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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK


Original Application No. 15 of 2011
Cuttack, this the 18th day of September, 2014

Mustafa Hussain	Applicant
	Versus	
Union of India & Ors.	Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? ✓
2. Whether it be referred to PB for circulation? ✓


(R.C. MISRA)
Member (Admn.)


(A.K. PATNAIK)
Member (Judicial)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 15 OF 2011

Cuttack, this the 18th day of September, 2014

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HON'BLE MR. A.K. PATNAIK, MEMBER (Judl.)

HON'BLE MR. R.C. MISRA, MEMBER (Admn.)

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Mustafa Hussain,
Aged about 40 years,
Son of Late Murtaza Hussain,
Permanent resident of Village- Danagahiri,
P.S. Pipli, Dist. Puri.

.....Applicant

Advocate(s)... M/s. B.S.Tripathy, M.K.Rath, J. Pati, M. Bhagat.

VERSUS

Union of India represented through

1. The General Manager,
East Coast Railway, Rail Vihar,
At/PO-Chandrasekharpur, Bhubaneswar,
Dist-Khurda.
2. Senior Divisional Operations Manager,
East Coast Railway, Khurda Road,
At/PO- Jatni, Dist-Khurda.
3. Divisional Operations Manager(G),
East Coast Railway, Khurda Road,
At/PO- Jatni, Dist-Khurda.
4. Sri B. Panda, Asst. Operations Manager(Plg)-cum-Enquiry Officer,
East Coast Railway, Khurda Road,
At/PO- Jatni, Dist-Khurda.

..... Respondents

Advocate(s)..... Mr. S.K.Ojha

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ORDER

A.K.PATNAIK, MEMBER (JUDL.):

This case has a chequered career and can briefly be stated that the applicant while working as Box Carrier under SM Khurda by order dated 15.05.1994 was transferred to Paradeep. At Paradeep he was allotted Quarters No. 49/D. On 21.04.2003, the applicant was served within a charge Memo alleging that he had subletted the said Quarters and thereby committed misconduct punishable under Rule 3.1(iii) of Railway Servants Conduct Rule, 1966 (hereinafter called as 'Conduct Rules'). The matter was enquired into and the IO held the charge proved against the Applicant. The DA accepted the findings of the IO and imposed the punishment of removal from service on the Applicant. On appeal, the Appellate Authority modified the order of punishment of removal from service to Compulsory retirement. Applicant challenged the said order of punishment in OA No. 214 of 2006 in which by filing counter, Respondents contested the case of the Applicant. After hearing the matter at length and taking into consideration the material placed on record, this Tribunal vide order dated 12th January, 2009 remanded the matter to the competent authority with direction to conduct de novo inquiry from the stage of initiation of inquiry on complying with the principles of natural justice and complete the same within six months from the date of receipt of copy of the order. Relevant portion of the order is extracted herein below:

“6. Perusal of the above charge does not disclose as to when the Quarters in question was allotted to the applicant and on what date the applicant had sub-letted the Quarters to said Shri Behera, as alleged. Besides, what is the relation between said Shri Behera and the applicant has also not been considered. Apart from that



there is no evidence either before the Inquiry Officer or in the charge, that any step has been taken to call for explanation of the applicant before issuing the charge memo in the matter of sub-letting the Quarters. In this context the explanation given by the applicant to the charge is also to be taken note of. He had stated that said Shri Behera was sharing accommodation and was looking after his house in his absence. However, this question was not considered by the Inquiry Officer. Since the charge regarding the date and time of subletting of the Quarters and to the person etc., is vague, we are of the view that on this ground alone the inquiry report (Annexure-A/6) should not be acted upon by the Disciplinary Authority. With the above deficiency, it is also to be noted that the Inquiry Officer though relied on some documents there is no evidence that these documents have been served on the applicant, apart from the inquiry being conducted ex parte. In this context, we are of the view that the inquiry is in clear violation of the principles of natural justice. Therefore, we hold that the inquiry report itself is void one and if so, the order passed in pursuance thereof by removing the applicant from service or the compulsory retirement, as the case may be is illegal. Accordingly, we set aside Annexure-A/8 and Annexure-A/10 respectively.

7. However, the allegation leveled against the applicant being serious, i.e. of subletting the Quarters as per the judicial pronouncement by the Apex Court. We are of the view that the matter can be again remanded to the competent authority to conduct de-novo inquiry from the stage of initiation of inquiry on complying with the principles of natural justice. As the applicant is out of service the inquiry so ordered shall be completed within six months from the date of receipt of the copy of this order. It is also made clear that the service benefits from the period of removal from service till compulsory retirement and the rest shall be considered by the authorities on completion of the inquiry."

2. Thereafter, Respondents, in compliance of the aforesaid direction of this Tribunal conducted the enquiry and the DA after following the procedure prescribed under the Rules, issued order dated **04.09.2009** holding as under:



“So, considering the above fact and gravity of the charges, I proposed to impose the following punishment to M. Hussain, Ex.Box Carrier, Paradeep.”

“Compulsory Retirement from Railway Service w.e.f. 25.07.2005 with all terminal benefits”.

3. On appeal the Appellate Authority modified the order of punishment of compulsory retirement vide order dated 16.07.2010 to the extent as under:

“Finding Sri Hussain guilty of at least sharing his Railway allotted quarters with outsider without intimating or taking permission from Railway administration, he is punished with 3 stages lower in time scale for 4 years with cumulative effect.

The period from the date of removal from service till issuing of this revised punishment order should be treated as leave without pay.

Shri Hussain has recently vacated the Rly quarter allotted to him at PRDP. The entire period from the date he was removed from service till vacation of quarter should be treated as unauthorized occupation and penal charges should be levied thereon.”

4. Being aggrieved by the aforesaid order of punishment, the Applicant has filed this OA with prayer to quash the report of the IO dated 23.07.2009, order of the Disciplinary Authority dated 04.09.2009 and the order of the Appellate Authority dated 16.07.2010 on the following grounds:

- (a) The order dated 4.9.2009 of the Disciplinary Authority and the order of the Appellate Authority dated 16.7.2010 being illegal, arbitrary and contrary to the sound principles of law the same are not sustainable and is liable to be quashed;
- (b) After the order dated 12.01.2009 in OA No. 214 of 2006 instead of issuing fresh charge sheet, Respondents preceded with the earlier memorandum of charge dated 21/23.04.2003 which is contrary to the order of this Tribunal. Hence the entire proceedings are liable to be set aside;
- (c) The Disciplinary Authority relying on the evidence of the earlier inquiry issued the order of punishment. The IO submitted its report holding that sub letting of quarters is not proved whereas the DA in his order held subletting of



- quarters as proved without giving any opportunity to the applicant to the above effect and imposed the punishment which is not sustainable in the eyes of law and, therefore, the same is liable to be set aside;
- (d) In course of enquiry some of the prosecution witnesses were examined after the examination of defence witnesses and based on the deposition the IO submitted its report holding that the applicant has violated para No.6 (ii) of Estt. Srl.No.62/95 dated 17.04.1995 though this was not alleged in the charge sheet. Hence principles of natural justice was violated and, therefore, imposition of punishment based on the said report of the IO being not sustainable in the eyes of law is liable to be set aside;
 - (e) The order of the Appellate Authority is cryptic without taking note of the points raised by the Applicant. Hence, the same is liable to be set aside;
 - (f) In case of sub letting of quarters action can be taken under Rule 6 & 7 which provides institution fo eviction proceeding and imposition of penal/market rent in case it is proved whereas in the instant case the Respondents without following the rules proceeded against the applicant and imposed heavy punishment even though the charge is not proved in its entirety. Hence, the order of punishment is liable to be set aside;

5. Respondents filed their counter in which it has been stated that in obedience of the order of this Tribunal, de novo enquiry was conducted from the stage of inquiry. In course of enquiry the Applicant admitted that one Shri S.Behera, Jeep Driver/PRDP along with his family members were residing in a portion of the said quarters along with the applicant. But he has denied the fact of accepting rent from said Shri Behera. During enquiry he was provided all opportunities to have his say in the matter after which the IO submitted his report copy of which was given to the applicant to submit his reply. After considering the report of the IO, representation submitted by the applicant and all other connected records, the Disciplinary Authority vide his order dated 04.09.2009 reiterated the order of compulsory retirement imposed on the applicant. But on consideration of the appeal

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preferred by the applicant, the Appellate Authority modified the said order of punishment. It has been stated that the scope of judicial review in so far as Disciplinary Proceeding matters are concerned is very limited. Unless it is proved that the proceedings are conducted in a perfunctory manner in violation of the statutory and mandatory rules or principles of natural justice there is no scope for interference. It is not the case of the applicant that any such eventuality has taken place in his case. Therefore, there is no reason to interfere in the order of punishment especially when on spot verification report, statement of PWs and statement of M.Hussain it was clearly proved that outsider along with family members were residing in Qrs.No.49/D allotted to the applicant at Paradeep without prior permission of the authority which was in violation of the para 6(ii) of Estt. Srl.No. 62/95 dated 17.04.1995 (Master Circular) under which it has been provided that where a Railway employee sublets a portion of the accommodation to an outsider for a consideration the same should be got vacated and allotted to another railway employee. Accordingly, Respondents have prayed for dismissal of this OA. Applicant has filed rejoinder more or less elaborating the points raised by him in the OA.

6. Having considered the arguments advanced by Learned Counsel for both sides, we have gone through the materials placed on record.

7. We find that this Tribunal vide order dated 12th January, 2009 only remanded the matter to the competent authority with direction to conduct enquiry de novo from the stage of inquiry and it is not in dispute that in compliance of the said order of this Tribunal Respondents has

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conducted the enquiry. This Tribunal neither quashed the charge sheet nor remanded the matter for de novo proceedings from the stage of issuance of charge sheet. Had it been so the Respondents were under obligation to do so. Therefore, we do not find any flaw in the enquiry proceedings without issuing any fresh charge sheet as alleged by the applicant. The allegation that the IO submitted its report holding that sub letting of quarters is not proved whereas the DA in his order hold subletting of quarters as proved without giving any opportunity to the applicant to the above effect and imposed the punishment is far from record. The IO in its report held as under:

“Although, documentary evidence is not available, from the spot verification report, statement of PW’s and statement of M.Hussain (C.O.), it is proved that outsider named Sri S. Behera along with his family was residing I the Qr. No. 49/D of M.Hussain at PRDP and till date the quarter is not vacated by Sri Hussain. So from the statement of PWs, C.O. and joint verification report it is established that a portion of the Railway quarter No. 49/D in occupation of M.Hussain, Ex.BC/PRDP is subletted to the outsider. Hence, he has violated Para No. 6(ii) of Estt. Sl. No. 62/95 dt. 17.04.95 (master circular) under which it is clearly indicated that, where a Railway employee has sublet a portion of the accommodation to an outsider, for a consideration the same should be got vacated and allotted to another Railway employee.

In violation to this Rule departmental action is also require to be taken against to the Railway servant in such case.

Hence, the charges framed against M.Hussain is proved.”


8. In view of the above, we find no substance on the above allegation of the Applicant which is rejected. In so far as the stand of the applicant that in course of enquiry some of the prosecution witnesses were examined after the examination of defence witnesses and based on the deposition the IO submitted its report holding that the applicant has violated




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para No.6 (ii) of Estt. Srl.No.62/95 dated 17.04.1995 though this was not alleged in the charge sheet is concerned we do not see any justification to interfere on the same as nothing has been stated by the applicant by adopting such a procedure how he was prejudiced and under which provisions such a procedure was to be taken by the Respondents. After going through the appeal of the applicant and the order of the appellate authority we also do not find any substance ^{on} the stand of the applicant that as the order of the appellate authority is cryptic the same is liable to be quashed. Rather we find that the appellate authority was sympathetic and considerate enough as he has modified the order of punishment of compulsory retirement to reduction of pay by three stages. It is not the case of the applicant that Shri Behera was not residing in the quarters in question along with his family members. The quarters belong to the Department and were allotted to the Applicant. As per the Rules the allottee cannot sublet, share or allow any other person to reside in the said quarters without the permission of the authority. In the above circumstances, we do not see any ground to interfere ^{with} impugned orders as prayed for by the applicant in this OA.

9. Resultantly, for the discussions made above, we find no merit in this OA which is accordingly dismissed. There shall be no order as to costs.


(R.C.Misra)
Member(Admn.)


(A.K.Patnaik)
Member (Judicial)

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