

VA2

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

.....

(Registration T.A. No. 259 of 1987)

Madan Lal.....Applicant
Vs.

Union of India,
General Manager, NE Rly
& Others.....Respondents

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. A.B. Gorthi, Member (A)

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant Peer Mohd. of Schedule Caste community has approached this Tribunal against the removal order, which has been passed against him as a result of disciplinary enquiry held for being in unauthorised occupation of a Railway quarter.

2. According to the applicant, he has been approaching the Railway Authorities continuously for allotment of a quarter, as he was entitled to. But those who were junior to him or whose names found place in the priority list subsequent to his names, were allotted quarters. The applicant was not allotted and stated that ~~and~~ he had to move out of the private house to the Railway Platform alongwith the family as ~~a~~ private house ~~which~~ was transferred to someone else by its owners.

3. According to the applicant as 4 quarters were ready, on the oral directions or assurance of the Foreman, he occupied ^{one of} ~~the~~ ^{same} ~~same~~. Notices were issued to the applicant for vacating the same and

the applicant stated all his difficulties. Without taking any proceedings against Public Premises, (Eviction of Unauthorised Occupants) Act or any ~~or~~ recovery of the rent or penal rent, A chargesheet was served on the applicant and on one Madan Lal. Both ~~of~~ the men were similarly occupying the premises. They filed their representation against the same indicating their story.

4. An Enquiry Officer was appointed and it appears that Defence Assistance were also nominated. But the applicant's grievances, that as opportunities were not given to him and the documents which he wanted are not given to him, he had no option but not to participate in the enquiry. The Defence Assistance also made such statements. The Enquiry Officer after taking into consideration the report in this behalf and statement of the witness~~es~~ examined concluded the enquiry ~~of~~ ex-part~~es~~ and submitted the same to the Disciplinary Officer. The Disciplinary Authority ~~also~~ passed an order of removing him from service.

5. So far as Madan Lal is concerned, he was also chargesheeted alongwith the applicant and who like the applicant was earlier placed under suspension which order in respect of both was later on revoked, was given ^a minor punishment of withholding of increment for one year and the applicant was thus shunted out of the service. The applicant's appeal also met with the same fate and that is why he has approached the Tribunal.

6. It is to be noticed in this case that for unauthorised occupation of the house legal proceedings are to be taken and the law in this behalf applicable

for Railway is rather a complete code by itself. Instead of adopting the procedure prescribed in law, it appears that the respondents tried to adopt its short circuit in getting the premises vacated in this manner.

7. The enquiry, though started with the disciplinary proceedings, no law could be pointed out under which, the unauthorised occupation of the Railway quarter, one can be removed from service. Instead of taking the prescribed action against him, the enquiry proceedings are full of legal handicaps. Even, if an ex-party enquiry was held, It was even then obligatory on the respondents to serve a copy of the Enquiry Officer's report and give him an opportunity to make a representation against it, even at that stage after holding him guilty of the charge.

8. It is significant to note that in the chargesheet no rules under which the same was issued or the enquiry against him was mentioned and the removal order also reference to Rule 6 was placed, but no reference to any other rules has been made. Even if the enquiry to some state of even participating thereafter. It was an ex-party enquiry, because the principle of natural justice requires that the Enquiry Officer's report should have been given to the applicant to enable him to make a representation, as it is the basic requirements of the principle of natural justice. In this connection reference may be made to the case of Union of India Vs. Mohd Ramzan Khan, AIR 1991, Supreme Court, page 119(1).

9. Thus the entire proceedings are vitiated and tainted and are against law. Even the chargesheet and the punishment order are also not supported by law

A
m

10. Accordingly this application deserves to be allowed and the removal orders dated 17.2.1982 and 7.7.1982 ^{are} ~~is~~ quashed and the applicant will be deemed to be continuing in service. However, it is made clear in case the respondents decide to proceed ^{with} an enquiry, it will be open for them to proceed from the stage of the Enquiry Officer's report given to the applicant, otherwise they can take action for eviction of the applicant in accordance with law.

11. The application is disposed of finally with the above directions and observations. No order as to costs.

transcript
Member (A)

lu
Vice-Chairman.

26 September, 1991.