

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 21ST DAY OF DECEMBER, 2000

Original Application No.1018 of 1997

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MR.S.DAYAL, MEMBER(A)

Mahesh Chandra, son of Shri Suraj Deo
C/o Shri Deena Nath Jha, Block No.12 A
near Panaki Railway Station, Kanpur
Nagar.

... Applicant

(by Adv: shri B.N.Singh)

Versus

1. Union of India through Divisional
Rail Manager, Northern Railway
Allahabad Division, Allahabad.
2. Divisional Superintending Engineer
Northern Railway, Allahabad
Division, Allahabad.
3. Assistant Engineer(Track) Northern
Railway, Old Railway station G.T.
Road, Kanpur.

... respondents

(by Adv: Shri G.P. Agrawal)

O R D E R(Oral)

(By Hon.Mr.Justice R.R.K.Trivedi,V.C.)

By this application u/s 19 of A.T.Act 1985 the applicant has challenged the order dated 11.8.1997 by which he had been punished by withholding the increment of one year on permanent basis. Further it has also been ordered that the house rent allowance realised ~~from~~^{by} the applicant, though he was occupying the Railway quarter No.12-C at Panki, shall be realised from his salary.

The facts in short giving rise to this application are that applicant was serving as Gangman under the Permanent Way Inspector(II), Northern Railway, Kanpur. On 29.12.1993 he received some injury while on duty and in that connection he occupied the railway quarter No.12/C Panki without any allotment in his favour. He vacated the above quarter

on 4.6.19196. For this conduct the applicant was served a memo of charge and regular disciplinary proceedings were initiated against him. The Enquiry officer submitted the resport. The Punishing Authority agreed with the same and passed the impugned order dated 11.8.1997(Annexure 1) punishing the applicant as stated above.

Shri B.N.Singh learned counsel for the applicant has challenged the order by making the following submissions.

- i) The first submission is that the applicant could not be punished for the misconduct in disciplinary proceedings, ^{for} occupying a railway quarter without allotment order, ^{as it is} ~~after expiry of the allotment~~ is not mentioned as misconduct in the rules.
- ii) The second submission of the learned counsel is that the applicant remained in the quarter for 3-4 months during the period he was suffering from injury and was undergoing treatment. It is also submitted that the Railway quarter was allotted in favour of Putti Lal and with his permission he remained in the quarter and did not commit any misconduct.
- iii) It has also been submitted that no inquiry was conducted as provided in rules.

Shri S.D.Kapoor holding brief of Shri G.P.Agrawal learned counsel for the respondents on the other hand submitted that from his own statement given before the Enquiry Officer this fact is equally established that applicant retained the occupation of the Railway Quarter for the period mentioned in the impugned order and he ^{had} ~~had~~ rightly been punished which amounts to misconduct.



We have considered the submissions of the learned counsel for the parties. Considering the first question first it has to be determined whether the occupation of the Railway Quarter in an unauthorised manner amounts to misconduct or not. The learned counsel for the respondents could not place before us any rule on which basis it may be said that unauthorised retention of the possession of the Railway quarter could be a misconduct for which he could be subjected to disciplinary proceedings. ^{Pos u} Such unauthorised retentions of the Railway Quarter procedure provided in law is to initiate proceedings to remove the unauthorised occupation and realise penal rent and damages. This Tribunal has already taken the view that for unauthorised retention ^u railway employee cannot be punished for misconduct.

However, so far as the possession of the quarter by applicant without any allotment during the period is concerned, it has been found in inquiry as a matter of fact that he occupied the same. We have gone through the entire statement of the applicant filed as (Annexure 8) and from perusal of his reply in respect of questions 5,6,7,10 & 11 it is fully established ~~kw~~ that he remained in possession of the Railway quarter during the period in question and in our ^u ~~our~~ opinion the impugned order is justified so far as this part is concerned. ^u

The learned counsel for the applicant challenged the procedure adopted for the inquiry. However, we do not find any illegality in the same. The applicant was served memo of charge which clearly indicated that he remained in occupation of the Railway Quarter without allotment. He submitted his reply of the same though after some delay. He participated in the inquiry and gave ^u ~~full~~ his statement. All these facts fully established ^u that the inquiry was proper and did not suffer from any irregularity so as to render it illegal.

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For the reasons stated above, this application is partly allowed. Though the order of punishment with-holding the increment for a period of one year on permanent basis is quashed. However, rest of the order is maintained.

There will be no order as to costs.


MEMBER(A)


VICE CHAIRMAN

Dated: January 3rd, 2001

Uv/