

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
ADDITIONAL BENCH AT ALLAHABAD

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Allahabad : Dated this 11th day of January, 1996

Original Application No. 1481 of 1994

District : Saharanpur

QUORUM:-

Hon'ble Mr. T.L. Verma, J.M.

Jag Roop S/o Shri Ram Garib,
R/o Riy. Qtr. No. 371-B, Khallasi Line,
Saharanpur.

(By Sri Rakesh Verma, Advocate)

..... Applicant

Versus

1. Union of India through

Assistant Engineer,

Northern Railway,

Saharanpur,

2. The Estate Officer,

Northern Railway,

Ambala Cantt.

(By Sri Prashant Mathur, Advocate)

..... Respondents

O R D E R

By Hon'ble Mr. T.L. Verma, J.M.

This application has been filed under Section 19 of the Administrative Tribunals Act, 1985 for quashing the order dated 25-8-1995 passed by the Estate Officer in case no. 74-W/PP/EA/UMB mandating the applicant to vacate the railway or no. 371-B, Khallasi Line, Railway

Colony, Saharanpur and to pay the damage rent for the period from 28.3.92 to 25.8.94 amounting to Rs.9,549/- @ Rs.479/- per month and to issue a direction to the respondents to permit the applicant to retain the quarter on payment of damage rent @ Rs.479/- per month till disposal of the review application.

2. The applicant, while working as fitter under the control of respondent No. 3, was charge sheeted vide memo dated 31.10.1990 and thereafter on completion of the Inquiry, disciplinary Authority removed him from service vide order dated 20-3-1992. The petitioner preferred an appeal against the order of the disciplinary authority and the same was rejected by order dated 26.5.92. Thereupon the applicant is stated to have filed two review petitions on 26.5.92 and 3.5.1993 respectively. The aforesaid review petitions, however, were treated as mercy appeals by the respondents and disposed of with a remark that there was no further channel of appeal to the General Manager by order dated 6.1.1983. The petitioner is stated to have submitted another review application which has remained undisposed. The applicant, therefore, filed an OA No.714/1994. The aforesaid OA was disposed of with a direction to the respondents to dispose of the review petition of the petitioner on merit by a reasoned and speaking order within a period of three months from the date of communication of the order vide judgement dated 6.5.1995. The aforesaid order was served upon the General Manager, Northern Railway, Baroda House, New Delhi on 22.6.1994. It is stated that the respondents have not decided the review application despite service of the order passed by this Tribunal in OA No.714 of 1994. While the aforesaid review petition was still pending, at the

instance of respondent no.1, respondent no.2 initiated proceedings under the Public Premises (Eviction of Unauthorised Occupants)Act, 1971 for eviction of the applicant from the Railway quarter allotted to him. The respondent No.2 has passed the impugned ex parte order dated 25.8.1994 holding the applicant to be an unauthorised occupant of the aforesaid railway quarter with a direction to the applicant to pay damage rent @ Rs.9,549/- at the rate of Rs.479/- per month. The contention of the applicant is that the applicant cannot be treated as unauthorised occupant of the quarter so long the review application, which is maintainable under Section 25 of the DAR Rules, remains pending. In that view of that matter, the applicant contends that the impugned order passed by respondent no.2 is illegal, void and without jurisdiction. Hence, this application for the relief mentioned above.

3. The respondents have resisted the claim of the applicant. In the written reply filed by the respondents, it has been stated that this application is not maintainable for non-impleadment of necessary party i.e. Union of India. It is further stated that the review application filed by the applicant has already been disposed of by the competent authority on 26.5.1992 and 28.8.1992 respectively. This application, therefore, it is stated, is not maintainable.

4. We have heard learned counsels for the parties and perused the records. From the pleadings it is clear that the applicant has been removed from service pursuant to the finding recorded by the Inquiry Officer in the disciplinary enquiry held against him. The appeal

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preferred against the penalty imposed by the disciplinary authority has been rejected. The two review applications which were treated as mercy appeals have also been dismissed. The applicant, however, states that the review application filed by the applicant after that, which was received by the respondents, is still pending. As provided under Rule 25 of the Railway Servants (DAR) Rules, the General Manager of the Zonal Railways is one of the authorities competent to review any order made under these rules. In view of the aforesaid provisions, the respondents were directed to dispose the review petitions, stated to have been filed by the petitioner, on merit by a reasoned and speaking order within a period of three months. The respondents instead of disposing of the review application have initiated proceedings for eviction of the application under Section 4 and 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and the Prescribed Authority under the said Act, ^{has} passed the impugned order. In the course of argument, the learned counsel for the respondents stated that the review application has already been disposed on 20.8.1995. The copy of the order, however, was not filed in support of the said argument. While reserving the judgment in the case, the counsel for the respondents was directed to furnish a copy of the order passed in the said review application within one week of the order ~~dated~~ 31-8-1995. The order dated 20-8-1995, stated to have been passed in the review application, has not been filed. I am, therefore, left with no alternative but to hold that the review application has not been disposed of in compliance with the directions issued by this Tribunal in its order dated 6-5-1994 passed in OA No. 714 of 1994. What consequence should follow for the alleged non compliance, is not the subject matter of this OA. Hence, I do not

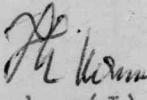
therefore, propose to express any opinion as to the consequences of the non-compliance of the aforesaid order.

5. The question for consideration, however, is whether the impugned order can be quashed for that reason, pending disposal of the review application stated to be pending before the respondents. The quarter in question was allotted to the applicant in his capacity as a railway servant. He has been removed from service in the departmental proceedings initiated against him. Although the appeal preferred against the punishment of removal has been rejected, the review under Rule 25 of the DAR Rules maintainable before the reviewing authority is still pending. Therefore, the disciplinary proceeding shall be deemed to be still continuing. In case this review application is allowed and the punishment of removal of the applicant from service is set aside, the applicant will have to be reinstated on his post as fitter. If that is done, he will be entitled to retain the quarter according to his entitlement. The eviction of the applicant pending disposal of the review application, therefore, in my opinion will not be just and proper. In view of the above, the applicant is entitled to retain the quarter until the disposal of the review application, which is stated to be pending. The impugned order, however, cannot be quashed altogether in view of the possibility of the review application being dismissed and the punishment of removal from service of the application being confirmed. In that eventuality the possession of the applicant may become unauthorised. In that view of the matter, it will be just and proper that the operation of the impugned order is stayed till the respondents dispose of the review

application stated to be pending.

6. In the result this application is disposed of with a directions to the respondents ~~not~~ to implement the impugned order dated 25-8-1994 until the review application is disposed of. In the event, the order removing the applicant from service passed by the disciplinary authority is set aside the applicant may be permitted to continue in the possession of the quarter on payment of rent according to rules. The respondents, however, will be at liberty to implement the order dated 25-8-1994 passed by the respondent no.2 in case the review application is rejected.

7. This application is disposed of with the above direction. The parties shall bear their own costs.


Member (J)