

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 2nd day of November, 2000

Original Application No.265 of 1994

CORAM :-

Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. Rafiquddin, J.M.

Rampati Ram Son of Khedan Ram,
Working as Senior Clerk in Machine Shop,
N.E. Rly Workshop, Gorakhpur,
Residing in b72, H, Bauliya Colony,
N.E. Rly, Gorakhpur.
(Sri Bashist Tewari, Advocate)

.Applicant

Versus

1. The Chief Mechanical Engineer,
N.E. Rly, Gorakhpur.
2. The Chief Works Manager (P),
N.E. Rly, Gorakhpur.
3. The Union of India
Through General Manager, N.E.Rly,
Gorakhpur.

(Sri A.K. Gaur, Advocate)

.Respondents

O R D E R (O_r_a_l)

By Hon'ble Mr. S. Dayal, A.M.

This application has been filed for setting aside the orders dated 12-1-1993, 24-2-1993 and 11-8-1993 passed by the disciplinary, appellate and revisional authorities. Further directions have been sought to the respondents to give promotional benefit w.e.f. 9-5-1992 to the post of Head Clerk. Recovery proceedings are also sought to be set aside and the amount already recovered to be refunded to the applicant.

2. The fact of the case is that the applicant was given a Memo. for major penalty in which the charge was that the applicant who was working as Head Clerk, Machine Shop, occupied semi-constructed Railway accommodation unauthorisedly which is an act unbecoming of a Government servant. The disciplinary enquiry resulted in order of removal passed by the disciplinary authority on 12-1-1993. The appellate authority considered the appeal of the applicant and reduced the punishment to reversion to the next lower grade for six months after which the applicant was to start from the lowest stage of his grade. The order of appellate authority is dated 24-2-1993. The revisional authority rejected the revisional application of the applicant. This gives cause for filing the present application.

3. Arguments of Sri Bashist Tewari, counsel for the applicant and Sri AK Gaur, counsel for the respondents have been heard.

4. The first issue raised by the learned counsel for the applicant is that the occupation of the Railway accommodation unauthorisedly does not amount to misconduct and it has been so held in the case of Hemendra Nath Mishra Vs. UOI & Ors. (1991) 15 ATC 572 as follows :-

"In the circumstances we find that since the disciplinary proceedings were not being done on account of actual misconduct or for lack of integrity and the orders passed by the disciplinary authority and the appellate authority show only the anxiety to get the eviction of the quarter and obtain the possession of the same, the orders cannot be supported and have to be quashed. When the removal from quarters could be done by other procedures, the procedures laid down for such eviction in the normal course, the action of the respondents cannot justify itself by the ends of the justice."

5. Learned counsel for the applicant mentions that this act of unauthorised occupancy of Railway accommodat-

ions have been included as misconduct since 1999, but at the time the enquiry was held against the applicant, the amended conduct rules were not applicable and hence the enquiry proceedings for punishment could not have been started against the applicant and the punishment awarded to him is illegal. In response to this the learned counsel for the respondents has averred in the counter reply that the act amounts to misconduct and states that no rejoinder affidavit has been filed by the applicant against the averments made by the respondents in paragraph no.26 and, therefore, the contention of the respondents should be accepted. We are not able to accept the contention of the learned counsel for the respondents for the reason that at that point of time several cases of disciplinary action in unauthorised occupation of railway quarters have been put before court of law and it was the law laid down by the Tribunal as mentioned in the case of Hemendra Nath Mishra (supra) that the act would not amount to misconduct. It is subsequently that the act was specifically made an act of misconduct by amendment rules. Hence, this contention is valid.

6. The second contention of the learned counsel for the applicant is that the applicant has not been furnished the copy of the relied upon document which is mentioned as representation of Sri Rampati Ram dated 12-12-1985. The learned counsel for the applicant has drawn our attention to Annexure-13 (Para 1(c)) in which it has been mentioned that the applicant had given no application dated 12-12-1985. The respondents have admitted that no copy of the relied upon documents was given to the applicant but have mentioned that since the representation 12-12-1985 was own document of the applicant, there was no justification for giving copy of the same. The learned

counsel for the respondents has also mentioned that this has not been denied by the applicant through the RA. Hence, the fact that it was his own representation cannot be denied at this stage.

7. Learned counsel for the applicant has also stated that he had in addition demanded three documents through an application dated 29-5-1986 (Annexure-A-5). These documents were (i) in addition to the rules published by General Manager (Pers) relating to allotment of railway accommodation, if some rules have been framed by Factory Administration in respect of allotment of Railway accommodation and copy of any amendment since 1978(ii) details of registration of applications since August 1978 for allotment of Type II accommodation in lieu of Type I, and (iii) the names and registration number of those employees who have been allotted Type II accommodation after exchange of Type I since August 1978 to date. The respondents in their counter reply have mentioned in para 5 that the delinquent employee demanded copies of certain documents which were not found necessary to be given to the delinquent employee by the disciplinary authority and as such the question of giving copies of these documents did not arise. Learned counsel for the respondents mentions that all the documents connected with the charge were shown to the applicant. Hence, it is not established that these three documents sought by the applicant vide his application dated 29-5-1986 and ordered to be supplied to the applicant vide orders dated 18-10-1987 and 6-12-1987 have been furnished to the applicant. Learned counsel for the respondents argued that the defence of the applicant was not prejudiced on account of non-supply of these documents. He has relied upon the decision in J.T. 1996(6) S.C. 604 - State of Tamilnadu Vs, Thiru K.V. Perumal & Ors, in which it has

been held that the persons seeking documents should point out how each and every document was relevant to the charges. It was also held that the Tribunal is also duty bound to record a finding whether any relevant document was not supplied and whether such non-supply of the document prejudiced the case of the delinquent employee.

8. Learned counsel for the applicant has in justifying his request for the documents relied upon the judgement of the Hon'ble Supreme Court in Trilok Nath Vs. UOI & Ors reported in 1967 S.L.R. 759. The Apex Court had observed in that case as follows :-

"It is for this reason that it is obligatory upon the enquiry officer not only to furnish the Public Servant concerned with a copy of the charges levelled against him, the grounds on which those charges are based and the circumstances on which it is proposed to take action against him. Further, if the public servant so requires for his defence, he has to be furnished with copies of all the relevant documents, that is documents sought to be relied on by the Inquiry Officer or required by the Public servant for his defence."

9. Learned counsel for the applicant has also cited the judgement of the Apex Court in the State of Punjab Vs. Bhagat Ram, 19 75 SCC (L&S) 18) in which the Apex Court ruled as follows :-

"The trial court found that copies of the statements of the witnesses as recorded by the Vigilance Department during the preliminary enquiry were not supplied to the respondent but only the synopsis was given. The trial Court, therefore, held that no reasonable opportunity was given to the respondent."

10. Learned counsel for the applicant has mentioned that the applicant sought change to Type II quarter because of certain peculiar domestic circumstances and sought information from the respondents in order to show that he had been discriminated by non-allotment of Type II quarter. We, thus, consider the act of non-supply of these documents as denial of opportunity to the applicant to defend himself in this case.

11. Learned counsel for the applicant mentions that the applicant was subjected to double jeopardy in so far as he was awarded penalty of reduction in rank and also subjected to payment of penal rent. This contention of the learned counsel for the applicant is not acceptable because these two related to two separate issues. One was regarding occupancy of Railway accommodation under certain conditions and the other was misconduct arising from such occupation. Hence, the issue of double jeopardy is not germane in this case.

12. Lastly learned counsel for the applicant also raised question of two punishments awarded to the applicant by by the order of the appellate authority. It has been contended that the appellate authority in reducing the rank of the applicant to the lower grade for six months and thereby making him start from the bottom of the present grade in effect are two punishments. This interpretation of the learned counsel for the applicant can be looked at below. The appellate authority has made temporary reduction in rank of the applicant by making it applicable only for a period of six months and thereupon by making the applicant start in the next higher grade. Therefore, we do not find that the applicant has been subjected to two punishments in this case by the order of the appellate authority.

13. Learned counsel for the respondents has placed reliance upon the judgement of the Apex Court in Apparel Export Promotion Council Vs. A.K. Chopra, J.T. 1999(1) SC 61, in which it has been laid down that the High Court cannot substitute its own conclusion with regard to the guilt of delinquent for that of the departmental authorities. This is also inapplicable. Present is the case where we find ^{denial} of opportunity to the applicant to defend himself and issue of misconduct which is a legal issue.

14. In effect, we find that the applicant has been unjustly proceeded against for an act which did not constitute misconduct at that time. We further find that there was denial of opportunity of access to the documents relied upon by the respondents and mentioned in the Memo. of Charges as also additional documents requested for by the applicant. In view of above, the orders of the disciplinary authority dated 12-1-1993, the order of the appellate authority dated 24-2-1993 and the order of the revisional authority dated 11-8-1993 are set aside. The applicant shall be considered for promotion on notional basis alongwith his juniors w.e.f. 9-5-1992 and in case he is given promotion, he shall be granted the benefit in fixation of salary from a date not later than three months from the date of receipt of a copy of this order from the applicant. There shall be no order as to costs.

Rahimuddin
Member (J)

Shau
Member (A)

Dube/