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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Transfer Application No. 1454 of 1987

N.N. Verma Applicant
Versus
Union of India and Others Respondents

CORAM:

Hon'ble Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. K. Obayya, Member(A)

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

This transferred application which was initially instituted as writ petition in the High Court has been transferred to this Tribunal by operation of law. Feeling aggrieved against the punishment order dated 1.5.84 passed by the Senior Divisional Safety Officer Northern Railway and the non disposal of the appeal the applicant was compelled to file the writ petition in which he has prayed that the said order may be quashed and the respondents may be directed to pay him full salary and allowances for the said post as if the impugned order was not passed against him and a writ of mandamus was also prayed commanding the respondent no.2 to decide the appeal of the applicant and to set aside the order passed by the respondent no.3

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2. The applicant who was a railway employee was promoted as Guard 'B' at Tundla on 5.11.80 in officiating capacity as short term posting. While posted at Tundla he applied for transfer to Allahabad on two different occasions on the ground of the applicant's ailing wife and unattended children. He was transferred on 3.4.81 from Tundla to Kanpur in place of Allahabad. In the meantime the post of Guard 'B' was merged in Guard 'A-b' together and became 'Guard 'A''. While posted at Kanpur the applicant applied for allotment of a quarter at Kanpur but no allotment order of any quarter or any other residential accommodation was granted in favour of the applicants, with the result that the applicants continued to remain in occupation of the only quarter at his disposal which was at Allahabad but no quarter is allotted to the applicant. A circular was issued to the effect that a person who has been transferred from one station, the person concerned may retain the quarter but he will have to pay rent at market value or ~~penal~~ rent. This circular was issued by the Divisional Railway Manager Allahabad. According to the applicant he was ^{not} served with any notice for eviction but with effect from 1981 ~~penal~~ rent was being charged from him and the applicant continued to ~~pay~~ pay the said ~~penal~~ rent and his efforts for getting a quarter at Kanpur failed. The applicant also met senior Divisional Operating Supdt, for operation ~~of~~ ~~to~~ ~~expedition~~ with the intention of getting his transfer and posting at Allahabad but no benefit was given to

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the applicant. Vide order dated 17.11.82 the applicant was suspended and the suspension order was revoked on 22.6.83. A charge sheet was served upon the applicant on 7.2.83 on the ground that he inspite of his transfer has not vacated the quarter .

3. The applicant had already filed suit no. 129/83 in the court of Munsif west Allahabad, against the order of Senior Divisional Safety Officer and others for permanent injunction and according to him it was because he has filed the suit for permanent injunction the matter was disposed of and a charge sheet was served upon him. The applicant submitted his reply in which he made reference to the suit in which a temporary injunction was also granted and the respondents are restrained from evicting the applicant from the quarter till disposal of the injunction application. The injunction order was servied upon on 23.2.83. The enquiry officer was appointed who earlier was interested in getting the quarter as is evident from the record without recording statements of any of the prosecution witnesses and affording any opportunity to the applicant to cross-examine the witnesses in the charge sheet and also without giving copies of documents to him and the Enquiry officer submitted his report and the impugned order of reduction in rank was passed.

4. Feeling aggrieved by the same the applicant filed an appeal which was not disposed of with the result that the applicant had no option but to file this writ petition. According to the applicant, the applicant challenged the entire proceedings and found that it is violative of Article 311 of the Constitu-

tution of India and no reasonable opportunity was given to the applicant to defend himself nor ^{he} was given any opportunity to cross examine the witnesses mentioned in the charge sheet and also not given any material documents to the applicant even though requested repeatedly.

5. The respondents in their counter affidavit has stated that the notice regarding the penal rent has been admitted and it has been stated that he should have vacated the quarter and waited for his turn of allotment of a railway quarter at Tundla and Kanpur but he has no right to retain the quarter at Allahabad. The operation merely because there was circular that he is not entitled for a quarter at ~~one~~ and there were several cases of similar nature like the applicant and they will get their quarter allotted only when their turn comes. Regarding enquiry it has been stated that the enquiry officer was not interested in person to occupy the said quarter and he in fact occupied another quarter. According to the respondents he gave full opportunity to produce the witnesses. Suffice to say that so far as the applicant was transferred to Kanpur station and he was entitled to the allotment of a quarter merely because of the quarter was not available, the applicant was not be held even responsible for the same. In order to have a quarter and retaining it at Kanpur or at Allahabad the applicant in view of the extant circular issued by the Government operated but the benefit of the same was not given. He

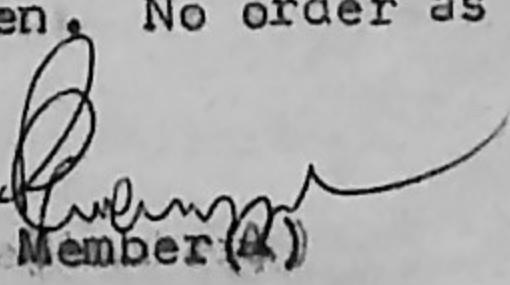
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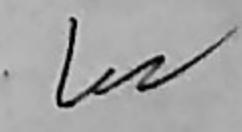
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was directed to pay ~~penal~~ rent, and he was given ~~penal~~ rent. The legal position in this behalf is quite clear. So far as the vacation of the quarter is concerned, for the disciplinary proceedings the law could have been taken. It was not a misconduct within the meaning of the Disciplinary proceedings and as such the proceedings which have been taken against the applicant for not vacating the quarter is concerned is misconceived and are not warranted by the provisions of Railway Services.

6. In the punishment order we have gone through the record and as we are allowing this application it will not be necessary to dilate more upon the plea which has been taken by the applicant as no reasonable opportunity was given to him of being heard though we are inclined to accept the plea which is justified on the record.

7. Accordingly, this application is allowed and the punishment order dated 1.5.84 is quashed. It will be deemed as if no punishment order has been given to the applicant, he will be entitled for all the benefits. So far as the question of non vacation of the quarter is concerned, it is for the respondents to take proceedings in accordance with law but no observation in this behalf has been taken. No order as to the costs.


Member (4)


Vice Chairman

Dated: 7th September, 1992

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