

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

D.A.No. 165/1998

24/5/2002

S.A. Hussain (Guard) S/o
Shri Sabbir Hussain R/o
643, Type-II, Rest Camp Colony
Tundla,
District : Firozabad - U.P.

..... Applicant

(By Advocate: Shri A.K. Srivastava/D.Singh)
Versus

1. Union of India through
General Manager
Northern Railway,
Baroda House, New Delhi.
2. Divisional Railway Manager
Northern Railway,
Allahabad.
3. Divisional Operating Manager
Northern Railways,
Allahabad Office of the Divl.
Railway Manager, Northern Railway,
Allahabad.
4. Chairman Housing Committee,
AEN/HQ/Northern Railway/
Tundla.

..... Respondents

(By Advocate: Shri A.K. Gaur)

Hon'ble Mr. S. Dayal, A.M.
Hon'ble Mrs. Meera Chhibber, J.M.

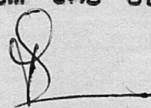
J U D G M E N T

Date: 24-5-2002

Hon'ble Mrs. Meera Chhibber, Judicial Member.

The brief facts of the case are that applicant was
chargesheeted as underwhile working as Guard TD-L CHC/TDL
committed following irregularities in as much as

- 1) That he occupied Rly. Quarter No.643/B, Type-II
Rest Camp colony/TDL of TRD pool unauthorisedly,
illegally and forcibly without any proper allotment
order from the competent authority.
- 2) That he has taken illegal Electricity connection
in his unauthorised occupation of Rly. quarter
No.643-B, Rest Camp/TDL without any proper
connection from the SEFO(G)/TDL which was gross



negligence on his part.

- 3) That he did not obey the orders of CRC/TDL at DTM/TDL regarding vacatbn of Railway quarter inspite of clear assurance.
- 4) That he also created nuisance outside of DTM/TDL's office on 22.12.93 along with his wife and son.
- 5) That he is habitual offender for occupying quarter unauthorisedly without any proper allotment order. Earlier to this, he was also taken under D&A.R for unauthorised occupation of Rly. quarter No.385/B, allotted to Shri E.M. Richard, Guard/Tundla.

By the above act Shri S.A. Hussain, Guard/TDL failed to maintain his absolute integrity, devotion to duty and acted in a manner unbecoming of Rly. Servant, thereby controvened Rules 3.1(i), (ii) & (iii) of Railway Service Conduct Rules, 1996."

After holding proper inquiry and discussing the evidence on record the Inquiry Officer submitted his report (page 26 to 39) holding therein that charge no.1 is proved which for ready reference reads as under:

That he occupied Railway Quarter No.643/B Type II Rest Camp Col/TDL of TRD pool unauthorisedly illegally and forcibly without any proper allotment order from competent authority (page 34).

Similarly the second charge that he had been consuming electricity illegally since 14.1.93 the date since he occupied the railway quarter unauthorisedly was also held to be proved (page 37).

The third charge with regard to disobeying the orders of CAO/TDL & DTH/TDL regarding vacation of Railway quarter inspite of assurance was also proved (page 38).

B

Charges 4 & 5 were however held as not proved.

Copy of the report was served on applicant who gave his representation and after considering everything the disciplinary authority vide its order dated 4.3.97 accepted the findings of Inquiry Officer and imposed the penalty of reduction of pay from the stage of 1470 to the stage of 1200 in the scale of 1200-2040 (RPS) permanently till retirement (page 14).

The applicant challenged the said order by way of an appeal but the appellate authority after recording the reasons held the punishment to be justified and rejected the appeal vide its order dated 5.6.97. Being aggrieved the applicant filed revision. The revisionary authority vide its order dated 30.12.97 reduced the scale for a specified period of three years with cumulative effect (page 17).

The applicant has challenged these orders in the present OA on the ground that as per construction Inspector's notice dated 20.1.96 the order was to be cancelled if he did not remove encroachment and for keeping animals thus his contention is that this clearly shows he was lawful allottee of quarter and had he been unauthorised occupant the notice would have been otherwise. He has also alleged that he was not being paid the HRA and a rent of Rs.80/- was being charged from his salary which proves that he was an authorised allottee, therefore, he states the charges as well penalty orders are liable to be quashed. Even though no such ground

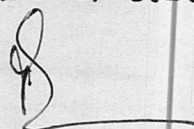


is taken in pleadings but at the time of arguments the applicant's counsel submitted that unauthorised occupation of quarter cannot be termed as a misconduct as held by Tribunal in its judgment reported in

1991 (1) ATJ CAT (Cal.) 269 and
1990 (2) CAT (All) 200

2. The respondents have opposed the OA on the ground that applicant has suppressed the material facts that he was never allotted the quarter No. 643/B Type -II Rest Camp colony while working as guard and he forcibly occupied the newly constructed quarter meant for TRD open line staff thus the OA may be dismissed on this ground alone.

On merit they have stated that the respondent can take any action to get the quarter vacated either by recourse to PPS Act or DAR Rules. They have further stated that applicant was given full opportunity in the enquiry but he failed to produce the allotment order in his favour and the Inquiry Officer held three charges proved on the basis of evidence that came on record. They have stated the penalty orders are based on these findings and copy of appellate order was duly served on him and he has even acknowledged the receipt on 14.6.97 and letter dated 4.3.97 is only a punishment notice and not original order on appeal. They have submitted that orders are passed on the basis of evidence available on record



therefore the case calls for no interference and is liable to be dismissed.

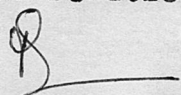
3. The applicant has not filed any rejoinder.

4. We have carefully seen the pleadings and heard both the counsel. Applicant's counsel's main contention was that unauthorised occupation of Government quarter is not a misconduct as such not only the chargesheet is bad in law but even the penalty on this ground is not sustainable.

Recently this very point was referred to the Full Bench by the Principal Bench viz; whether unauthorised retention of staff quarters by a Railway servant can be made the basis of a charge in disciplinary proceedings against him and whether the penalty of dismissal from service imposed upon the applicant can be interfered with by the Tribunal in view of the aforesaid decision in the case of Union of India Vs. Parma Nanda, 1989 SCC (L&S) 303.

After considering all the judgments on this issue and defining as to what is a misconduct as defined by various judgments of Hon'ble Supreme Court, the Full Bench held as under while defining misconduct.


"Thus it could be seen that the word misconduct though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour unlawful behaviour, wilful in character



forbideen act a transgression of established and definite rule of action or code of conduct but not mere error of judgement, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character its ambit has to be construed with reference to the subject matter and the context wherein the term occurs regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a discipline service and it requires to maintain strict discipline. ~~Laxity~~ in this behalferodes discipline in the service causing serious effect in the maintenance of law and order.

Then the Full Bench examined various judgments and relevant rules on the subject as to whether disciplinary proceedings could be initiated for unauthorised occupation of quarter and concluded as under:

We are not inclined to agree with the contention of Shri Bhandari that initiation of disciplinary proceedings is a short-cut method of coecing a railway servant to surrender the railway quarters. Merely because a railway servant is liable to pay penal rent and is also liable to be proceeded for eviction under the PP Act, the same cannot and do not detract from disciplinary proceedings being initiated against him. It may as well happen that a railway servant by virtue of disciplinary proceedings initiated against him may be forced to surrender the railway quarters but that is neither here nor there it is conceivable that despite initiation of disciplinary proceedings, a railway servant may still refuse to vacate the quarter, it would in that case be open to the respondents to start proceedings under the PP Act. Merely because one remedy i.e., of PP Act or of charging of penal rent is available, it does not necessarily follow that disciplinary proceedings in respect of the very same charge are barred, In the circumstances we have no hesitation in holding that unauthorised retention of staff quarters by a railway servant can be made the basis of a charge in disciplinary proceedings against him. The first part of the reference made is accordingly answered in the affirmative.




Thus all the judgments wherein a contrary view was taken were overruled by the Tribunal.


I respectfully agree with the view taken by the Full Bench as such the contention of applicant's counsel that retention of Government Quarter unauthorisedly cannot be made the basis for misconduct is rejected.


The applicant's counsel had next argued that the penalty could not have been imposed for permanently or for an unspecified time but that aspect has already been taken care of by the revisionary authority in as much as he had made the penalty to be specific for three years with cumulative effect, thus this contention is also not sustainable in law.

The applicant's counsel had next contended that since the notice issued to him was for keeping some animals unauthorisedly, that itself shows that the quarter was allotted to him however the fact remains that once the applicant was charged with unauthorised occupation of quarter the onus was on him to show that he had been allotted the quarter by the competent authority. As per Inquiry Officer's report the applicant failed to show any order giving him the authority to occupy the said quarter. The applicant had full opportunity to produce the evidence in his defence before the



inquiry officer. Now we cannot reappreciate the evidence as the Apex Court has repeatedly held that even if there is some evidence on the basis of which the charge is proved and punishment inflicted, the Tribunal should not interfere in the matter even if some of it is found to be extraneous or irrelevant material, AIR 1989 SC 1185. The notice was issued by construction and not by the office of Estates and the Inquiry Officer did not accept the defence given by the delinquent on valid and justifiable reasons. The applicant's counsel had not pointed out any illegality in the inquiry thus we do not find any illegality in the impugned order as such the OA is dismissed with no order as to costs.


(Meera Chhibber)
Member (J)


(S. Dayal)
Member(A)

vtc.