

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
THIS THE 17th DAY OF MAY, 2007

Original Application No.1105 of 1998

CORAM:

HON.MR.JUSTICE KHEM KARAN, V.C.
HON.MR.K.S.MENON ,MEMBER(A)

S.P.Verma, S/o Sri Jhagree Prasad
Verma, Fitter Staff No.3806, L.A.S,
D.L.W., Varanasi.

..Applicant

(By Adv: Shri Ram Chandra)

Versus

1. The Union of India through
The President of India, New Delhi
2. General Manager, D.L.W., Varanasi
3. Chief Mechanical Engineer/Production,
D.L.W., Varanasi.
4. Deputy Chief Mechanical Engineer,
D.L.W. Varanasi/Administrative
Officer, D.L.W., Varanasi.

..Respondents

(By Adv: Shri Amit Sthalekar)

ORDER

BY JUSTICE KHEM KARAN,V.C.

It is prayed that the order dated 5.9.98, 19.3.98 and
18.2.98 passed by respondent no.2,3 & 4 respectively be quashed with a

direction to them to reinstate the petitioner in service with all consequential benefits and treat the applicant in continuous service without any break.

2. The case in hand, has, somewhat peculiar facts and circumstances which we want to set out in the very beginning, with a view to appreciate the issues involved in this matter. Admittedly, applicant was serving as Fitter Gr.I staff in Diesel locomotive Works, Varanasi under the respondents. His wife Smt. Babuna Devi purchased Plot No.2/2 from a recorded Tenure Holder and constructed a House No.38 on this plot, situating close to the boundary wall of Diesel Locomotive works, Varanasi. It transpires that the respondents were of the view that the piece of land on which the applicant's wife constructed a house, was part of Plot No.2/3, belonging to the Railways. So they initiated the proceedings under Public Premises Eviction of Unauthorised Occupants Act, 1971 (for short the Act of 1971) against the applicant, without impleading his wife. According to the averments made in the O.A. ex parte order dated 3.7.1995 for eviction of the applicant was passed. Copy of this order is Annexure-4. Before the applicant could prefer an appeal, against the said order dated 3.7.95, the Disciplinary Authority issued O.M. dated 25.9.97, initiating formal disciplinary proceedings against the applicant under the relevant rules of 1968. The charge against him was, that he took unlawful possession of the railway property and had also made a construction thereon. The second charge was that though eviction order had already been passed under the Act of 1971, he was not vacating the land. Applicant came with a defence that the land in question did not belong to D.L.W, Varanasi as it was

purchased by his wife from erstwhile tenure holder. It is averred in the OA that he filed an appeal No.128/98 against order dated 3.7.95 before the District Judge Varanasi and vide order dated 20.3.98, the District Judge stayed the operation of eviction order. It is also stated that a civil suit No.57/98 Babuna Devi Vs. Union of India & Ors was already pending before the Civil Judge, Junior Division Hawali Varanasi, wherein interim injunction had already been granted on 21.1.98, copy of which is A-7. The Disciplinary Authority, however, passed the impugned order dated 18.2.98 (A-1) dismissing the applicant from service. Applicant preferred appeal, which was dismissed vide order dated 19.3.98 (A-2). The applicant preferred a revision which too was dismissed by the General manager vide order dated 5.9.98 (A-3).

3. The main ground taken for assailing the punishment order is, that the finding of guilt as recorded by the Enquiry officer and the Disciplinary Authority, is totally perverse in the facts and circumstances of the case as there was a bonafide dispute in between applicant's wife and the respondents, about the ownership of the land in question. It has also been said ex parte decision dated 3.7.95 is already before the Appellate court so on the basis of that decision alone, finding of misconduct could not have been recorded. He has also contended that his wife was not arrayed as respondent in the proceedings under the Act of 1971.

4. The respondents filed reply, saying that the piece of land measuring 0.72 Acre was part of acquired Plot No.2/3, situating in village Nathupur, Pargana Dehat Amanat, varanasi and was property of DLW, Varanasi and so encroachment on it, by the applicant and his wife

was a serious misconduct entitling the respondents to take suitable action against the applicant. It has, however, been conceded in Para 3(2) of this reply that 0.72 acre land was outside the boundary wall of DLW. They say that in response to the Memorandum dated 25.9.97 served on the applicant on 26.9.97, applicant did not submit any written statement of defence and the Enquiry officer, after conducting the inquiry, submitted his report dated 9.1.98 (A-4) and in turn the Disciplinary Authority sent the copy of this report to the applicant, asking him to submit his representation if any. It is said the applicant submitted his representation dated 27.1.98 and after considering all this, the Disciplinary Authority passed the impugned order of punishment. Attempt has also been made to say that the applicant ought to have approached the revenue court as civil court had no jurisdiction to decide the matter.

5. It appears, that this OA was finally disposed of vide order dated 7.3.02. By that order the Tribunal had set aside the dismissal order as well as the orders passed by the Appellate and Revisional Authorities with the observation that authorities should have waited for the final out come of the civil suit. This order was, however, reviewed and recalled by subsequent order dated 31.3.2005, on the application of the respondents. This is how the matter is again before the Tribunal for final orders.

6. We have heard Shri Ram Chandra, the learned counsel for the applicant and Shri Amit Sthalekar for the respondents and have also perused the entire material on record of this OA.

7. Shri Ram Chandra has argued that in the circumstances when a civil suit with regard to the ownership was pending in the civil

court and when his wife had already obtained interim orders against the respondents restraining them from interfering with the possession over the land in suit and when appeal u/s 9 of the Act of 1971 was already pending before the District Judge and operation of the eviction order dated 3.7.95 had already been stayed, the Disciplinary Authority ought not to have recorded a finding of guilt and ought not to have imposed a punishment of dismissal from service. His second submission is, that there is no acceptable evidence which can justify the finding of guilt. According to him excepting the order dated 3.7.95, passed under Sub-section (1) of Section 5 of the Act of 1971, there was no other evidence before the Enquiry officer to say that the applicant was in unauthorized occupation of the land in question. He says that the Enquiry officer ought to have, asked the department to lead evidence to establish that the land in question belonged to of DLW, and finding of guilt could not have been recorded, merely on the basis of order dated 3.7.95, operation of which was stood stayed, Shri Ram Chandra has also argued that it is difficult to say that the civil court, before whom the civil suit for injunction filed by his wife was pending, had no jurisdiction to entertain and try the suit. The learned counsel goes on to argue that a suit for injunction is always cognizable by the Civil court. He argues that if the civil court passes a decree of permanent injunction against the respondents, restraining them from interfering with the possession of applicant's wife over the land in question and that decree becomes final then how the order of dismissal from service on the ground of unauthorized occupation of the government land will be compatible and sustainable, has not been explained by the learned counsel for the

respondents. He has also argued that if the District Judge, allows the appeal, sets aside the eviction order and the order of District Judge becomes final, then how the dismissal order will be sustainable in law. The learned counsel for the respondents has tried to say that if appeal is allowed by the District Judge holding that the possession of the applicant was not unauthorized and the order of the District Judge becomes final or if the civil suit is decreed and the decree becomes final, the dismissal of the applicant would be set aside and the applicant reinstated in service. In other words, according to the learned counsel for the respondents when a servant is removed from the job on the basis of the conduct which has led to his conviction and subsequently the servant is acquitted in appeal, he is reinstated in service and the same yardstick may be adopted in the case of the applicant.

8. We have carefully considered the respective submissions. Undoubtedly, the case is typical in nature and it is not very easy to accept that in such a case where there is a bonafide dispute in between the servant and his master as regards the title of a property or as regards the right to have the possession on the property, the servant could be visited with any punishment under the disciplinary rules, before adjudication of the respective rights by a court of competent jurisdiction is done. Here, in the instant case applicant's wife purchased the piece of land situating outside the boundary wall of DLW, which was part and parcel of Plot No.2/2 and after taking possession constructed a house. The case of the respondents appears to be that the piece of land built upon by the applicant and his wife is part and parcel of Plot No.2/3. In other words, if the land in question is part and parcel of Plot No.2/2 respondent's claim

will be totally unfounded and the entire action taken by them against the applicant will be totally unsustainable. Had the land in dispute been within the boundary wall of DLW, there could have been some scope for saying that the dispute was not bonafide one. We do not dispute the proposition that a servant can be subjected to disciplinary proceedings for unlawfully encroaching upon the land or property of his master or for making unauthorized construction on the land of his master but we have a grave doubt whether the master will be justified to subject his servant to disciplinary action in a case where there is a bonafide dispute in between him and the servant as regards the title and possession of the property in question. If his master will be permitted to punish his servant even in a bonafide dispute, consequences may be very grave. So we agree with Shri Ram Chandra that disciplinary proceedings should not have been initiated or punishment order should not have been passed without knowing the final outcome of the civil suit or appeal u/s 9.

9. Shri Ram Chandra has also argued that the contention of the respondents that the civil court has no jurisdiction to try or entertain the civil suit pending at Varanasi is not well founded. According to him the question has to be decided by the civil court itself and not by this Tribunal or by the respondents. I think the question as to whether the civil court has jurisdiction or not, should not be deliberated in this forum and that has to be decided in the suit itself, if the same is raised before it. We are not supposed to pronounce on that point.

10. Shri Ram Chandra has also contended that the finding of guilt is perverse in the sense that in the facts and circumstances of the case no reasonable person will record a finding that the applicant is in

unauthorized occupation of the land in question. According to him when there is a bonafide dispute and when the land situates outside the boundary wall of DLW and when there is no evidence, except the order of Estate officer u/s 5 of the Act of 1971, to establish that the land belongs to the respondents, how it has been concluded by the Enquiry officer or by the Disciplinary Authority that the applicant has encroached upon the land of his master. He has also contended that after the operation of the order dated 3.7.95 has been stayed in appeal u/s 9, the applicant cannot be hauled up for not complying with that order. The submissions of Shri Ram Chandra are appealing and we find it difficult to brush aside the same.

11. We take the view that disciplinary proceedings ought not to have been initiated or concluded before the final verdict of the civil court in the civil suit pending at Varanasi or before the outcome of appeal pending before the District Judge, varanasi. An anomalous situation is likely to be created or may be created if the wife of the applicant gets a decree of injunction from the civil court or if appeal against the eviction order is allowed and the same attain finality. So we are inclined to quash the impugned orders with liberty to the ^{respondents &} applicant to proceed under disciplinary rules only after the result of the civil suit or of the appeal.

12. The OA is accordingly allowed and the impugned orders dated 5.9.98, 19.3.98 and 18.2.98 are hereby quashed with liberty to the Disciplinary Authority to initiate departmental proceedings against the applicant only after the final outcome of appeal under of the Act of 1971 or of the civil suit filed by the wife in a court at Varanasi. The applicant

shall be entitled to all consequential benefits as a result of the quashing
of the impugned order.

Dated: May , 2007
Uv/

Emerson
MEMBER (A)

L. J. Emerson
VICE CHAIRMAN

17.5.07