

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 767/2000

New Delhi: this the 29th day of MAY, 2001.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

HON'BLE DR. A. VEDAVALLI, Member (J)

Sabir Ali,
S/o Sh. Ewaj,
Ex-Switchman/Harthala,
Moradabad Division,
C/o Q. No. P-8/C out House,
Officers Colony
Opp. Rly. Station, Moradabad.

.....Applicant.

(By Advocate: Shri G. D. Bhandari)

Versus

Union of India
through

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

2. The Divl. Railway Manager,
Northern Railway,
Moradabad.

.....Respondents.

(By Advocate: Shri B. S. Jain)

ORDER

S. R. Adige, VC (A):

Applicant impugns the disciplinary authority's order dated 30.9.97 (Annexure-A1) and the appellate order dated 2.3.98 (Annexure-A3). He seeks reinstatement with consequential benefits.

2. Applicant was proceeded against departmentally vide Memo dated 2.4.96 on the charge that upon his transfer from Moradabad to Mewanivada on promotion as Switchman w.e.f. 17.4.94, he was permitted to retain occupation of the railway quarter allotted to him in Moradabad till 15.5.95, but even after the expiry of that date he did not vacate the aforesaid quarter.

3. The Enquiry Officer in his findings dated 14.6.97 (Annexure-A12) reported that the charge against

applicant was proved, in the light of his own statement that he would vacate the quarter after 31.5.97.

4. A copy of the Enquiry Officer's report was furnished to applicant on 10.7.97 for representation, if any. Applicant submitted his representation on 16/17.7.97, and after considering the same as also the other material on record, the Disciplinary Authority agreed with the Enquiry Officer's findings and by order dated 30.9.97 removed applicant from service.

5. Applicant's appeal was rejected by order dated 2.3.98 (Annexure-A3).

6. Applicant's revision application dated 27.4.98 (Annexure-A14) under Rule 24(2) Railway Servants (D & A) Rules followed by reminders dated 31.8.98 (Annexure-A -15) and dated 9.9.98 (Annexure-A 16), as well as review application dated 22.1.99 (Annexure-A17) under Rule 25 Railway Servants (D & A) Rules followed by reminder dated 26.7.99 (Annexure-A-18) have elicited no response from respondents, upon which applicant filed this OA on 29.3.2000.

7. A perusal of impugned order dated 30.9.97 removing applicant from service reveals that it has been issued in a cyclostyled form, without proper application of mind. This is evident from the fact that the words in the order read thus

"I therefore hold you guilty of the charges (3) and have decided to impose on you the penalty of ~~compulsory retirement/removal/dismissal~~ from service. You are therefore ~~compulsory retired/~~ removed/dismissed from service w.e.f. 2.10.97 (AN)."

8. Thus in the first sentence, applicant has been ordered to be removed from service while in the very next sentence he has been removed/dismissed from service. Orders in disciplinary proceedings are quasi judicial orders, and are required to display proper application of mind. Clearly the aforesaid order dated 30.9.97 does not display the same.

9. That apart, the appellate order dated 2.3.98 is a bald and cryptic order, which does not discuss any of the grounds taken by applicant in his appeal. Respondents' instructions themselves state that appellate orders being quasi judicial orders, have to discuss each of the various grounds taken the appeal, however briefly, so that that they display proper application of mind.

10. During hearing we specifically asked respondents' counsel to show us the relevant rules/instructions by which unauthorised retention of railway accommodation constituted misconduct. Respondents' counsel was unable to do so, but even if unauthorised retention of railway accommodation beyond the permissible limit does constitute misconduct, it is our considered view that the penalty of removal from service is wholly disproportionate to the gravity of the misconduct, so much so that it shocks our judicial conscience.

11. During arguments the only plea raised in defence by respondents' counsel was that the OA was barred by limitation under section 21 AT Act. This plea is rejected in view of respondents' own inaction on applicant's revision petition and review petition despite reminders. Furthermore when the impugned orders of the disciplinary authority as well as the appellate authority are, for the reasons discussed above,

clearly unsustainable in law, respondents cannot be permitted to defend their actions on the ground that the OA is hit by limitation.

12. The OA therefore succeeds and is allowed. The impugned orders of the disciplinary authority dated 30.9.97 and of the appellate authority dated 2.3.98 are quashed and set aside. Applicant should be reinstated in service within 1 month from the date of receipt of a copy of this order. The period between the date of removal of applicant from service till the date of his reinstatement will be determined by respondents in accordance with rules, instructions and judicial pronouncements on the subject. If indeed unauthorised retention of Railway accommodation beyond the permissible limit constitutes misconduct within the meaning of the relevant rules and instructions, it will be open to respondents to impose upon applicant a penalty other than removal or dismissal which is in consonance with the gravity of the misconduct and in accordance with law. It will also be open to respondents to take appropriate action against applicant for retention of the Railway accommodation beyond the permissible limit in accordance with the relevant rules and instructions relating to eviction of unauthorised occupants from public (including Govt) premises. No costs.

A. V. Veda Valli
(DR. A. VEDAVALLI)
MEMBER (J)

S. R. Adige
(S. R. ADIGE)
VICE CHAIRMAN (A)

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