

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration No.295 of 1986 (T)

Har Swarup Applicant

Versus

Union of India & Another Respondents.

Hon.S.Zaheer Hasan, V.C.

Hon.Ajay Johri, Member(A)

(By Hon.Ajay Johri, Member(A))

This is a Suit No.351 of 1983 received on transfer from the Court of Munsif Moradabad under Section 29 of the Central Administrative Tribunals Act of 1985. The petitioner Har Saroop was a Carriage & Wagon Khalasi on the Northern Railway at Moradabad. He had joined service on 10.12.62 at Rosa and came on transfer to Moradabad on 28.2.70. He had applied for allotment of a quarter but the same was not given to him when his turn came. One quarter L 45/B fell vacant. The petitioner's house in his village was washed away due to floods and the family was rendered homeless. According to the petitioner he informed the Wagon Repair Foreman (WRFO for short) and occupied this quarter. On 27.10.78 he was suspended on a report made by the W.R.FO. but suspension was revoked on 28.11.78 and he was asked to pay the prescribed rent. This was done till Jan., 1980. However, the matter was reopened on 28.1.80 by the Carriage & Wagon Inspector and the petitioner was asked to give his statement. Under an order of eviction given to him on 30.4.80, he was evicted from the quarter too. For the alleged unauthorised occupation he was removed from service by an order dated 23.5.80 served on him on 24.5.80. The petitioner has pleaded that the removal

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order tantamounted to 'Double jeopardy' and he was also not given opportunity of defence. He preferred appeals but they were turned down. Then he came to the court seeking relief that the order of 23.5.80 be declared illegal & void and he be given all the benefits consequential to it.

2. The respondents case is that the petitioner never applied for allotment of a quarter and, therefore, his claim that his turn came in 1976 was wrong. He occupied the quarter unauthorisedly. He was suspended for this unauthorised occupation. This order was revoked later on. The petitioner was charged penal rent from April, 1979 to May, 1980. He was also evicted from the house unauthorisedly occupied by him. A regular enquiry was held for the above act and he was removed from service thereafter. Charging of penal rent and eviction is not a punishment under Article 311 hence there was no 'Double jeopardy'.

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3. We have heard the learned counsel for both parties. The petitioner's application to the Carriage Repair Foreman made on 2.9.76 requesting for allotment of quarter is placed at 29 Ga. The respondents have denied that he ever applied. They have said in their reply that the two quarter allotments challenged by the petitioner were made to Essential Staff, and the petitioner was not concerned with this. The petitioner has not been able to produce any allotment letter for the quarter. He has stated that he occupied it after informing the ²⁶ R WFO. This cannot be considered

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2. The respondents case is that the petitioner never applied for allotment of a quarter and, therefore, his claim that his turn came in 1976 was wrong. He occupied the quarter unauthorizedly. He was suspended for this unauthorized occupation. This order was revoked later on. The petitioner was charged penal rent from April, 1979 to May, 1980. He was also evicted from the house unauthorizedly occupied by him. A regular enquiry was held for the above act and he was removed from service thereafter. Charging of penal rent and eviction is not a punishment under Article 311 hence there was no 'Double jeopardy'.

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as adequate proof of the legitimacy of occupation. With a low percentage of employees having satisfaction in regard to housing, the houses are allotted to Essential Staff first. In this way the nonessential category waits for a fairly long time. Petitioner has put forward the family circumstances - his house in the village getting damaged due to floods - he had his family to house somewhere. He, therefore, appears to have taken the law in his own hand and when he found a quarter getting vacated he occupied it without proper allotment. Thus he was in unauthorized occupation and was liable to be evicted from it and also to pay the penal rent. There is nothing wrong in the respondents action in this regard.

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4. The petitioner has admitted that he was asked to give a statement. His removal order (Exb. 26 Ga) clearly says that an enquiry officer was appointed on 9.9.79. A chargesheet was also issued to him on 18.11.78 prior to the suspension being revoked. The chargesheet was for Major Penalty. The petitioner participated in it. He has not produced any documents to indicate that he had made any objections. He has also not produced the appeals which he made against the punishment. He cannot now take a plea that he was not given adequate opportunity. We do not find anything wrong with the disciplinary proceedings.

5. When the petitioner occupied the quarter unauthorisedly he became liable to penal rent as well as eviction. The administration was at liberty to take action against him under D & A Rules. Charging of Penal Rent and eviction are separate set of actions. Eviction
24 Could in any case have been enforced after his removal. sk

AK (5)

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could not then say that since he has been removed for unauthorized occupation he should not be evicted. It was for his misconduct & for actions not expected of a Govt. employee that he was issued the chargesheet. The ingredients of the two actions are not the same. This is not a case of double jeopardy.

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6. The offence was unauthorized occupation. The petitioner has been removed from service for the same. On the date of removal he was not in possession of the quarter. The learned counsel for the petitioner has attacked the quantum of punishment. He argues that the petitioner has been too severely dealt with and the punishment is disproportionate to the offence committed. The nature and quantum of punishment is to be decided by the punishing authority. In normal circumstances the Tribunal will not like to sit in judgement over the punishing authorities decision. The reasons which prompt the punishing authority to impose a punishment cannot be justiciated.

7. A punishment should however be consonant with the gravity of offence. Discretion has to be exercised ~~quite~~ reasonably. Imposition of a punishment without justification takes away the security of the service. If it becomes arbitrary and is out of all ³¹ ^rproportions to the misconduct, ³¹ ^{in this case} which does not tantamount to gross indiscipline, justice will demand that the punishment should be tempered.

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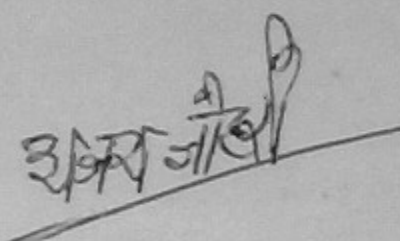
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RF (6)

8. We, therefore, set aside the punishment. The respondents will be at liberty to impose any other punishment of lesser severity on the petitioner. The intervening period from the date of removal to his joining duty shall be treated as leave of any kind due to the petitioner. Parties will bear their own costs.


V.C.


A.M.

RKM

Dated the 3rd Oct., 1986.