

(V)

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 10 of 1992
~~O.A.NO. 10~~

DATE OF DECISION 27-2-1997

Shri Abdul Haikhan Petitioner

Mr. B.B. Gogia Advocate for the Petitioner [s]
Versus

Union of India and ors. Respondent

Mr. A.S. Kothari Advocate for the Respondent [s]

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The Hon'ble Mr. V. Radhakrishnan : Member (A)

The Hon'ble Mr. T.N. Bhat : Member (J)

JUDGMENT

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 Lerdships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(V)

Shri Abdul Haikhan,
Rathod Niwas,
Krishnanagar,
Popatpara,
RAJKOT - 360 001.

(13)
..Applicant.

(Counsel : Mr.B.B.Gogia)

Versus

1. Union of India,
Owning and representing
Western Railway,
Through :
General Manager,
Western Railway,
Churchgate,
BOMBAY - 400 020.

2. Divisional Railway Manager,
Western Railway,
Rajkot Division,
Kothi Compound,
RAJKOT - 360 001.

..Respondents.

(Counsel : Mr.A.S.Kothari)

JUDGMENT
O.A. NO. 10 OF 1992.

Date : 27-2-1997

Per : Hon'ble Mr.T.N.Bhat : Member (J)

1. This O.A. is directed against the letter dated 19.4.1990 issued by the office of respondent no.2 by which the applicant has been directed to pay a total amount of Rs.4,284/- towards recovery of rent of Type-II quarter No.L/58/B situated at Okha.

Mr. T.N. Bhat

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2. The facts giving rise to this application are as under :

The applicant, while working in the Loco Shed, Western Railway, at Rajkot, was sent to man the post of FIC Okha which post was lying vacant. This arrangement continued for some time and according to the applicant his request for being permitted to occupy the ear-marked Railway quarter at Okha was rejected by the respondents and the applicant never occupied the same. The impugned orders having been issued by the respondents, in respect of the said residential quarter and they assert that the applicant not only occupied the residential quarter but also simultaneously drew house rent allowance.

3. The main grounds agitated by the applicant are :

Firstly, that he never occupied the quarter; secondly, that the charge sheet issued in respect of the alleged unauthorised occupation not having been perused further nor any penalty having been imposed on the said charge sheet, it was not open to the respondents to order recovery of rent and House Rent Allowance; thirdly, that even in the charge sheet (Annexure-A/3), there was no allegation regarding unauthorised occupation of the quarter at Okha and drawing House Rent Allowance at Rajkot; fourthly, that the applicant had submitted rent receipts of his private accommodation hired by him but that the respondents have wrongly ignored those receipts;

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fifthly, that the respondents did not hold any enquiry nor afforded to the applicant the opportunity of being heard, and; lastly, that the impugned order to recover the amounts detailed therein amounts to imposition of penalty under Rule-6 of the Railway Servants (Discipline and Appeal) Rules, 1968, and, accordingly, it was incumbent on the respondents to serve a regular charge sheet for imposing minor penalty on the applicant.

4. The respondents have filed their reply statement in which they have resisted the applicant's O.A. on the ground that the applicant had actually occupied the quarter and had continued in unauthorised occupation of the same. It is further averred that for the purpose of recovery of rent for unauthorised occupation as also for recovery of House Rent Allowance erroneously drawn the service of a charge sheet is not necessary. The respondents further take the plea that the charge sheet was in fact issued for the alleged unauthorised occupation by the petitioner and that on the enquiry being conducted penalty was awarded to the applicant by which one set of passes and one set of P.T.O. were stopped. Another allegation against the applicant was that being duty bound to conduct housing committee meeting in the capacity of the officer incharge of the same, the applicant had failed to discharge his duties. After the enquiry was held by the APO (M) and the AEE the applicant was asked to pay the rent of the aforesaid quarter and also deposit the H.R.A. erroneously drawn by him.

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5. To the reply statement of the respondents the applicant has filed a rejoinder.

6. We have heard the learned counsel for the parties and have also gone through the documents placed on record by them.

7. The fact that a charge sheet was served on the applicant is not disputed by him. It is also not disputed that punishment of withholding one set of passes and one set of P.T.O. was imposed upon the applicant by the order dated 24.4.1990 (A copy at Annexure-A/6). On going through the charge sheet, a copy of which is annexed at Annexure-A/3 to the O.A., we find that in the statement of imputation there is a clear mention of the fact that the applicant had allegedly occupied one of the quarters, bearing No.L/58-B, which was unauthorisedly used by him, while at the same time he continued to claim T.A. and H.R.A. at his headquarter, Rajkot. The applicant having been awarded penalty as aforesaid which penalty, it appears, was later reduced to censure, the applicant cannot be heard to say that the decision to recover rent and H.R.A. from him was an ex-parte order or an order passed at his back. It cannot also be pleaded by the applicant that he had not been afforded any opportunity of being heard, as it is quite clear that some sort of enquiry was held into the allegation against him as mentioned in the charge sheet.

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8. Another important fact which emerges from the pleadings of the parties and the documents annexed thereto is that the applicant had earlier also, in the year 1991, filed one O.A., being O.A.NO. 128/91, in which the order impugned in the instant O.A. together with the order dated 24.4.1990 by which penalty had been imposed upon the applicant were assailed. By the order dated 16.7.1991, the aforesaid O.A. was rejected, though on some technical grounds. It appears that the applicant had in that O.A. annexed copies which contained incorrect details. It was further held that since a charge sheet dated 28.2.1990 had been issued ^{to} ~~to~~ the applicant, there was every possibility that some final order might have been passed on that charge sheet which the applicant had failed to challenge.

9. The learned counsel for the respondents has taken the plea that the aforesaid O.A. having been dismissed, the instant O.A. would not be maintainable as it was hit by the principles of res judicata. In reply, the learned counsel for the applicant says that since, the earlier O.A. was not decided on merits it cannot operate as res judicata. We are of the view that this contention of the applicant cannot be accepted. As already mentioned, the order dated 24.4.1990 was passed on the charge sheet dated 28.2.1990, and it was, therefore, incumbent upon the applicant to point out this fact to the Bench of this Tribunal which heard the earlier O.A. The applicant chose to accept the aforesaid Judgment/order of the Tribunal

by me

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and later filed this O.A. on the self-same cause of action and that too after the lapse of further three months or so.

10. That leads to the question of limitation.

Although the applicant has filed M.A. seeking condonation of delay, we do not find any sufficient grounds disclosed in the M.A. which would justify condonation of delay.

11. In view of what has been held and discussed above, we find no merit in the O.A. which is hereby dismissed, leaving the parties to bear their own costs.

by me
27.2.97

(T.N.Bhat)

Member (J)

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(V.Radhakrishnan)

Member (A)

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