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Reserved:

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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

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Registration O.A. No. 1413 of 1988

Gyanendra Prasad Mishra ... ... Applicant.

... Versus

Union of India
and others .. .. Respondents.

...

Hon. Mr. S. Das Gupta, Member(A)
Hon. Mr. T.L. Verma, Member(J)

(By Hon. Mr. S. Das Gupta, Member(A))

The applicant has come to this Tribunal through this Original Application praying that the impugned order of punishment dated 26.3.1984 (Annexure- A 1), the order of appellate authority of May, 1985(Annexure- A 13) and order dated 5.8.1986 of the reviewing authority (Annexure- A 15) be quashed and that the respondents be directed to regularise the occupation of Railway Quarter No. E/42-D Type-II by the applicant retrospectively by issuing a proper allotment order in his favour.

2. The facts of the case giving rise to this application are that the applicant joined the Railway as 'Cleaner on 11.3.1973 and after getting successive promotions he rose to the rank of Fireman Grade-B at Moradabad. A major penalty charge-sheet dated15.10.1981 (Annexure- A 2) was served on the applicant while he was working as Fireman Grade-B at Moradabad. The charge

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against the applicant was that he had occupied quarter No. E/42-D Type-II forcibly after breaking the lock on 17.6.1981, thus violating Clause-III (i) Rule-3 of the Railway Service Conduct Rules, 1968. The applicant submitted his explanation refuting the charges and thereupon an enquiry was held into the charges. The enquiry officer found that the charge against the applicant has not been established. The disciplinary authority, thereupon, directed the enquiry officer to give his finding as to whether the applicant was in unauthorised occupation of the said quarter. The enquiry officer vide his supplementary finding (Annexure-A 5) reported that the applicant was not responsible for unauthorised occupation and infact, the quarter should be regularised in favour of the applicant. The disciplinary authority thereafter passed the impugned order dated 26.3.1984 (Annexure-A 1) imposing a penalty of withholding of increments for 3 years postponing his future increments. The impugned order, however, indicated that the disciplinary authority had agreed with the findings of the enquiry officer.

3. The applicant preferred an appeal against the order of the disciplinary authority pointing out interalia that the disciplinary authority had imposed penalty while at the same time, he agreed with the findings of the enquiry officer and that the finding of the enquiry officer was that the charges have not

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been established against the applicant. A copy of this appeal dated 22.5.1984 is at Annexure-A 12. The appellate authority vide its impugned order dated May, 1985 (Annexure-A 13) rejected the appeal, Thereupon, the applicant filed a review petition again pointing out the discrepency in the order of the disciplinary authority inasmuch as he agreed with the findings of not guilty by the enquiry officer and yet imposed a penalty on the applicant. A copy of this review petition is at Annexure-A 14. The reviewing authority vide its impugned order dated 5.8.1986 (Annexure-A 15) passed the following order;

" Status -quo will be maintained in this case".

Since the applicant could not understand the implication of the said order, he submitted a number of representations to the reviewing authority for clarification of its order. Finally vide communication dated 25.8.1988 (Annexure-A 21), it was clarified that the 'Status-Quo' means that the decision of the appellate authority was to stand. The applicant thereafter approached this Tribunal seeking the reliefs aforementioned.

4. The respondents have submitted a written reply to the Original Application and the applicant has thereafter submitted rejoinder affidavit. We have heard the counsel of both the parties and carefully perused the rival contentions made in

original application, written reply and rejoinder affidavit.

5. At the out set , we must observe that this appears to be one of the few cases which bristle with irregularities committed by the responding department. No step taken by the respondents in this case appears to have been correctly taken. To begin at the beginning, let us examine to what extent the charge against the applicant was maintainable.

6. The applicant has averred that although he was figuring at Sl. No. 246 as on 11.9.1975, in the list of priority for allotment of quarter at Moradabad, he was not allotted a quarter and that his claim for allotment of quarter was repeatedly ignored in preference to persons junior to him in the list of priority. He has cited 10 specific cases where he alleges that quarters were given to persons junior to him. He has submitted that one Babu Khan who was the occupant of the disputed quarter No. E/42-D Type-II offered to share his accommodation with the applicant and the offer was readily accepted by the latter. He claims that thereafter he informed the loco foreman, Moradabad, the authority in regard to allotment of quarters that he was sharing accommodation with

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Babu Khan. The applicant further submits that after some time, the said Babu Khan absconded from duty after handing over charge of the aforesaid quarter to the applicant and he again informed the loco foreman, Moradabad of this fact in writing requesting that the quarter in question be allotted to him. In view of this, the applicant pleads that he was shocked when a charge memo was served on him allegedly for taking forcible occupation of the said quarter. The petitioner has alleged that there was renk favouritism and nepotism on the part of the authorities concerned in alltoment of quarters and the applicant's rightful claim was ignored.

7. The respondents have sought to deny the allegations levelled by the applicant stating that the allotment of railway quarters was done in accordance with the existing rules and there has been no favouritism and nepotism in allotment of quarters. It however, reveals from the details given by the respondents regarding allotments which the applicant alleges were to his juniors, that at least in 3 suchcases, quarters were allotted to persons occupying the position 252,258 and 262 as on 2.10.1975, 10. 10.1975 and 20.6.1976 respectively. whereas, admittedly, the applicant's position was 246

as on 11.9.1975. It is, therefore, very clear from the respondent's own averments that at lease in three cases allotments were made to persons junior to the applicant without in any way indicating the reasons for such out of turn allotment. Moreover, we have seen from the details furnished by the respondents that in 2 cases unauthorised occupation was regularised by subsequent orders. In view of such palpable irregula-rities, we cannot accept the contention of the respondents that the quarters were being allotted in accordance with existing rules. We are rather inclined to believe the applicant there there was something basically wrong in the system of allotment of quarters by the authorities concerned. Whether or not such irregularities were committed due to favouritism or nepotism or worse is a matter of speculation which field we are not inclined to enter.

8.. The applicant's contention that he had given a written intimation to the Loco Foreman, Moradabad that he has been sharing the accommodation with Babu Khan with the latter's consent has not been specifically denied by the respondents nor there is a specific denial of the contention of the applicant that after he occupied the entire quarter, he

intimated the matter to the Loco Foreman , Moradabad in writing requesting for regularisation of the quarter in his name. We have also seen that as many as six witnesses examined by the prosecution in this case did not testify that the applicant had broken the lock for taking possession of the disputed quarters. We are, therefore, unable to disbelieve the applicant that initially he started sharing the quarters of Babu Khan and thereafter took the possession of the quarter when the said Babu Khan left the station. Even if such occupation was unauthorised nothing prevented the respondents in regularising the accommodation in his name, particularly, when there are atleast 2 instances before us from the details furnished by the respondents themselves that unauthorised occupation were subsequently regularised. It is not that the applicant had no claim to a quarter; infact, he had a very good claim and the same was ignored in preference to his juniors as already pointed out by us. In our view, therefore, the charge itself against the applicant for breaking the lock of the quarter and taking unauthorised occupation thereof was not maintainable.

9. Even ignoring for the moment that there was nothing wrong in the charge sheet issued to the applicant, let us examined how the authorities proceeded for finalising the disciplinary action against the applicant. Here is a case, where the enquiry

officer gives a clear finding, and in our view a correct finding based on the evidence on record, that the charge against the applicant has not been established. The disciplinary authority directs the enquiry officer to make further enquiry as to whether the charge of unauthorised occupation was established or not. Even to this, the enquiry officer gives a clear findings that there was no case ofunauthorised occupation and that, infact, the quarter should be regularised in the name of the applicant. No doubt, the disciplinary authority was not bound by these findings and it had a right to disagree with the same, but in that case, it is incumbent on it to record clearly the reasons for such disagreement. This is a duty imposed on the disciplinary authority statutorily under rule 10(3) of the Railway Servant (D & A). Rules, but what the disciplinary authority does, is very strange to say the least. It agrees with the findings of the enquiry officer and yet imposes the penalty on the applicant. A lame attempt has been made by the respondents in their counter reply to glass over this irregularity by saying that in the impugned order of disciplinary authority, the prefix 'dis' was not added to th the word ' agreed' and that the intention of the disciplinary authority was to say that it disagrees with the findings of the enquiry officer but by mistake the word ' agreed' was written. Even if we accept this version of the respondents, the

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question which still remains unanswered is as to why in the case of the alleged disagreement with the findings of the enquiry officer, the disciplinary authority did not record the reasons for such disagreement as it was statutorily incumbent on it to do so in terms of rule 10(3) of the Rules ibid. The impugned order of the disciplinary authority is thus totally vitiated and is a non est.

10. The order of the disciplinary authority being a non est , the impugned orders of the appellate authority and the reviewing authority are also non est. The appellate order in any case is per se vitiated on account of the fact that it is a totally non-speaking order which does not indicate whether the appeal was considered in all its aspects as required in terms of the provisions of Rule-22 ibid. In the case of Ram Chandra Vs. Union of India, AIR 1986 SC 1123, the Supreme Court held that where the appeal of Railway Servant was dismissed by a machenical reproduction of the phraseology of Rule 22 (2) ibid, there was non-compliance with the requirement of the said rule and that the appellate order must be set aside. In this case there was not even a machenical reproduction of the phraseology of Rule 22(2) ibid.

11. The order of the reviewing authority is also vitiated per se on account of being not only a

non-speaking order but also being an order couched in ambiguous language viz "Status-quo be maintained". A subsequent attempt at clarification of the said order does not cure the defect.

12. The applicant has also stated that panel rent is being realised from him on account of the alleged unauthorised occupation of the quarter in dispute and has pleaded that this amounts to double jeopardy. The respondents have on the other hand stated that there is no double jeopardy in this case, since the imposition of penalty is on account of the mis-conduct committed by him , whereas, the penal rent realisation was for unauthorised occupation and these are two independent acts. We would have been inclined to agree with the respondents had the penalty been imposed in proper manner and the applicant was really found guilty of unauthorised occupation of the quarter. In the facts and circumstances of the case as already been discussed, we are unable to accept the contention of the respondents.

13. One more point to be considered is regarding the plea raised by the respondents relating to the maintainability of the application both on the question of limitation and on plural reliefs. So far as the question of limitation is concerned, it was held by the Madras Bench of the CAT in the case of B.R. Venkappayya Vs. State of

Mysore 1972 Lab. IC451 , that once a representation is entertained and considered on merits, the order rejecting the representation would give a fresh starting point for the purpose of limitation. The Tribunal in this case relied on the decision of the Principle Bench in the case of B. Kumar Vs. Union of India, reported in ATC (1988) 1 CAT . In the case before us although the review order was passed on 5.8.1986, the subsequent representations of the applicant seeking a clarification of the review order was replied to by the respondents vide their communication dated 25.8.1988. This would, therefore, give a fresh starting point for the purpose of limitation. The application having been filed on 21.12.1988, is well within the period of limitation in that view of the matter.

14. So far as the plea of plural relief is concerned, we find that the charge is based on unauthorised occupation of the quarter, and as such, the applicant has prayed for quashing the orders of penalty based on this charge and the appellate order and the reviewing orders passed thereon as well as for regularisation of the quarters. These two reliefs, in our opinion, cannot be considered as distinct reliefs attracting the provisions regarding non-maintainability of applications on the ground of plural reliefs.

15. In the result, the application is allowed . We quash and set aside the impugned orders 26.3.1984 (Annexure-A 1), May, 1985 (Annexure-A 13) and 5.8.1986 (Annexure- A 15) passed by the disciplinary authority, appellate authority and reviewing authority respectively with all consequential benefits. We also hold that the petitioner has a right to be allotted a quarter and we direct the respondents to regularise the quarter in dispute in the name of the applicant with retrospective effect, and to realise only normal rent since the original date of its occupation by the applicant. There will be no order as to costs.

Member(J)

Member(A)

Dated: 5 April,1994.

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