

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.

Original Application No.675 of 2003.

Allahabad this the 13th day of July 2004.

Hon'ble Mr. Justice S.R. Singh, V.C.

Hon'ble Mr. D.R. Tiwari, A.M.

Arjun Lal S/o Sri Bandha aged about 47 years,
R/o Quarter No. BW 99/B Prem Nagar Colony,
Raja Junction, District Sahjahan Pur,
Northern Railway, Moradabad Division.

.....Applicant.

(By Advocate : Sri A.K. Srivastava)

Versus.

1. Union of India through General Manager
Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager,
Northern Railway, Moradabad Division, Moradabad.
3. Divisional Operating Manager,
Northern Railway, Moradabad, Division, Moradabad.

.....Respondents.

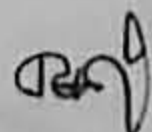
(By Advocate : Sri Avnish Tripathi)

O R D E R

(By Hon'ble Mr. Justice S.R. Singh, V.C.)

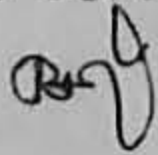
Heard Sri A.K. Srivastava learned counsel for the
applicant and Sri A Tripathi learned counsel for the respondents.
We have also perused the pleadings and order impugned herein.

2. Impugned herein is the order dated 24.04.2003 whereby
applicant has been compulsorily retired from service as a
measure of punishment for unauthorisedly occupying the
Railway Quarter No.BW-99/B at R.A.C. since 17.11.1995.
Compulsory retirement has been ordered to be effective from
30.06.2003.



3. Sri A.K. Srivastava learned counsel for the applicant has submitted that unauthorised occupation of Government Quarter is not tantamount to misconduct warranting disciplinary action under the provisions of the Railway Servant (Discipline & Appeal) Rules, 1968. Learned counsel for the applicant has placed reliance on the decision of Central Administrative Tribunal, Allahabad in Hemendra Nath Mishra Vs. Union of India and Ors. A.T.R. 1990 (2) C.A.T. 200; decision of Ernakulam Bench of the Tribunal in P. Moosa Vs. Union of India & Ors. II (1989) ATLT (CAT) 634; decision of Central Administrative Tribunal Calcutta Bench in Kuldip Narayan Ojha Vs. U.O.I & Ors. Administrative Tribunal Judgments 1991 (1) page 269 and the decision of Punjab and Haryana High Court in Bal Kishan Vs. The Municipal Corporation, Faridabad, Administrative Tribunal Judgments 2002 (3) 564 in support of his contention that unauthorised occupation of quarter by an employee cannot be the subject matter of disciplinary enquiry.

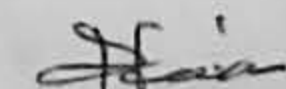
4. The submission made by learned counsel for the applicant cannot be countenanced. The Full Bench decision of the Central Administrative Tribunal in Sri Om Prakash Vs. Union of India, 2002 (3) Administrative Total Judgments 19 has held that unauthorised retention of staff quarter by a Railway servant on his transfer can be made the basis of a charge in disciplinary proceedings against him. In view of the Full Bench decision aforesaid, the decisions of the Tribunal relied on by learned counsel for the applicant no longer held good for these decisions were rendered by Smaller Benches. So far as the decision of Punjab and Haryana High Court is concerned, suffice to say that the Hon'ble Apex Court in Union of India and others Vs. M.A. Jaleel Khan 1999 Supreme Court Cases (L&S) 637 has held that refusal by an employee to vacate the accommodation he was sharing with his colleague on an undertaking that when the original allottee vacates the accommodation he would also vacate the same is

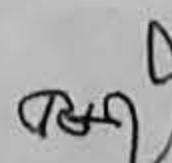
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an act warranting disciplinary proceeding against him. The plea that Railway Servant (Discipline & Appeal) Rules, 1968 were not attracted cannot be countenanced for the action of the employee was unbecoming of a Govt. servant. In this view of the matter, the view taken by the Punjab and Haryana High Court, relied on by the learned counsel for the applicant, cannot be held to be laying down a good law. We, therefore, hold that the unauthorised retention of Government Quarter by the applicant was an act unbecoming of a Railway Servant and, therefore, attracted the provisions of Rule 3 of Railway Servant (Discipline & Appeal) Rules, 1968.

5. Learned counsel for the applicant then urged that the punishment of compulsory retirement was too harsh. Learned counsel has submitted that the quarter was vacated by the applicant in 1999 and it was subsequently re-allotted to the applicant and the applicant could not vacate the quarter earlier due to family circumstances. The Hon'ble Supreme Court has held in the abovementioned case that the dismissal from service was too harsh. It may pertinently be observed that the applicant has still about 12 years of service at his credit. We are, therefore, persuaded to dispose of the O.A. with a direction to the respondents to consider and decide the appeal the applicant has already preferred expeditiously within a period of three months having due regard to the observation made in this order. Appellate Authority shall also take into consideration all the attending circumstances under which the applicant could not vacate the quarter.

No costs.


Member-A.


Vice-Chairman.

Manish/-