

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No.1477/94

New Delhi this the 2nd Day of October, 1998

Hon'ble Mrs. Lakshmi Swaminathan, Member (J)
Hon'ble Mr. R.K. Ahooja, Member (A)

Shri Suraj Mal,
Ex.Assistant Guard,
Northern Railway
presently
R/o 116/1 near Juggi 63,
Railway Colony,
Kishan Ganj,
Delhi.

Applicant

(By Advocate: Shri B.S. Mainee)

-Versus-

Union of India : Through

1. General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Divisional Railway Manager,
Northern Railway
Ambala Cantt.

Respondents

(By Advocate: Shri R.L. Dhawan)

ORDER

Hon'ble Shri R.K. Ahooja, Member (A)

The applicant who was posted as a Pilot Jamadar in Delhi was promoted and transferred as Assistant Guard to Ambala in 1982. As he did not vacate the Railway Quarter No. 116/1, Delhi Kishan Ganj till 1983, he was chargesheeted for a major penalty for this misconduct and by the impugned order dated 23.11.1993, he was imposed the penalty of dismissal from service. The appeal against this order was also rejected vide order dated 16.2.1994, Annexure A-2.

2. We have heard the counsel on both sides. Various points have been raised by the learned counsel for the applicant regarding the conduct of the inquiry

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 against the applicant including the point that respondents themselves had not initiated any action till 1993, thus accepting the situation that the quarter, in question, was being occupied by the son of the applicant who is also in the service of Railways. In our view these points are not relevant. The main issue to be considered in our opinion is whether the unauthorised retention of Govt. accommodation constitutes a misconduct in terms of disciplinary rules.

3. Shri B.S. Mainee, learned counsel for the applicant in this respect has cited the orders of a Coordinate Bench dated 9.9.1997 in O.A. No. 116/92, Kailash Charan Lal Vs. General Manager, North East Railways & Ors. We have perused the order. In that case also the applicant had been removed from service for unauthorised retention of Government accommodation (later the Divisional Authority had reduced the penalty to reduction in rank). Relying on the earlier judgements of the Tribunal in ATR 1987(1) CAT 567; ATJ 1991(1) CAT 269 and 1990(3) SLJ (CAT) 460, the Tribunal concluded as follows:

" 7. Nothing has been shown to us to lead us to believe that the aforesaid judgements have been stayed, modified or set aside and under the circumstance, we as a co-ordinate Bench are bounded by those judgements, which appear to have been final.

8. In the result, neither the Disciplinary Authority's order dated 2.1.91 removing applicant from service, nor the appellate order dated 12.4.91 rejecting the appeal, nor indeed the revisional authority's order dated 15.11.91 converting the removal order to one of reverting applicant to the post of a peon (Gr. IV)


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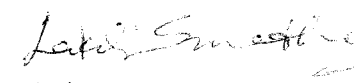
can be sustained. The OA is allowed and the above 3 orders are quashed and set aside. Respondents are directed to reinstate applicant as Goods Clerk with all consequential benefits, including backwages, continuity of service and seniority within three months from the date of receipt of a copy of this judgement. It will be open to respondents to recover rent/license fee for the period of unauthorised retention of accommodation as per rules. No. costs."

4. We find that the present case is on all fours with the facts of Kailash Charan Lal Vs. General Manager (Supra) decided by the Coordinate Bench. Being in respectful agreement with the decision of Coordinate Bench, we also hold that no disciplinary proceedings can be initiated for non vacation of quarter and the proper course for the respondents was to initiate proceedings under the Public Premises Eviction Act.

5. The O.A. is therefore allowed and the impugned order, Annexure A-1 of the disciplinary proceeding of the appellate authority is quashed and set aside. The respondents are directed to treat the applicant in service till the date of his superannuation. He would be entitled to the arrears of his pay as well as to his retiral benefits. The consequential payments will be made to the applicant within a period of three months from the date of receipt of a copy of this order.

There is no order as to costs.


(R.K. Ahuja)
Member(A)


(Mrs. Lakshmi Swaminathan)
Member (J)

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