/94

New Delhi, this the 31st day of August, 1994.

HON'BLE SRI A.V. HARIDASAN, MEMBER (JUDICIAL)

Vijay Bahadur
S/o Sri Khillawan,
Rly Qtr.No.147/2,
Railway Colony,
Minto Bridge, New Delhi .. Applicant
(By Sri B.S. Mainee, ADVOCATE)

V/s

1. Union of India through the Secretary
to the Govt. of India,
Ministry of Railways,
Rail Bhavan, New Delhi
2. Divl. Superintending Engineer/Estate
Northern Railway, Baroda House,
New Delhi. .. Respondents
(By Sri R.L. Madhok, Standing Counsel)

ORDER (RESERVED)

HON'BLE SRI A.V. HARIDASAN, MEMBER (JUDL.)

The applicant who is working as Liftman under S.E.E.O.(P), Railway Board was allotted railway quarter No.147/2 , Minto Bridge, New Delhi on 25-9-91. He is living in that quarters. When a joint check was conducted in this quarters on 14-7-92 by the Vigilance in association with the I.O.U., the family of Sri Shambuprasad was found in the quarter. Therefore, a charge sheet under Standard Form-II dt.28-12-92 for imposition of minor penalty under Rule 11 of Railway Servants

(Discipline and Appeal) Rules, 1968 was issued to the applicant wherein it was alleged that on 14-7-92 the Inspecting Party found the family of one Sri Shambu Prasad (non-railway employee) residing in the quarter, that as the applicant had not obtained permission for allowing Sri Shambu Prasad and his family to stay in his quarter No.147/2, his action amounted to misuse of railway quarter and he had therefore acted in a manner unbecoming of a railway servant contravening Rule 3.1(iii) of Railway Servants Conduct Rules, 1966. Though the applicant in his explanation submitted to the Memo. stated that he had only obliged his close friend and relative Mr. Shambu Prasad ^{who came with family on a visit} to stay in his quarters for a few days when his family was away in his native place. The explanation was not accepted and the Disciplinary Authority imposed on the applicant a minor penalty of withholding of one set of privilege passes by order dt.20-5-93. One set of privilege passes were withheld pursuant to ^{by another} the order dt.11-8-93 (Annexure-D). However, on 24-2-94, the second respondent issued another notice to the applicant (Annexure-E) alleging that he had sub-let the quarter No.147/2, Minto Bridge that his action was highly objectionable act of misconduct and breach of trust warranting deterrent disciplinary action as well as cancellation of allotment of the above quarter and directing the applicant to vacate the said quarter within 15 days from the date of issue of the notice. Though the applicant in his representation, in reply to this notice stated that he had not sub-let the quarters and had only allowed his friend's family to reside there for a

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few days for which he had been punished withholding one set of privilege passes, and requested for dropping further proceedings in the matter, he was served with another notice dt.4-4-94 directing him to vacate the quarter within 10 days (Annexure-G). In reply to this notice the applicant made a representation stating that his friend's family had already left, that as he accepted punishment of withholding of one set of passes for having allowed his friend to reside there for a few days without taking the permission from the Railway authorities, it is unduly harsh to evict him from the quarter in which he is residing with his family. But the second respondent, by his order dt.26-4-94 (Annexure-A) again directed the applicant to vacate the quarter within 15 days from the date of issue of notice and to handover vacant possession to IOU(Estate) and informing him that failing which action under the E.P.E.Act, 1971 would be initiated against him and he would be liable to pay damage rent w.e.f. 14-7-92. It is aggrieved by the order dt.11-8-93 (Annexure-D) withholding the privilege passes and the order dt. 26-4-94 by which the allotment of the quarter was cancelled that the applicant had filed this application U/s 19 of the A.T.Act.

2. The applicant has alleged in this application that the finding that the applicant had sublet the quarters is unjustified that in issuing the impugned order of penalty the rules have not been properly followed, and that the action of the respondents in evicting the applicant after imposing him a penalty of withholding of one set of privilege passes amounts to double jeopardy.

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3. The respondents in their reply have sought to justify the impugned order on the ground that the applicant was awarded the penalty of withholding of one set of privilege passes, ~~as~~ the charge of sub-letting the railway quarter was established against him and that the impugned action for evicting ^{from} the applicant/~~the~~ railway quarters was initiated on the basis of Railway Board's instructions No.E(G)79RN2-117 dt.9-4-80 (Annexure R1). They have further contended that as proceedings for eviction of the applicant from the quarters in question has been initiated under Sec.4 and 7 of Public ~~Eviction~~ ~~Act, 1971~~ against the applicant, the applicant is not entitled to maintain this application and is bound to resist the proceedings before the Estate Officer, as laid down by the Full Bench of the Tribunal in RASILA RAM & ORS. Vs. UOI 1989 2 SLJ 342. They have also contended that the application is premature. The applicant in his rejoinder has reiterated his contention that neither a case of subletting nor sharing of accommodation had been established against him, ^{that} ^{the} and ~~therefore~~ ~~unilateral~~ action of the respondents in cancelling the allotment of the quarter is illegal and unjust.

4. I have heard Sri B.S. Mainee, learned counsel for the applicant and Sri R.L. Madhok, learned standing counsel for the respondents. I have also carefully perused the pleadings in the case. Sri R.L. Madhok, learned counsel for the respondents ~~argued~~ that the challenge against the order dt.11-8-93 is liable to be rejected as pre-mature, as the applicant has not exhausted

the departmental remedy of appeal. The order imposing the penalty of withholding of privilege passes is not dt.28-12-92 at Annexure-B, but it is really the one dt.20-5-93 at Annexure-C. In this order itself it was mentioned that an appeal against the order could be filed to DEE (Special) within a period of 45 days. Obviously, the applicant has not filed any appeal against this order. Further, in his own communications (Annexure-F) dt. 20-3-94 addressed to the Divisional Superintending Engineer (Estate) he had stated that he had accepted the punishment, meaning thereby that he did not intend to file an appeal. The conduct of the applicant thereafter also shows that he did not wish to file an appeal against the order for withholding of one set of his privilege passes. Therefore, I am convinced that there is no merit in the present challenge against the order withholding of one set of privilege passes.

5. I shall now consider the applicant's challenge against the order dt.26-4-94 whereby the applicant was directed to vacate the quarter within 15 days from the date of issue of the notice. The order reads as follows:

" A check of the above quarter conducted by Vig. Department on 14-7-92 & it was found that the quarter in question has been subletting by you to one Sri Shambhu Prasad & family. In this connection a show cause notice was issued to you under this office letter of even number dt.4-4-94 to vacate the said quarter within 10 days from the date of issue of this show cause notice. But you have failed to do so. As such the tenancy of the said quarter is hereby cancelled in your name w.s.f.14-7-92.

(13)

Please vacate this quarter within 15 days from the date of issue of this notice and hand over its vacant possession to IOW/Estate, N.Rly., DAM Office, New Delhi, failing which this office will be compelled to initiate eviction proceedings against you under PPE Act, 1971 at your risk, cost and responsibility & damage rent as per extant rules will also be recovered from your salary w.e.f. 14-7-92 to date of vacation.

Please acknowledge the receipt of this notice.
This is without prejudice.

Sd/-

Divl.Suptdg.Engineer/Estate
Northern Railway, New Delhi

In the letter dt.4-4-94 referred to in this letter a copy of which is Annexure-G also it was stated that a check of the quarter conducted by the Vigilance Department revealed that the applicant had sublet the quarter to Sri Shambur Prasad and family and that the applicant was required to vacate the quarter within 10 days from the date of issue of the notice. The applicant had submitted his reply to this notice stating that he had not sublet the quarter and that he had only allowed his close friend and relative to reside ~~with~~ in the quarter for a few days when the applicant's family was not in station as his friend had come with his family on a visit. He had also made it clear that his friend's family had already left and that as he had not sublet the quarter, the allotment of the quarter in his name may not be cancelled. The grievance of the applicant is that the respondents have taken a unilateral decision without holding any enquiry and without giving the applicant an opportunity to establish the

fact that he had not sublet the quarter ~~taken~~

✓ ~~a unilateral decision~~ that the applicant has sublet the quarter and required him to vacate the premises cancelling the allotment. This action of the respondents according to the applicant amounts to violation of the principles of natural justice. Learned counsel for the applicant argued that the action for cancellation of the allotment of the quarter and for eviction of the applicant under the P.P.E. Act, 1971 as mentioned in the Railway Board letter Annexure-R-1 are warranted only ^{is proved,} on the fact of subletting the quarter. Since ~~the fact has~~ [✓] not been ~~subletting~~ ^{has} established in this case, the learned counsel for the applicant vehemently argued that the impugned action is liable to be struck down as violative of principles of natural justice.

6. The learned counsel for the respondents on the other hand argued that since the applicant has already been punished by imposition of a minor penalty under Rule 11 of the Railway Servants (D&A) Rules, 1988, ^{v.c.de} while orders dt.20-5-93 and 11-8-93 (Annexures C and D) and as this punishment has become final, the applicant having accepted the punishment and not filing an appeal, it was not necessary to hold another enquiry for establishing the fact that the applicant had sublet the quarters. A reading of the Memo. of Charge dt.28-12-92 at Annexure-B and the order dt.20-5-93 at Annexure-C would go to show that the allegation against the applicant was that he had allowed Sri Shambu Prasad and his family to stay in his quarter without taking the permission from the authorities. It is worthwhile to quote the statement of imputation contained in

Annexure-B which reads as follows:

" A joint check was conducted on 14-7-92 by Vigilance on Rly. Qr.No.147/2, Minto Bridge, New Delhi in association with Sh.M.L. Arya, I.C.W./MNTB. At the time of check family of Shri Shambhu Prasad (Non Railway employee) was found residing in the Railway quarter No.147/2, MNTB, Mrs. Maya wife of Shri Shambhu Prasad stated that she is residing in this quarter for last six months with her family members. Sh. Vijay Bahadur confirmed version of Mrs. Maya in his statement. Shri Vijay Bahadur has failed to get the permission from administration before allowing Sh. Shambhu Prasad and his family to stay in his quarter No.147/2, MNTB, Thus he is misusing Railway quarter No.147/2, MNTB, which is allotted to him for his bona fide use.

By the above act of omission and commission Shri Vijay Bahadur acted in a manner of unbefitting of Railway servant thereby contravened rule 3.1(iii) of Railway Service conduct rules, 1966.

It is obvious from the above quoted statement of imputation that the allegation was that ^{applicant} he allowed Shri Shambhu Prasad and family to stay in his quarter without obtaining the permission of the authorities, ~~But that~~ there was no allegation that he had sublet the quarter for consideration. According to the Railway Board's Circular Annexure-R1 action for cancellation of quarter and proceeding under P.P.E. Act, 1971 for eviction are warranted only on finding

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that the railway employee has sublet the quarter for consideration. Here from Annexures B and C it is evident that no charge of subletting has been alleged or established against the applicant. The mere fact that the applicant suffered the punishment of withholding of one set of privilege passes for allowing his friend to stay in the quarter without obtaining permission from the authorities does not ~~keep~~ ipso facto establish that he had sublet the quarter. For arriving at a finding that the applicant had sublet the quarter the respondents should have made such allegation and given the applicant an opportunity to establish the negative. If the allegation against him was not ^{True} ~~proved~~ ^a that having not been done in this case, I am of the considered view that the unilateral decision taken by the respondents that the applicant has sublet the quarters to the family of Shambhu Prasad and the resultant order cancelling the allotment of the quarter and to initiate proceedings against him for eviction under the P.P.E. Act, 1971 is unsustainable as this amounts to violation of principles of natural justice. On that ground the impugned order at Annexure-A is liable to be struck down.

7. The learned counsel for the respondents further argued that since proceedings U/s 4 and 7 of P.P.E. Act, 1971 have already been initiated against the applicant, the application is not maintainable in law because the applicant has to defend his case before the Estate Officer. In this connection, he referred ^{me} to the decision of the Full Bench of _{La}

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this Tribunal in RASILA RAM AND ORS. V/S U.D.I. (1989) SLJ 342, wherein it was observed that in cases where proceedings have been started under the P.P.E. Act, 1971 it will be proper for the aggrieved employee to contest his case before Estate Officer and may approach the Tribunal only after final orders have been passed by the Estate Officer under the P.P.E. Act, 1971. But in the very same judgement the Full Bench has observed as follows:


" We , therefore, clearly hold that eviction proceedings against Central Government employees under the P.P.Act fall within the purview of the Central Administrative Tribunal. Proceedings under the Administrative Tribunals Act do not run concurrent with the jurisdiction of the District Judge under the P.P. Act. The Tribunal can stay or quash either the eviction proceedings or the order of eviction by declaring the order cancelling the allotment as illegal. We, however feel that in order to have harmonious interpretation between Sec.33 of the A.T.Act and Sec.51 of the P.P.Act, it would be proper that when a person is aggrieved against an order of cancellation by the administrative authority, he can approach the Tribunal at that stage if he is aggrieved by such orders after making necessary representations to the administrative authorities.

8. In this case the applicant has filed this application not against the proceedings under the P.P. Act, but against the impugned order at Annexure-A by which the Divisional Superintending Engineer (Estate) has cancelled allotment of the quarter and called

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upon the applicant to vacate the quarter informing him that failure to do so would entail proceedings under P.P. Act, 1971 and recovery of damage rent. The applicant has made representation against the order dt.4-4-94 by which he was asked to vacate the premises, but it was inspite of that the impugned order has been passed. It is apprehending that he would be forcibly evict^{ed} on the basis of impugned order at Annexure-A that he has filed this application. The dictum in Rasila Ram's case does not prohibit filing an application before the Tribunal against an order of cancellation of allotment. Therefore, the argument of the learned counsel for the respondents that the application is not maintainable. In the light of the ruling of the Full Bench in Rasila Ram's case has no force.

9. In the result, the application is allowed in part and the order dt.26-4-94 cancelling the allotment of quarter No.147/2, Railway Colony, Minto Bridge, New Delhi is set aside. The parties are directed to bear their own costs.


(A.V. Haridasan)
Member (Judl.)

31/8/94

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