

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 529 OF 1998

ALLAHABAD, THIS THE 29th DAY OF JANUARY, 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

M. R. Garg
aged about 56 years,
son of Late Shri Jagdish Prasad,
r/o 64, Ganga Rampura, Muzaffarnagar.

.....Applicant

(By Advocate : Shri N.L. Srivastava)

V E R S U S

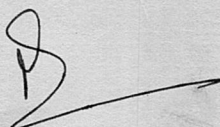
1. Union of India through the Secretary
(Postal), Ministry of Communication,
Government of India,
New Delhi.
2. Postmaster General, Dehradun.
3. Sr. Superintendent of Post Offices,
Muzaffarnagar.
4. Senior Postmaster (Gazetted),
Muzaffarnagar.

.....Respondents.

(By Advocate : Shri G.R. Gupta)

O R D E R

By this Original Application applicant has challenged the orders dated 04.03.1992, 29.06.1992, 16.11.1992, 13.01.1994 and 20.02.1998 and has sought a further direction to the respondents to refund the amounts so recovered from the salaries of the applicant upto March 1994 amounting to Rs.19,870/- within a month with the interest at market rate till the date of actual payment and also to pay him damages due to loss cost to the applicant.



.....2/-

2. In nut shell the case of the applicant is that the order dated 04.03.1992 was passed by the SSPDs to make recovery from applicant's salary @Rs.830/- per month as damage rent. He had challenged the said order in appeal but the same was also rejected. Therefore, ultimately applicant filed O.A. No.628 of 1994 which was ~~admittedly~~ decided on 24.10.1997 (Pg.30). The Tribunal after a detailed discussion directed the respondents to conduct a fresh enquiry to establish or otherwise about the unauthorised occupation of the quarter by the applicant by allowing the applicant to produce documentary evidence in support of his case before the enquiry officer and also to provide him opportunity of cross-examination of the witnesses produced by the Administration. This was to be completed within 3 months from the date of receipt of the Judgment. It was further held that in case all the claim of the applicant was established, the applicant shall be refunded the recovery already made and no further recovery shall be made. However, in case, the claim of the applicant is not established, then the applicant shall be replied through a speaking order within the same period of three months.

3. Grievance of the applicant is that inspite of clear direction from the Tribunal neither applicant was permitted to ~~cross~~ examined the witnesses of the administration nor he was allowed to lead his defence in a proper manner, therefore, he was deprived once again of his right to defend himself. Inspite of it, ultimately the enquiry officer found the applicant to be not guilty and clearly held that another officer was responsible and guilty with respect to the said quarter. It is submitted by the applicant that neither this report was supplied to the applicant nor any disagreement note was given to him by the disciplinary authority and by suppressing the findings



recorded by the inquiry officer, the disciplinary authority once again issued the order dated 20.02.1998 holding therein that applicant was unauthorisedly occupying from 22.03.1992 the quarter of APM Muzzafarnagar City. Therefore, the panel rent may be recovered from applicant as per the letter of post Master General Dehradun dated 16.11.1992. He has also challenged all the earlier orders passed by the respondents as well as the latest order passed on 20.02.1998 in the present O.A.

4. Respondents have opposed this O.A. and submitted that this O.A. is barred by Section 20 as applicant has approached this Tribunal without exhausting the remedy of filing appeal to the next authority. They have further submitted that this case is *regarding* attached rent free quarter which was occupied by the applicant beyond the permissible limit. The post attached rent free accommodation could be retained only for 15 days free of rent and for one month on payment of licence fee as laid down in Government of India order dated 04.10.1991. They have also submitted that transfer and posting of Shri M.S. Babra at Shamli Head Office vide memo dated 06.10.1989 following arrangement of Shri M.R. Garg as S.P.M., Muzaffarnagar City were totally on ad-hoc basis liable to be changed/terminated on regular arrangement. They have further submitted that applicant was given a reasonable opportunity/time to vacate the quarter up to 30.04.1990 and was not permitted to retain the quarter which was post attached rent free and a regular incumbent had since joined the post. They have further tried to explain how applicant could not have retained the said quarter unauthorisedly.

5. Counsel for the respondents have thus submitted that since applicant was found to be guilty of occupying the post attached rent free accommodation unauthorisedly, therefore, there is no illegality in the orders passed by the disciplinary authority, accordingly, the O.A. may, ~~wherefore~~, be dismissed.



6. I have heard both the counsel and perused the pleadings as well.

7. This O.A. was filed in the year 1998 because respondents had issued the order for making recovery from the applicant as per the orders already passed by the Post Master General dated 16.11.1992. In these circumstances, if applicant approached the Tribunal for seeking protection against recovery, after 5 years, this case cannot be dismissed on this ground that applicant had approached the Tribunal without exhausting the departmental remedy because that would not be in the interest of justice or equity. I am, therefore, rejecting the objection raised by the respondents counsel.

8. Coming to the merits of the case, it is seen that when applicant had approached this Tribunal earlier, there was a clear direction to the respondents to conduct the fresh inquiry by giving full opportunity to the applicant to cross examine the witnesses produced by the administration as well as providing him opportunity to produce documentary evidence in support of his case before the enquiry officer. It was further held that if the claim of the applicant is established, the applicant shall be refunded the recovery already made and no further recovery shall be made. At this juncture, it would be relevant to quote the operative portion from the enquiry officer's report, which for ready reference reads as under:-

"Perusal of the above report shows that in the enquiry, applicant was not found to be guilty and infact another officer namely Shri Sabra was found to be guilty of the whole affair."

Now the question arises whether inspite of this finding havin



been recorded by the enquiry officer, could the disciplinary authority give a different finding and order the recovery from applicant's salary as damages for the unauthorised occupation of quarter that too without supplying a copy of the report to the applicant.

9. Applicant has specifically stated in the rejoinder that copy of the report was served to him along with the reply filed by the respondents to the contempt petition. Here a neat question of law arises, which is fully covered by the Judgment of Hon'ble Supreme Court of India in the case of KUNJ BIHARI reported in JT 1998(5) SC 548 ^{wherein} Hon'ble Supreme Court has held that whenever the disciplinary authority disagrees with the findings recorded by the inquiry officer, he is required to give a disagreement note along with the reasons as to why he is disagreeing ^{with the E.O's findings} calling upon ^{delinquent to} explain ^{by} giving opportunity to the delinquent officer to give representation against the said Disagreement note otherwise it would be violative of principle of natural justice. This view was reiterated in STATE BANK OF INDIA VS. ARVIND KUMAR SHUKLA reported in AIR 2001 SC 2398 wherein it was held that Non-furnishing of reasons of disagreement to delinquent officer is fatal and vitiates the ultimate order of dismissal. Keeping in view the above judgment, it is a clear case where neither applicant was served with the copy of the inquiry officer's report nor he had been given an opportunity of being heard as no disagreement note had been served on the applicant. Therefore, the impugned order dated 20.02.1998 is liable to be quashed. Even otherwise, perusal of the earlier order passed by the Tribunal shows that in case applicant is able to substantiate his claim. in that case the recovery already made was to be refunded to the applicant and no further recovery could have been made. The fact that applicant



was found not guilty by the inquiry officer would mean that he had substantiated his claim before the inquiry officer. However, disciplinary authority did have the power to disagree with the enquiry officer's report but while doing so he had to follow the laid down procedure, which has indeed not followed in the instant case. Therefore, without going into the other question as to whether the applicant was given fully opportunity to defend himself or not, the impugned order dated 20.02.1998 is quashed and set aside.

10. The order dated 20.02.1998 has been quashed because the respondents had not followed due process of law, therefore, this matter is remitted back to the authorities once again to start the proceedings from the stage of serving a copy of the enquiry officer's report on the applicant along-with disagreement note of disciplinary authority with reasons in case they so desire. It goes without saying that applicant should be given reasonable time to give his representation against the said disagreement note and then to pass the final orders after discussing all the points raised by the applicant in his representation. I am informed by the applicant's counsel that applicant had already retired in the year 2001 and all his retiral benefits have been withheld he is only getting the pension. Therefore, if respondents choose to still proceed against the applicant, they shall complete the process within a period of 3 months from the date of receipt of a copy of this order otherwise shall drop the case ^{if it} is deemed fit by the respondents. In case they decide to drop the case, ^{all} the pensionary benefits, which are payable to the applicant shall be released forthwith. In this case since applicant has been dragged to the court ^{2nd time} for the fault of the respondents ^{as} not following due process of law inspite of clear direction



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given by this Tribunal, therefore, this O.A. is partly allowed with a cost of Rs.1,000/- in favour of the applicant.



Member (J)

shukla/-