

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 431 OF 1993.
~~T.A. No.~~

DATE OF DECISION 16th Sept. 1993.

Shri Iqbal I. Saiyed Petitioner

Shri D.M.Thakkar Advocate for the Petitioner(s)

Versus

Union of India and ors. Respondent

Shri Anil S.Kothari Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C.Bhatt : Member (J)

The Hon'ble Mr. M.R.Kolhatkar : Member (A)

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

Shri Iqbal I. Saiyed,
Quarter No.T-149,
Railway Quarters,
Railway Colony,
Broad Gauge Yard,
Ahmedabad.

....Applicant.

(Advocate : Mr.D.M.Thakkar)

Versus

1. Union of India,
Notice to be served through,
the General Manager,
Western Railway,
Churchgate,
Bombay.
2. Divisional Railway Manager,
Western Railway,
Pratapnagar,
Vadodara.
3. Station Superintendent,
Western Railway,
Ahmedabad.

....Respondents.

(Advocate : Mr.Anil S.Kothari)

O R A L J U D G M E N T

O.A.NO. 431 OF 1993.

Dated :16.09.1993.

Per : Hon'ble Mr.M.R.Kolhatkar : Member (A)

n
This is an Original Application under Section 19
of the Administrative Tribunals Act, 1985. The relief sought
by the applicant is as under :

...3..

"Your Honour be pleased to quash and set aside the impugned order dt.19.8.1992 at Annexure-A/4, passed by the Station Superintendent, Ahmedabad (respondent No.3 herein) suspending the applicant and compelling the applicant to vacate the quarter as being arbitrary, illegal, null and void and be pleased to direct the respondents to reinstate the applicant in service with all monetary benefits as if the impugned order of suspension was non-est.

2. The interim relief sought by the applicant is almost identical and is reproduced below :

"Your Honour be pleased to suspend the operation, implementation and execution of the impugned order of suspension dt. 19.8.93 at Annexure-A/4 passed by the Station Superintendent, Ahmedabad, pending admission, hearing and final disposal of this petition."

3. The respondents have filed reply and the applicant has filed rejoinder. We have also heard the learned advocates.

4. The pleadings have gone into the question relating to entitlement of the applicant to the Railway accommodation which was ~~in~~ allotted to applicant's father a railway employee who has retired on 30.9.1992, about the claiming of the HRA by the applicant while sharing accommodation with his father ^{and} about screening of the applicant for regularisation on 25.3.1993. Since the relief relates to the order of suspension we have not gone into the question and

this position has also been accepted by both the parties.

The order of suspension issued by Respondent No.3 is reproduced below :

"During the course of CAM-ADI's inspection of Yard, you were found in unauthorised occupation of Railway Quarter No.139/A. You are hereby instructed to vacate Rly. Quarter No.139/A within 15 days and till that date you may please treat yourself under suspension, as desired by CAM-ADI.

Please ack. receipt of this letter,

5. According to the Railway Servants (Discipline and Appeal Rules)-1968, a Railway servant may be placed under suspension under following circumstances :

"(a) Where a disciplinary proceeding against him is contemplated or is pending ; or

(b) Where, in the opinion of the authority competent to place a railway servant under suspension, he has engaged himself in activities prejudicial to the interest of the security of the state ; or

(c) where a case against him in respect of any criminal offence, is under investigation, inquiry or trial."

The said Rule further says that a Railway servant shall be deemed to have been placed under suspension by an order of competent authority,

(a) with effect from the date of his detention, if he is detained in custody, whether on criminal charge or otherwise for a period exceeding forty eight hours :

(b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction."

6. We note that the statutory provisions of Rule-5, have not been complied with in this order of suspension. There is no indication of any disciplinary proceedings contemplated or pending against the applicant. Unauthorized occupation is that of Father and ^{not} his son. In fact the order states in so many words that till the applicant vacates the quarters he is to treat himself under suspension as desired by CAM-ADI. In our view the order of suspension shows lack of application of mind and is absolutely illegal. To the extent the question of vacating the quarters by his father is concerned the respondents certainly could have taken appropriate measures open to them either under the Railways Act or under the Public premises. (Eviction of unauthorized occupants) Act, 1971. In this connection we refer to the Full Bench judgment of Wazir Chand Vs. Union of India and Others; at P.217 of Full Bench Judgments (CAT) Vol.II, Para-10 states :

"It is significant to notice that detailed and elaborate provisions for evicting unauthorised occupants have been made by Section 4, 4S of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and the Rules made thereunder in the case of the 'public premises' covered by the aforesaid Act, Section 5 (2) of 1971 Act, even clothes the Estate Officer with the powers to use such force as may be necessary in case of failure or refusal to comply with the order of eviction. Section 138 of the Indian Railways Act gives fairly wide powers to the Railway Administration to get the railway quarters vacated by following the summary procedure specified therein. The foregoing provisions are fairly stringent provisions. Keeping in view the aforesaid provisions, one may legitimately question the justification or the need to follow the coercive course of withholding of DCRG with a view to getting the railway quarters vacated from the retired railway servants."

M The Full Bench judgment proceeded^S ~~to~~ to interpret Railway Board's circular dated 08.6.1983. The respondent have no such justification. They ~~have~~ ^S reported to suspension as a collateral measure with the ulterior motive of making the applicant's father vacate the quarter allotted to him.

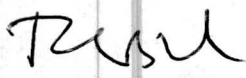
7. In this back ground, we have no hesitation in holding that the order of suspension cannot be sustained and therefore, it is required to be set aside. At the same time the right of the Railway Administration to take appropriate action for any improper acts of its employee

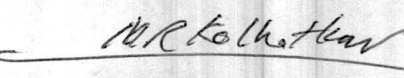
under the Rules is also required to be recognised. We therefore, dispose of this Original Application finally by passing the following order :

ORDER

1. The order dated 19.8.1993, suspending the applicant is hereby quashed and set aside. The respondents should reinstate the applicant in service with all the monetary benefits of which he was deprived ^{on} ~~consequent~~ suspension.
2. We make it clear that it is open to the Railway Administration to take any action against the applicant's father under the Rules for unauthorised occupation of the quarters and any action against the applicant for any misconduct so long as the action is under the Rules.

The application is disposed of accordingly. No order as to costs.


(R.C.Bhatt)
Member (J)
16.09.1993.


(M.R.Kolhatkar)
Member (A)
16.09.1993.

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

AHMEDABAD.

Application No. 005/431/93 of 199

Transrer Application No. — Old writ Pet. No.

C E R T I F I C A T E

Certified that no further action is required to be taken
and the case is ift for consignment to the Record Room (Decided).

Dated : 5-10-93

Countersigned :

9/11 Section Officer CS Court Officer

105/1093
Sign. of the Dealing Assistant.

INDEX SHEET

VERSUS

[illegible]