

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

ORIGINAL APPLICATION NO.756 OF 2003

ALLAHABAD, THIS THE 13th DAY OF MARCH, 2007

CORAM :

HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER

Chandra Bhushan Mishra,
Son of Sri M.N. Misra, Resident of 837-B Loco Colony Allahabad,
Presently posted as Train Ticket Examiner,
Northern Railway, Allahabad.

..... Applicant

By Advocate : Vikas Budhwar

Versus

1. Union of India,
Through the General Manager,
Baroda House, New Delhi.
2. Additional Divisional Railway Manager,
Northern Railway, Allahabad.
3. The Senior Divisional Commercial
Manager, Northern Railway, Allahabad.
4. The Divisional Commercial Manager,
Northern Railway, Allahabad.
5. The Chief Commercial Manager,
Northern Railway New Delhi,
(Now North Central Railway)
Allahabad.

..... Respondents

By Advocate : Shri A. Sthalekar

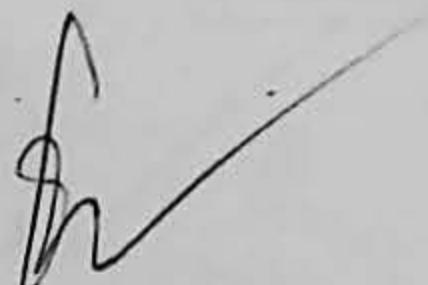


ORDER
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

Undaunted by successive failure in OA No. 230/94 before the Tribunal, OP No. 42102/98 relating to retention of Railway accommodation by the applicant, followed by equally successive failure in his defence before the I.O. against the charge sheet levelled against the applicant, appeal against the Disciplinary Authority's order of penalty of reduction in rank with cumulative effect and revision against the appellate order, the applicant with a sanguine hope that he would succeed in this OA has filed the same.

2. Brief facts of the case as carved out from the List of dates would suffice to have a hang of the matter and the same are as under:-

<i>DATE</i>	<i>EVENTS</i>
03/02/92	On 3.2.1992 the applicant alongwith Shri M.M. Sharma preferred an application to DRM, Allahabad seeking permission of mutual exchange of Quarter No. 643-A, Nawab Yusuf Road, Allahabad, which was in possession of Shri MM Sharma with Quarter No. 837, Loco Colony, Allahabad, which was in possession of the applicant, on which the Chief Controller, Allahabad, endorsed no objection.
24/06/92	In terms of the above both Pool holders of quarter of the applicant as well as Shri M M Sharma gave their no objection and accordingly the matter was forwarded to respondent No. 3 and Senior Divisional Operating Manager, Allahabad who also gave their consent on 24.6.1992. In the meantime, Shri Sharma was promoted and posted as Assistant Traffic Officer at Delhi in July, 1992. Shri Sharma was relieved but was allowed to retain quarter No. 643-A Nawab Yusuf Road, Allahabad.



DATE	EVENTS
10/07/92	The Chief Controller, NR, Allahabad, vide its order dated 10 th July, 1992 allotted House No. 643-A Nawab Yusuf Road, Allahabad to Shri SK Tiwari, Dy. Chief Controller, as a result of transfer of Shri MM Sharma.
Sept., 1992	One Shri R.P. Singh in September, 1992 applied for allotment of House No. 643-A Nawab Yusuf Road, Allahabad, on which the Sr. Divisional Operating Manager ordered the Pool Holder to allot first available quarter from S.S. Pool on priority basis to Shri R.P. Singh.
03/01/93	The DRM, Allahabad, allotted the House No. 643-A Nawab Yusuf Road, Allahabad, in favour of Sri RP Singh
09/06/93	Shri MM Sharma submitted an application on which endorsement was made that possession of the house be given to the proper allottee.
10/06/93	Shri Sharma handed over charge of the Railway quarter in question to the applicant.
15/06/93	Joint Inquiry Committee submitted their report that the applicant had undertaken possession of the house from Shri MM Sharma.
16/07/93	A charge sheet was issued to the applicant.
07/09/93	Shri RP Singh filed OA No. 1352 of 1993 seeking direction regarding handing over of the possession of Type III quarter No. 643-A, Nawab Yusuf Road, Allahabad.
11/02/94	Applicant filed OA No. 230 of 1994 which was clubbed with OA 1352 of 1993.
26/11/98	OA No. 230 of 1994 alongwith OA No. 1352 of 1994 was decided directing the applicant to handover peaceful possession to Shri RP Singh within three months.
22/03/99	Hon'ble High Court dismissed the Writ Petition by judgement dated 22.03.99.
06/04/99	Applicant vacated the premises
01/07/99	Penalty of reduction was passed.
17/08/99	Applicant filed appeal.
19/08/99	Being dissatisfied with the judgement given by Hon'ble High Court dismissing the Writ Petition No. 42102 of 1998 the applicant filed SLP before Hon'ble Supreme Court, which was also dismissed on 19.08.1999.
31.01.2000	Respondent No. 3 dismissed the appeal.



DATE	EVENTS
21.08.2000	Revision Petition was also dismissed.
17.08.2001	Still feeling aggrieved, the applicant filed appeal before Chief Commercial Manager, NR, New Delhi (respondent No. 5).
31.10.2002	Decision of respondent No. 5 communicated whereby punishment has been modified and the penalty W.I.T. imposed for three years has been reduced to 18 months.

3. For appreciation of the case the charges levelled against the applicant are as under:-

"(i) That he occupied Railway quarter No. 643/A Traffic Colony ALD unauthorisedly, forcibly, illegally, arbitrarily and without any proper allotment order from any competent authority on 10.06.93.

(ii) That he had already been occupied Railway Qr. No. 837/B Loco Colony ALD since long time and in addition to this one he has also occupied another Railway Qr. No. 643/A at Allahabad forcibly, unauthorisedly, illegally and arbitrarily.

(iii) That orders issued by Sr. DOM ALD for vacation of Rly. Qr. No. 643/A Traffic Colony ALD within 24 hours was handed over to him personally, but he disregarded the orders and did not comply with. That amounts to his serious breach of discipline on his part.

(iv) That he is not willing to vacate the Rly. Qr. No. 643/A Traffic Colony ALD even after being placed under suspension.

Thus Shri C.B. Mishra, by his above acts of omission and commission failed to maintain absolute Integrity, devotion to duty and acted in a manner of unbecoming Rly. Servants thereby contravened the provision of Rules 3.1(I), (II) & (III) of Railway Service Conduct Rules, 1966."

4. The Inquiry officer has rendered his findings as under:-

Charge I and III – Proved: Charge II and IV – not proved.



5. After following the due process of disciplinary proceedings, the Disciplinary authority had issued the Annexure A-4 penalty order dated 01.07.99 awarding penalty of reduction from the post of Train Ticket Examiner to Ticker Collector at the initial in the grade of Rs. 3050 – 4590 for a period of five years on permanent basis. While the appeal had been rejected, Revisional authority, purely on compassionate grounds, reduced the period of the afore said five years to 3 years. In addition, the Revisional Authority considered the petition of the applicant in respect of damage rent but rejected his request. Petition before the Divisional Commercial Manager reduced the afore said period of 3 years to 18 months and directed recovery rate of damage to Rs 2,000/- p.m.

6. A number of objections have been raised by the applicants in the grounds relating to the decision that the applicant's occupation of the Railway Quarter in question as illegal. All these are of least significance in view of the clear finding by the Tribunal in this regard, as upheld by the Hon'ble High Court, vide order Annexure A-33 order dated 26-11-1998 and Annexure A-34 judgment dated 22-03-1998 the extracts of which are as under:-

(a) In the order of the Tribunal: (i) *"The occupancy of the premises in question by the applicant remains unauthorised and for this reason he has forfeited any right to challenge the allotment of quarter to another official.*

(ii) *On the day the possession of the quarter was handed over*

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by Shri M.M. Sharma to Shri C.B. Mishra, Shri M.M. Sharma in authorised possession."

(b) In the judgment of the High Court: *In view of the admitted fact in the present case there is no personal sanction of the Divisional Railway Manager, we are of the opinion that the petitioner had no right to occupy Type III accommodation whether by mutual consent or by allotment.*

7. Thus, what is to be seen is whether there is any legal lacuna in the decision making process. For, judicial review of disciplinary proceedings should be limited to the extent of analyzing the decision making process and not the very decision, as held by the Apex Court in the case of V. Ramana vs A.P.S.R.T.C. (2005) 7 SCC 338, as referred to in a still recent decision in the case of **State of U.P. v. Sheo Shanker Lal Srivastava, (2006) 3 SCC 276**. The following is the exact expression:

"11 . The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision."

8. Of the four charges, the I.O. held, charge I and III as having been proved. In fact, in so far as the charge No. 1 was concerned the same was agitated before the Tribunal also, and the Tribunal's finding as extracted

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above as upheld by the Hon'ble High Court attained finality. Thus, if the Disciplinary Authority accepts the plea of the applicant in the appeal that Charge I did not stand proved, it would mean that the applicant was not in unauthorized occupation of the Railway quarter, in which event, that would amount to sitting in appeal over the very Judgment of the Hon'ble High Court. The same cannot be permitted. The appellate authority too has dispassionately dealt with the entire matter, surfacing out the main contention of the applicant in the appeal and met the same. Thus, the appellate authority's order too cannot be faulted with. Again, in so far as revision authority's order is concerned, he had taken a compassionate view and reduced the period of penalty from 5 years to 3 years. And, the applicant could get some more respite from the order of Divisional Commercial Manager, vide Annexure A-1 whereby the period of penalty was still further reduced to 18 months. As such, no legal infirmity could be discerned from the orders impugned herein.

9. The application falls and is therefore, dismissed.

10. No costs.



**Dr. KBS RAJAN
JUDICIAL MEMBER**