

(3)

**CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH**

**O.A. 12/91**

**DATE OF DECISION : 22.10.99**

**Mr. Hiralal Saini** : Petitioner [s]

**Mr. K.K. Shah** : Advocate for the petitioner [s]

**Versus**

**Union of India & ors** Respondent [s]

**Ms. R.M. Vin** Advocate for the Respondent [s]

**CORAM**

**THE HON'BLE MR. V. RAMAKRISHNAN : VICE CHAIRMAN**

**THE HON'BLE MR A.S. SANGHAVI : MEMBER [J]**

**JUDGMENT**

1. Whether Reporters of Local papers may be allowed to see the judgment? 7 →
2. To be referred to the Reporter or not ? yes
3. Whether their Lordships wish to see the fair copy of the judgment ? ~
4. Whether it needs to be circulated to other Benches of the Tribunal ? ~

Mr. Hiralal Saini,  
B-19, Nairuti park,  
Opp. Novino Battery,  
Makarpura Road,  
Baroda-10.  
(Advocate : Mr. K.K.Shah)

: Applicant.

**VERSUS**

- i) Union of India,  
Notice to be served through  
The General Manager, Western Railway,  
Churchgate, Mumbai-400 020.
2. Division Operating Superintendent,  
Divisional Office, Western Railway,  
Bhavnagar.
3. The Divisional Railway Manager,  
Divisional Office, Western Railway,  
Bhavnagar.  
(Advocate : Mr. R.M. Vin)

Date : 22.10.99

**JUDGMENT**  
**O.A. NO. 12 OF 1991**

**PER : HON'BLE MR. A.S. SANGHAVI : MEMBER (J)**

Heard Mr. K.K. Shah, for the applicant and Mr. R.M. vin, for the respondents. The applicant who was serving as a Station Master at Khakhariya, was charge-sheeted by the respondent No.2 alleging that his conduct is "unbecoming of Railway Servants in as much as disobeying the orders resulting in non-vacation of lease accommodation" and thereby having mis-conducted. An enquiry was conducted, pursuant to the charge-memo given to the applicant and the Enquiry Officer had held, the applicant to be guilty of misconduct. On report



(2)

of the Enquiry Officer, the disciplinary authority had levied a penalty of removal from the service, but the appellate authority had set aside the penalty of removal from service and reduced penalty to the "reduction by two stages in the scale of pay for one year without cumulative effect." The applicant has, therefore moved this O.A. challenging the enquiry proceedings as well as penalty levied upon him. The main grounds, on which, the enquiry proceedings are challenged by the applicant are that he was not supplied any documents at the time of serving the charge-memo and that there was no question of any misconduct, as there is a provision under IREM that on non-vacating the public premises or accommodation allotted by the Railway Administration, the Railway Administration can charge penal rent at a market rent value and since there is a remedy under the IREM, the matter of non-vacating the lease premises, can not become a matter of misconduct. It was always open to the Railway Authorities to get the Govt. accommodation vacated by invoking the public Premises Eviction Act and therefore without exhausting the remedy under the Statutory Act, it can not be considered that the applicant had mis-conducted in non-vacating the lease premises. The charge-sheet itself therefore is bad in law and requires to be held illegal, null and void. It is also alleged that enquiry proceedings were not conducted in fair and proper manner and that even though he had asked to hold fresh enquiry subsequently and demanded certain documents, the respondents failed to provide the documents and failed to initiate any proceedings and therefore, the whole proceedings were vitiated. On

these grounds, the applicant prayed for setting aside the penalty orders, Annexure A, Annexure A/1 and Annexure A/2 that is the charge-sheet, disciplinary authorities order and appellate authorities order and prayed for the consequential benefits.

2. The respondents have contested this application and in their reply, have stated that the premises in question were hired from a private party by the Railway for a specified period by an agreement and on the complaint of the landlord that fraud was perpetuated by the applicant by changing the agreement and that the landlord had demanded the possession of the rented premises, the applicant was asked to hand over the possession of the rented premises to the landlord. As the applicant disobeyed the orders of the respondents in handing over the possession of the disputed premises to the landlord, he was charge-sheeted vide SF-'5' No.ET/308/88/67 dated 2.5.1988 and the charges were levied that he had mis-conducted by showing a conduct "unbecoming of a Railway servant in as much as disobeying the orders resulting in non-vacation of lease accommodation." The applicant was informed that if he desired, he can inspect and take extracts from the documents mentioned in the enclosed list of documents in the charge-sheet at any time during office hours. They have contended that the applicant had taken copies of the documents and every opportunity was given to the applicant for defending the charges, but he has failed to defend the same and ultimately on the enquiry officer finding him guilty, the disciplinary authority had imposed the penalty of removal from the



service. However, this penalty of removal from the service, has been reduced by the appellate authority and subsequently, the possession of the disputed premises was also recovered from the applicant. The respondents have asserted that the punishment imposed on the applicant is neither illegal, harsh or unreasonable and therefore, there is no question of Tribunal interfering with the punishment.

3. We have heard, Mr. K.K. Shah, learned advocate for the applicant, and Mr. R.M. Vin, learned advocate, for the respondents and have carefully considered the documentary evidence produced by both the parties. Mr. K.K. Shah, learned advocate, for the applicant has relied mainly on a decision in the case of Mr. Abdulmohit Mustakikhan Vs UOI & Ors delivered by this Tribunal on 5.8.1986 in O.A. No. 160 of 1986 and reported in 1987 (1) ATR 567. According to Mr. K.K. Shah, this decision has direct application to the facts of the instant case and failure of the applicant in not vacating the disputed premises can not be held to be a misconduct and therefore, the applicant could not have been punished by the disciplinary authority. According to Mr. K.K. Shah, the applicant was charge-sheeted only because, he had failed to vacate the disputed premises, but since, the respondents could have invoked the provision of Public Premises Eviction Act, 1971, to recover the possession of disputed premises, the question of holding enquiry against the applicant for the alleged misconduct did not arise at all and therefore, the whole proceedings are required to be held null and void.

4. Mr. Vin, learned advocate for the respondents on the other hand, has submitted that the disputed premises was not a Railway Quarter, but since the Railway quarter was not available, the same was acquired by the Railway for letting out to the applicant. The same were let out to the applicant by the execution of an agreement and it was subsequently found that the applicant had perpetuated fraud by unilaterally changing the terms of the agreement and therefore, the Railway had asked the applicant to hand over the vacant possession of the disputed premises to the landlord. Since, the applicant did not comply with these directions of the Railway and disobeyed the orders, an enquiry was conducted against him. He was found to be guilty of misconduct in enquiry and consequently awarded punishment for the same. According to Mr. Vin, this is not a case of letting out a Railway Quarter to the Railway Employee, but it is a case of disobedience of the order of the Superiors by the Railway servant and also perpetuating fraud by making amendment in the agreement. According to Mr. Vin, the decision, in the case of the Abdulmohit Mustakikhan (supra) is not attracted to the facts of the instant case as the facts of both the cases are different.

5. We have carefully considered the rival contentions. There is no denial of the fact that the applicant was provided a residential premise by the Railway, by taking the same on lease from a private party. It is also not in dispute that this premise bearing House No. 31/A, Shankeshwar Society, Makarpura Road, Vadodara were owned by Mr. P.S. Prakash and the same were acquired on lease

(2)

by the Railway. It was alleged that the agreement to take the house on lease was for the period of one year, that is, upto 2.11.84, but agreement submitted by the applicant to the XEN (RR) BRC's Office were found to have been changed and made for three years. The signature of the landlord was also alleged to have been forged, and the alterations made in the agreement did not bear the signature of the house owner/landlord. In view of the complaint of the landlord on 15.10.84, the lease agreement entered into vide XEN/RE/BRC's endorsement was terminated by Railway and on 4.5.85, the applicant was given a notice of one month to make alternative arrangement for his accommodation and he was asked to hand over the vacant possession of the disputed premises to the landlord by 4.6.85. In this O.A., we are not concerned with the correctness of the allegations regarding the forgery of the agreement, but the fact remains that the lease agreement had come to an end with the consent of both the parties to the agreement and the applicant was asked to vacate the premises on or before 4.6.85. The question, therefore, now is whether the failure of the applicant to vacate the house before 4.6.85 or even thereafter can be said to be a disobedience of the orders on his part and can be said to be a misconduct with the meaning of the Rule-9 of the Railway Servants (Disciplinary and Appeal) Rules. In the case of Abdulmohit Mustakikhan, relied upon by Mr. K.K. Shah and decided by this Tribunal, the Railway Servant had failed to vacate the Railway Quarter allotted to him though he was asked to vacate the same. After DAR enquiry was held against him, he was found guilty of the charges leveled



against him and was visited with the penalty of removal from the service. On his preferring the O.A. before the Tribunal, relying on the decision in the case of Mr. B.R. Vengappaya, Vs. State of Mysore & Ors (1972 Service Law Reporter, 59), it was held by the Tribunal that under the rules, the Railway quarter could have been got vacated on pain of coercive steps and rent at the penal rate might have been recovered from the salary of the Railway servant. The failure of the Railway servant to vacate the quarter could not be treated at all as a misconduct. It was also held that when a Govt. servant fails to vacate rent free accommodation on transfer, he is liable to pay the rent provided in the rules and hence the disciplinary proceedings are not competent. Even under the provisions of the Public Premises Eviction Act, the possession of the quarter could have been obtained from the Railway servant and therefore, the failure to vacate the quarter would not invite disciplinary proceedings.

6. We, in this respect, feel that present case is very much different. The applicant here was not occupying the Railway Quarter, but he had been given a premise acquired from a private party by the Railway. The Railway had also acquired that premises under an agreement with the landlord. Now when the agreement was terminated with the consent of both the parties, the Railway was duty bound to hand over the possession of the said premises to the landlord, Since the Railway was bound to hand over the vacant possession of the said premises to the landlord, the applicant who was serving under the Railway was also equally duty bound to hand over the vacant possession of the same to the

(9)

landlord. It is also to be seen that this is not a case, wherein, Railway can levy a penal rent and by coercive action, obtain the possession of the quarter from the applicant. It is also doubtful, whether the provisions of the Public Premises Eviction Act can be attracted to the facts of the instant case, as the premises did not belong to the Railway. Under such circumstances, failure of the applicant to hand over the vacant possession of the said premises, would be a failure of the Railway to abide by the agreement. This would have made Railway liable for action in the Civil Court by the landlord and would have created problem for the Railway. It was also therefore, absolutely necessary on the part of the applicant to obey the directions of the orders of the Superiors and hand over the possession of the disputed premises, as demanded by the authorities. The failure to do so, was clearly an act unbecoming of a Railway Servant, as he was putting, the Railway, his master in awkward position. Hence, it can not be said that since, the rules provided for imposition of penal rent and also for the attraction of the provisions of the Public Premises Act, failure of the applicant to vacate the quarter would not amount to misconduct. In fact, in the instant case, the Railway could not have been levied a penal rent, as the premises did not belong to the Railway and in any case, the failure of the Railway to hand over the possession of the said premises to the landlord would have made the Railway liable for the action by the landlord. Further, repercussions of the failure of the Railway to hand over the quarter when demanded by the landlord would be that no landlord would be willing to lease out his premises to the

20

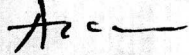
Railway and this would only create hardship to the other Railway servants. It is, therefore, obvious that the decision in the case of Abdulmohit Mustakikhan can not be made applicable to facts of the instant case and it can not be held that the conduct of the applicant was not unbecoming of a Railway Servant and thereby no disciplinary proceedings could have been initiated against the applicant.

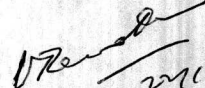
7. So far as the disciplinary proceedings are concerned, though it is alleged in the application that the applicant was not supplied with the documents along with the charge memo, this point is not canvassed before us at the time of argument. Even otherwise, the reply of the Railway states that the applicant had taken the copies of the documents within 10 days of the serving of the charge-memo on him and therefore, was not prejudiced in any manner. So far as the enquiry is concerned, it is a settled position, that we can not enter into the merit of the enquiry proceedings and can not reappraise the evidence. The punishment itself revised by the Appellate authority can hardly be said to be disproportionate or harsh, considering the nature of the allegations against the applicant and therefore also, there is no case made out for interference with the penalty levied on the applicant. No other points are canvassed before us. Hence, we hold that the application is devoid of merit and penalty levied upon the applicant can not be set aside.



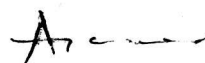

(2)

8. In the conclusion, we hold that the O.A. is devoid of merit and reject the O.A. with no order as to costs.

  
(A.S. Sanghavi)  
Member (J)

  
(V. Ramakrishnan)  
Vice Chairman

Pt

तारीख DATE	कार्यालय टिप्पणी OFFICE REPORT	आदेश ORDER
05.07.2000		<p>The review application moved by the applicant has been disposed of on dated 20.06.2000 by a speaking order by us. It appears that the miscellaneous application <del>for the production of the documents</del> was received by the office by post on dated 16.06.2000. The same was not placed in file as the R.A was pending for orders. However, since once the applicant had withdrawn the application for condonation of delay, this type of application for condonation of delay cannot be entertained. The delay condoning application is also moved by the applicant more than 30 days after the pronouncement of the order in O.A 12 of 91 and does not disclose any reason for condoning the delay in filing the review petition. The delay condoning application is therefore, clearly not entertainable both on merit as well as on the ground of the same having been moved after withdrawal of the first application. The M.A is therefore, rejected with no orders as to costs.</p> <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div data-bbox="818 1969 1099 2114">             (A.S. Sanghavi)            Member(J)         </div> <div data-bbox="1205 1917 1558 2114">             (V. Ramakrishnan)            Vice Chairman         </div> </div>

A hand-drawn diagram of a cell. It consists of a large, irregular oval outline representing the cell membrane. Inside this oval, there is a smaller, more rounded shape representing the nucleus. Within the nucleus, there is a small, dense, darkly shaded circular region representing the nucleolus. The drawing is simple and appears to be a student sketch.

**Date of decision :** 20/6/2000

Mr. P in P: Advocate for the petitioner [s]

Union of India & Ors. : Respondent [s]

\_\_\_\_\_: Advocate for the Respondent [s]

**THE HON'BLE MR. V. RAMAKRISHNAN : VICE CHAIRMAN**

**THE HON'BLE MR. A.S.SANGHAVI : MEMBER [J]**

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?



Mr.H.L.Saini,  
B 19, Nairriti park,  
Opp. Novino Battery,  
Makarpura Road,  
Vadodara.

Applicant

By Advocate P IN P

Versus

1. Union of India, Through :  
The General Manager, W.Rly.,  
Churchgate, Bombay.
2. Division Operating Supdt.,  
Divisional office, W.Rly.,  
Bhavnagar.
3. The Divisional Railway Manager,  
Divisional office, W.Rly.,  
Bhavnagar.

Respondents

**[ Decision by circulation ]**


**ORDER**  
**IN**  
**R.A.21/2000 with M.A.162/2000 in O.A.12/91**

Dt. 20/6/2000

**Per Hon'ble Mr.A.S.Sanghavi Member [J]**

The review petition after having been filed by the applicant and having been registered is sought to be withdrawn by the applicant. The applicant has given in writing on dated 22.3.2000 that he does not want to

proceed with this review petition and seeks permission to withdraw the same. However, since he had given wrong number of review application, i.e. 9/2000, a clarification was sought from him as to which R A he wanted to withdraw. He has informed the office by his letter dated 3.5.2000 that he wants to withdraw the M.A.162/2000 in R.A.8/2000. Since M.A.162/2000 pertains to delay condone in the present R.A.21/2000, the withdrawal of the M.A. on his part would mean that the main R.A. i.e. 21/2000 does not survive. The applicant is however, permitted to withdraw the M.A.162/2000. When the review application was lodged, it was given stamp No.8/2000 and after removal of the objections by the applicant, a regular number of 21/2000 is given by the office. The M.A.162/2000 is therefore, in R..21/2000 Since M.A.162/2000 is withdrawn and the applicant is no more praying for condoning the delay in filing this review application, the review application stands rejected on account of being barred by limitation. The order against which the review <sup>is filed by</sup> ~~was~~ passed on dated 22.10.99 while this review application is filed by the applicant on dated 14.2.2000 <sup>i.e.</sup> after more than 30 days of the passing of the order. Hence, the review application <sup>being</sup> barred by limitation stands rejected with no order as to costs.

  
[ A.S.Sanghavi ]  
Member [J]

  
[ V.Ramakrishnan ]  
Vice Chairman

S.Solanki