

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NOS. 12 & 13 of 2003
Cuttack, this the 28th day of January 2005

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI M.R.MOHANTY, MEMBER (JUDICIAL)

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IN O.A.NO.12 of 2003

Smt. Minakshi Sethi aged about 52 years w/o Abhiram Sethi working for gains as Mid-Wife under Senior Divl. Medical Officer/OPD (In charge), S.E.Rly., Khurda Road at present residing at Railway Qr.No.D.41/A at Traffic Colony, Khurda Road, P.O.Jatni, Dist.Khurda.

..... Applicant

Advocates for the applicant

..... Mr. Achinya Das.

Versus-

1. Union of India service through General Manager, S.E.Railway, Garden Reach, Kolkata-43.
2. Member Staff, Railway Board, Rail Bhavan, New Delhi.
3. Divisional Railway Manager, S.E.Railway, Khurda Road, P.O.Jatni, Dist.Khurda, PIN-752050.
4. Medical Superintendent, S.E.Railway, P.O.Jatni, Dist.Khurda, PIN-752050.
5. Senior Divisional Medical Officer/OPD (I/C), S.E.Railway, Khurda Road, P.O.Jatni, Dist.Khurda, PIN-752050.

..... Respondents

Advocates for the Respondents

..... Mr. R.C.Rath

IN O.A.NO.13 of 2003

Sri Ashok Kumar Kar aged about 38 years, s/o Sri Braja Bandhu Kar working for gains as Senior Clerk under Senior Divisional

Medical Officer(Indoor), S.E.Rly., Khurda Road at present
residing at Railway Qr.No. G. 4/B at Traffic Colony, Khurda
Road, P.O. Jatni, Dist. Khurda.

..... Applicant

Advocates for the Applicant - ...Mr. Achintya Das

Versus-

1. Union of India service through General Manager, S.E.Rly.,
Garden Reach, Kolkata-43;
2. Member Staff, Railway Board, Rail Bhawan, New Delhi.
3. Divisional Railway Manager, S.E.Railway, Khurda Road,
P.O. Jatni, Dist. Khurda, PIN-752050.
4. Medical Superintendent, S.E.Railway, P.O. Jatni, Dist.
Khurda, PIN-752050.
5. Senior Divisional Medical Officer(Indoor), S.E.Railway,
Khurda Road, P.O. Jatni, Dist. Khurda, PIN-752050.

..... Respondents

Advocates for the Respondents - ...Mr. R.C.Rath

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ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

Since the O.A. Nos. 12/03 and 13/03 pertain to
common question of facts and law, we dispose of the O.As.
through this common order.

2. For the sake of convenience, we may as well refer
to O.A. No. 12/03 which has been filed by Shri Minakhi Sethy,
working as Mid-Wife under Sr. Divisional Medical Officer/OPD,
Khurda Road. The facts of the case are that the applicant
was allotted Railway quarters No. D/41/A in Traffic colony

at Khurda Road. The allegation of the applicant is that on 19.10.02 when she was away on her duty at Retang colony Health Unit, some Railway personnel visited her quarters and alleged to have found one Shri Sushanta Kumar Patnaik working at Delang staying in that quarters. It appears the said visiting party reported against her to the effect that she had sublet the quarters. As a result of this, she has been served with a major penalty chargesheet on 15.11.02 by the Sr. D.M.O. O.P.D./In-charge/Khurda. Thereafter, on 9.12.02, the said authority (the Disciplinary Authority), issued another letter dated 9.12.02 advising her to vacate the quarters on the ground that she had been found to have sublet the quarters. The applicant by her letter dated 14.12.02 denied the allegation. In spite of this, the Respondents have deducted from her salary, an amount of Rs. 1104/- for the month of December, 2002 under the heading "Damage Rent" in addition to normal rent of Rs. 53/- without serving any showcause notice. The applicant has assailed the decision of the Respondent to issue chargesheet to her on the basis of un-substantiated report and such an order was completely illegal in the face of the decision of the Ernakulam Bench of this Tribunal in the case of P. Moosa Vs Union of India 1991 (12 ATC 66) to the effect that subletting is not misconduct and that action against the Railway servant for any conduct connected with the retention of the quarters can be taken only under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 for eviction. She has also submitted that it was not

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open to the Respondents to make any deduction of any amount under so called "Damage Rent" as no such provision exists for deduction under the Payment of Wages Act, 1936, circulated under Master Circular No. 59/94.

3. The Respondents have opposed the application on all counts. They have submitted that on receipt of an anonymous complaint vide R-2, the Respondents had set up a Joint Committee of Sr. Officers to look into the allegation about rampant subletting of Railway quarters by the employees and in the course of investigation eight staff belonging to the Medical Department including the applicant were found to have sublet their quarters. On receipt of this report, the competent authority, in terms of the RBE No. 12/93 circulated under CPO/GRC's Estt. Sl. No. 62/95 decided to initiate eviction proceedings against the subletting to get the quarters vacated expeditiously and also to charge penal/market rent from the erring employees and also to take action against these officials on ground of misconduct. They have refuted the plea of the applicant that the provisions of Payment of Wages Act, 1936 was either applicable or relevant for the purpose of this case. They have also submitted that the decision in the case of P. Moosa was not relevant as the same decision runs contrary to the Railway Board Circular Establishment Sl. No. 62/95 which provides that departmental action can be taken in case of subletting and violating the instruction contained in Annexure-R/3, i.e., Railway Board

Circular Establishment Sl. No. 62/95.

4. We have heard the Id. Counsel for both the parties and have perused the records placed before us.

5. The applicant had also submitted rejoinder to the counter. She has also submitted the following case laws in support of his argument :

- (i) Ved Prakash Vs Director, Directorate of Estates & Anr. AISLJ 1998(1) (CAT) 168.
- (ii) Nawal Singh Vs UOI & others (1988) 6 ATC 928.
- (iii) P.Moosa Vs UOI & others (1990) 12 ATC 66.

She has also submitted the following letters of the Railway Board in support of her application :

- (i) Railway Board's letter No. E(D&A) 98 GSI-1 dt. 19.6.98.
- (ii) Railway Board's letter No. E(D&A) 86 RG6-34 dt. 10.4.96.
- (iii) Railway Board's letter No. E(G) 79 RN 2-117 dt. 9.4.90.

6. Without going into the lengthy arguments and counter arguments of the parties, the O.A. can be disposed of by answering the issue whether the Railway servant could be subjected to disciplinary action under the Railway Servants (D&A) Rules, 1968 for subletting of quarters without referring the matter to the Estate Officer, set up under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

7. In this connection, at the outset, we would like to point out that we are not impressed by the reply of the Respondents given in their counter at para 15 to the effect that "reported decision of the year 1991 can not come to

the aid of the applicant which runs contrary to the latest Railway Board's Circular i.e. Estt. Sl. No. 62/95 which clearly provides for taking departmental action in cases of subletting and violating the instructions contained in Annexure-R/3." We are constrained to point out that the reply in their counter is not only unsatisfactory but also smacks of complete nonapplication of mind by the Respondents. Needless to emphasise, the decision of the Ernakulam Bench of this Tribunal in P.Moosa case being judicial pronouncement is binding on the Respondents and supersedes the executive order, if any, existing and running contrary to this order. The ratio of the decision in that case is that no action against a Railway servant can be taken for subletting without initiating proceeding under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. This is the settled position of law and the Respondents are clearly and forever bound by this. The Respondents also should have with profit referred to the decision of the Apex Court which was circulated by the Railway Board by their letter dated 19.6.93 (RBE No. 136/98) addressed to General Managers, All India Railways and others, in which they quoted the decision of the Apex Court regarding the procedure to be followed for taking action against the erring Railway servants in the matter of subletting. In terms of the said letter of Railway Board the procedure for taking action for alleged subletting should be taken in the following manner :

"Firstly, the matter is to be referred to the Estate

Officer for determining the case of subletting and that the decision of the Estate Officer should be communicated to the Disciplinary Authority of the concerned Railway servant. On receipt of such an report, the Disciplinary Authority shall initiate disciplinary proceedings against the Railway servant concerned. The findings of the Estate Officer regarding subletting shall be binding on the Disciplinary Authority for the purpose of initiating disciplinary proceedings. Once the disciplinary proceedings are initiated the procedure laid down under the Railway Servants (D&A) Rules, 1968 shall take its own course." It has also been observed by the Apex Court that since the disciplinary proceedings in such cases would be initiated on a charge of grave misconduct, the competent authority may place the delinquent Government servant under suspension. In pursuance of the law laid down by the Apex Court procedure has been laid down in the Railway Servants (Conduct) Rule, 1966 of the Indian Railway Establishment Code, Vol. I (1985 Edition) vide Establishment Sl. No. 51/97 making subletting a breach of conduct, punishable under law. In result, in this case, the Respondents should have referred the matter to the Estate Officer on the basis of enquiry report received by them from the Committee set up for this purpose to establish the case of subletting by the concerned officers, in this case, the applicant. It is only after receipt of the findings of the Estate Officer, it was open to them to initiate action against the erring Railway servants under the Railway Services (Conduct) Rules, 1966 as referred to above. But, in the present

case, the said procedure as laid down under RBE No. 136/98 have not been followed. That is a major failure on the part of the Respondents and because of that the application filed by the applicant succeeds because disciplinary action has not been initiated following the due procedure of law laid down in this regard. We hold this view relying on the decision of the Apex Court in Ramachandra Keshav Adke Vs Govind Joti Chavare and others, AIR 1975 SC 915, where it was held that "Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden. This rule squarely applied where the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other. This decision of the Apex Court was based on Taylor v Taylor, (1875) 1 Ch.D.426, Nazir Ahmed v Emperor, 63 Ind.App.372, Shiv Bahadur Singh v State of V.P., (1954) SCR 1098, Deep Chand v State of Rajasthan, (1962) SCR 662." We, therefore, set aside the impugned order dated 15.11.02(Annexure-A/2) being devoid of merit. The Respondents are, however, at liberty to take action as they deem fit and necessary under RBE No. 136/98, following the procedure laid down therein in this regard.

8. We would also like to clarify here that the Respondents, in this case, has misunderstood the provision made at para 6 of the Establishment Sl. No. 62/95 which was circulated prior to the circulation of RBE No. 136/98. The

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total dependence of the Respondents on Establishment Sl. No. 62/95 has led to the adoption of wrong procedure with regard to taking action for eviction of the applicant from the quarters allotted to her. It is to be noted that in para 6 of Establishment Sl. No. 62/95, it has been clearly laid down that where an Railway employee is found subletting the quarters, eviction proceeding should be initiated against subletting; and eviction proceeding can only be undertaken under the Public Premises Act of 1971 for which the matter has to be referred to the Estate officer. It is, however, made clear that the Respondents do have power to charge penal/market rent, as the case may be, pending finalization of the eviction proceeding only after giving proper warning to the concerned officer. In other words, imposition of penal rent and taking recourse to eviction are two different ends of the spectrum, one an administrative decision, a prerogative of the employer to fix rent for the quarters let out and the other, an eviction action under the Public Premises Acts of 1971. It is also clarified that disciplinary action can be initiated only after the matter of subletting has been established by the Estate officer, as stated above.

10. With the above observation, this O.A. is disposed of. No costs.

Substantive
22/01/05
(M.R.M.)
Sd/ M.R. Mchandy
Member (Judge)

Sd/- B. N. SONI
VICE CHAIRMAN

RK/SD