

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the ^{and 5th hour} 4th day of April 2002.

QUORUM : HON. MR. S. DAYAL, A.M.

HON. MR. RAFIQUDDIN, J.M.

O.A. No.1066 of 1992.

A.D.N. Singh, Sr. Parcel Clerk, N. Railway, Varanasi Cantt.

Varanasi.....

..... Applicant.

Counsel for applicant : Sri R.C. Shukla.

Versus

1. Union of India represented by General Manager, N. Railway Baroda House, New Delhi.
2. Divisional Rail Manager, N. Railway, Hazaratganj, Lucknow
3. Sr. Divisional Safety Officer, N. Railway, Hazratganj, Lucknow.....

..... Respondents.

Counsel for respondents : Sri A.V. Srivastava.

ORDER (ORAL)

BY HON. MR. S. DAYAL, A.M.

This application has been filed for setting aside order of stoppage of increment passed by the Sr. D.S.O./LKO because occupation of a quarter (which was not unauthorised) cannot be classified as misconduct and no penalty can be imposed.

2. At the out set counsel for respondents mentioned that the order dated 1.5.00 which was passed in the application earlier could not have been recalled without filing of a review petition by the applicant. He has, in this connection, drawn attention to Rule 15 of C.A.T. Procedure Rules 1987. We had considered the Misc. Appn. No. 134/02 on 1.4.02 for recalling the order passed in considering another recall application No. 3159/01. We had considered the R.A. No. 134/02 and had recalled the order dated 4.12.01 by which M.A. No. 3159/01 to recall the order by condoning delay was rejected. Counsel for respondents has rightly mentioned

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that the applicant was required to file a review application instead of recall application which had been rejected earlier. Recall Appn. No. 3159/01 prayed for recall of order dated 1.5.00 on account of the fact that the erstwhile counsel for applicant Late Sri G.P. Verma had died when the applicant came to be heard on 1.5.00 and the applicant was not aware of the death of his counsel and the order passed in this O.A. till he went to Varanasi on 15.7.01 to meet his counsel Mr. Verma who have already stated to died on 31.8.96. He enquire about the case in the office and the tribunal after coming to know of the death of Sri G.P. Verma and came to know of the order passed on 1.5.00. The recall application No. 3159/01 is in the nature of review because the applicant's case went unheard for no fault of his. Hence we were inclined to recall order dated 1.5.00 on 1.4.02. Hence we have heard the O.A. a fresh.

3. The applicant who was working as Asstt. Station Master, Kashi Railway Station claims that he was allotted a railway Qr. No. T-16-D in Ganga Colony, Kashi. The said quarter was a Type I quarter which was converted to Type II. The applicant claims that Station Master assured him that he could exchange his quarter when a better quarter was available. Because of this assurance, the applicant occupied Qr. No. 21-D in Killa colony as it was a regular Type II quarter and Qr. No. T-16-D which was earlier occupied by Shri Ranvir Singh, Switchman. The respondents recovered regular rent from Sri Ranvir Singh of Rs. 22.30 paise from the salary of the applicant from Qr. No. 21-D for the months of January and February 1983. He claims that Station Master later on developed animosity and reported that Qr. No. 21-D of Killa Colony was forcibly occupied by the applicant in an unauthorised manner. The charge-sheet for major penalty was issued on 7.10.83. It was subsequently converted to minor

penalty charge-sheet on 10.2.84 and the applicant was penalised by stoppage of three increments. The applicant claims that the orders passed by Sr. D.S.O. on 31.7.85 was communicated to him only on 13.4.87. The applicant filed an appeal on 2.5.87, which he claims, remained undisposed of.

4. We have heard the arguments of Sri R.C. Shukla for applicant and Sri A.V. Srivastava for respondents.

5. Counsel for the applicant has claimed that he had occupied Qr, No. 21-D within knowledge and with the consent of the Station Master. This has been denied by the respondents. The respondents have admitted to recovery of normal rent from the applicant for two months on account of clerical error and claim to have stopped it on getting to know of the said error. Counsel for the applicant has relied on the ratio of the judgment of Calcutta High Court in Ravindra Nath Bose Vs. G.M. Eastern Railway containing that if rent had been recovered from the applicant from the date of occupation of quarter, the relationship of landlord and tenant got established which cannot be questioned later. The applicant in the said case had occupied the quarter without allotment on 10.10.1964 and usual rent was deducted from him from the date of occupation of the said quarter. Later on the respondents sought to recover penal rent from the applicant and it was held that penal rent could be recovered only if the petitioner was an unauthorised occupant. In the case before the High Court, the petitioner could not be considered as unauthorised occupant and the rent was recovered from the applicant of the quarter.

6. We have considered the submissions of counsel for applicant on this issue. We find that the facts of the two cases are ~~the similar~~ ^{dissimilar} and the ratio cannot be applied to the case before us where it was realised immediately

after first two months that the recovery of rent was a mistake on account of error of clerk.

7. Counsel for the applicant mentioned that it was not a misconduct on the part of the applicant ^{just} because the railway servant Conduct Rule 3(iii) stipulated that every Government servant shall do all times which is unbecoming of a railway or Government servant. The contention of the counsel for applicant is that the act of occupation of Type II quarter without regular allotment was not an act which is unbecoming of the railways as it does not sully the image of railways. He also contended that by construction, the word Servant could not be considered as referring to railway but it could only be construed as referring to Govt. We are unable to agree with the interpretation of Conduct Rule 1966. The rule clearly requires railway servant to do nothing which is unbecoming of a railway servant or a Govt. servant.

8. Counsel for the applicant has placed before us the judgment of Chandigarh Bench in Sri Satya Prakash Vs. UOI & others 1990(3)(CAT) AISLJ 460. It has been held that non-vacation of Govt. accommodation and being in unauthorised occupation of the same cannot be treated as misconduct and that the disciplinary proceedings resulting in removal from the service of applicant cannot be taken ~~against~~ him. It appears from the order that initially the applicant was in authorised possession and subsequently when he was transferred the possession became unauthorised. In such a situation, especially looking to the severity of the punishment, the said order had been passed. In the case before us, the possession was ~~und~~authorised from the beginning. Not only that, the quarter actually allotted was given ^{away} by the applicant to some other railway employee.

9. The counsel for applicant has also placed reliance

on Sri Naval Singh Vs. Union of India and others to state that unauthorised possession of vacant quarter is not a misconduct. The order passed in this O.A. is based on the case of A.M.M. Khan Vs. UOI ATR 1987 (1) CAT 567 in which the applicant was in possession of rent free accommodation and his order of removal from service was not sustainable, because if the Govt. servant fail to vacate rent free accommodation on transfer, he was liable to pay rent including the panel rent provided under the rules. Besides, the alleged misconduct in the case was non-vacation of quarter. Counsel for the applicant has also placed before us the case of U.S. Reddy Vs. State of Andhra Pradesh (1988) 7 ATC 119 and contended that rule 3(1) (ii) and (iii) have been held to be vague and of a general nature. This has been said in the context of violation of fundamental rights of the applicant in that case where freedom of right of ~~fundamental~~ speech was involved.

10. The counsel for respondents, on the other hand, has relied on the case of Sri Hari Shankar Shukla Vs. UOI and others 1992(1) UPLBC 6 by a Division Bench of this tribunal has held that *prima facie* an act of unauthorised occupation is an act of misconduct.

11. We find from the O.A. that the applicant had given over possession of his own quarter allotted to him to another person and allotted some other quarter without authorisation. This would certainly fall within the category of an act becoming of a Govt. servant which has been classified as a misconduct in Railway Servant (Conduct) Rules 1966 in Rule 3(1)(iii). The counsel for respondents has also drawn attention to Railway Board order dated 9.1.63 in which it has been stated that the staff indulging in unauthorised occupation/retention may be dealt with under D & AR proceedings and action under public premises/

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Unauthorised Occupation Act 1971. Thus, by executive order also the desired conduct of railway servants was prescribed.

12. Under the circumstances, we find no merit in the O.A. and the same is dismissed.

There shall be no order as to costs.

Ratneshwar

J.M.

Ahuja

A.M.

Asthana/
5.4.02