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CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA No. 277/ 1996

Present: Hon'ble Mr. Mukesh Kumar Gupta, Judicial Member
Hon'ble Mr. M.K. Mishra, Administrative Member

SHRI JAI RAM SHARMA

Vs

1. Union of India, Service through the General Manager, S.E. Railway, Garden Reach, Calcutta - 43.
2. Chief Personnel Officer, S.E. Railway, Garden Reach, Calcutta - 700 043.
3. Works Manager (FMG), S.E. Railway Workshop, Kharagpur - 721 301.
4. Dy. Chief Mechanical Engineer (Prod.), S.E. Railway Workshop, Kharagpur - 721 301.
5. Workshop Personnel Officer, S.E. Railway Workshop, Kharagpur - 721 301.
6. Chief Project Manager, S.E. Railway Workshop, Kharagpur - 721 301.

For the applicant : Mr. P.C. Maity/ Mr. K.C. Saha, Counsel

For the respondents : Ms. A. Singh, Counsel

Heard on : 30.11.2004

Date of Order: 4.02.05

O R D E R

Mr. Mukesh Kumar Gupta, JM:

The relief prayed for in the present OA are as follows:

(a) to issue direction by directing the respondents to cancel rescind and/ or to withdraw and/ or to set aside and quash the impugned order of punishment imposed by disciplinary authority vide Memo. dated 16.8.95 and the impugned punishment order of Appellate Authority vide Memo. dated 20.2.96 shown in Annexure A-7 and the impugned memo of charge sheet dated 24.9.94 shown in Annexure A-3 and entire D & A Proceedings in respect of the Quarter of the applicant in

question and by further directing the respondents to pay the arrears of salaries during the suspension period and to refund the penal rate of rent whatever deducted till date from the applicnat on the same charges.

- (b) by further directing the respondents not to give any effect of reversion and reduction of salary of the applicant consequent upon the reversion order dated 20.2.96.
- (c) to produce all records in original pertaining to the present case and upon perusal of the same pass such appropriate order or orders as your Lordships may deem fit and proper.
- (d) Cost or costs.

2. The admitted facts of the case are that the applicant while working as Electric Welder, Grade I was allotted Railway Quarter No. L/71 A1, Unit No. 23 at New Settlement vide letter dated 10.6.90. A surprise verification of the Govt. accommodation was conducted by a team consisting of 2 senior officials, namely, S/Shri P.C. Saha and M. Appa Rao, who found that the applicant had subletted the said Government accommodation unauthorisedly. Vide order dated 17.7.94, the applicant was placed under suspension under Rule 5 (1) of Railway Servants (Discipline & Appeal) Rules 1968 by the Works Manager (Dev.), South Eastern Railway, Kharagpur. On 20.7.94, the applicant submitted representation to revoke the said suspension order and also stated that two persons visited his house in his absence and enquired from his sister, who is mental patient and the said fact came to his notice later on. According to applicant, since his mother-in-law was ill, he had left his sister, namely, Smt. Laxminarayananamma at his house. He also made a request for reverification of the Government accommodation. Initially, vide

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communication dated 20.8.94, the Works Manager (Dev.) refused to revoke the suspension but later on vide communication dated 7.7.95 revoked the said suspension with immediate effect. In the meantime, vide communication dated 23.7.94, the applicant was directed to vacate the said Railway Quarter. Since he failed to vacate the same, his allotment was cancelled on 19.8.94. Vide communication dated 10.9.94, penalty/ damage rent with effect from 1.9.94 was also ordered to be recovered. The applicant's appeal to waive the penal rent was not agreed vide communication dated 9.4.95. Vide communication dated 19.8.95, the applicant was again directed to vacate the said Railway accommodation within 7 days failing which necessary eviction process was to be initiated.

3. In the meantime, a memorandum dated 24.9.94 (A-3) under Rule 9 of RS (D&A) Rules, 1968 was issued wherein it was alleged that the Railway Quarters allotted to him on 10.6.90 had been sub-letted unauthorisedly and therefore the applicant violated Rule 3 (i) & 3 (iii) of RS Conduct Rules 1966. 3 documents were listed to support the said charge and no witness was named in the Annexure-IV appended to said charge memorandum. Since the applicant denied the said charge, an oral enquiry was held and based on enquiry officer's report, which was endorsed to the applicant on 17.6.95, an opportunity to make representation was afforded to him, which chance was availed by submitting representation dated 2.7.95.

Thereafter, vide order dated 16.8.95, a penalty to reduce the applicant's pay by one stage lower in the same scale for a period of one year with cumulative effect, was imposed, which punishment was to come into force from 20.8.95. The applicant submitted his appeal dated 6.9.95 which was returned to him, for re-submission to the appropriate authority, on 15.9.95. Accordingly, a fresh appeal was submitted on 19.9.95. Immediately thereafter a show cause notice notice dated 4.11.95 was issued proposing to enhance the said penalty of reversion from E-Welder Grade I to E-Welder Grade II with cumulative effect, instead of the punishment imposed vide order dated 16.8.95. The applicant submitted his representation dated 16.11.95. After considering the same, the Dy. CME (P), Kharagpur passed order dated 20.2.96 (A-7) and reverted him from the post of E-Welder Grade I carrying pay scale of Rs.1320 - 2040 to E-Welder Grade II in pay scale of Rs.1200 - 1800, for a period of three years with cumulative effect. Such punishment was made effective from 20.2.96. In the meantime, the applicant had submitted a representation dated 29.12.95 seeking review of his case sympathetically.

4. In the present OA, the aforesaid punishment order dated 16.8.95, appellate authority's order dated 20.2.96 as well as the entire disciplinary proceedings have been questioned besides seeking a direction to refund the penal rent recovered from his salary with all its consequential benefits.

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5. The applicant has contended that the impugned actions were not only whimsical and arbitrary, but also highly mala fide and unsustainable in law; the respondents No. 3 & 4 failed to act in consonance with principle of natural justice and fair play; the respondents No. 3 & 4 acted with close mind and the allegations of subletting of Quarter had not been proved; the respondents failed to consider various representations and appeal filed by the applicant in as much as he was paid for about a year only 50 per cent of the subsistence allowance without making a review of the said suspension order as well as subsistence allowance; the punishment imposed was harsh and in fact constitutes double jeopardy. Not only this, even a damage/ penal rent had been recovered making the applicant to suffer unjustly.

6. The respondents contested the applicant's claim and stated that as per the record maintained by the Railway, the applicant did not have any dependent unmarried sister. He was awarded the punishment of withholding one set of PTO on account of unauthorised absence. The allegation of subletting was established by conducting the departmental enquiry, wherein the applicant was afforded an opportunity to place his defence. The story of serious illness of applicant's mother-in-law was only fabricated. Initially, the applicant had stated that his wife had gone to market, his sister was at his house. It is only later on that

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the applicant projected the story of his mother-in-law's illness and his being staying with his mother-in-law for the last 5-6 days prior to date of incident. 2 senior officials conducted the spot enquiry, who found that the Railway accommodation had been subletted by the applicant and therefore he was advised to vacate the Railway Quarter, which he failed to do. Therefore, finding no alternative, allotment of the said Railway accommodation was cancelled. The applicant was paid subsistence allowance as per the provisions of the Rules. Considering the gravity of the offence and misconduct, charge memorandum dated 24.9.94 was issued and the charge was proved in the enquiry & enquiry officer submitted his report after considering all aspects of the matter. The applicant examined both the officers who conducted the raid and made spot enquiry of the said Quarter. No defence witness was produced by the applicant. The enquiry officer started the enquiry on 10.3.95 and completed the same on 27.5.95, giving adequate scope to applicant & after following the mandate of rules and complying the principle of natural justice. The applicant attended the proceedings alongwith his defence counsel and the documents asked for were supplied to him. The enquiry officer was an independent body and had no bias. Two neighbours who also witnessed the surprise check had signed the report as witness. The applicant himself admitted in question No.4 on 18.5.95 that Smt. Laxminarayananamma was staying in the said quarter. The punishment imposed by the

disciplinary authority was not agreed to by the appellate authority, who after affording an opportunity of hearing and issuing show cause, enhanced the penalty from reduction of pay by one stage lower in the same scale to that of reversion. There was no violation of any rule or procedure.

7. We heard learned counsel for the parties and perused the pleadings carefully.

8. S/Shri P.C. Maity and K.C. Saha, learned counsel appearing for the applicant contended that during the pendency of the present OA the applicant had retired on attaining the age of superannuation with effect from 31.12.2003 and because of the impugned reversion, he had suffered drastically in terms of pension. On merits, it was contended that the procedure regarding surprise check on Quarters on Railway Colony was not followed and therefore, the report submitted by the committee was of no effect. For this purpose, our attention was drawn to para 4 of the Revised Appended 'H' appended to RBE 219/ 1992 on the subject of unauthorised use of Railway's residential accommodation. Para 4 deals with the subject of subletting the Quarters and stated that a committee consisting of (i) The POO Holder (Supervisor); (ii) The Sectional representative or URMU of station

station of IOM

such surprise checks. It was emphasised that in the present case since the committee was consisted of only two Deputy SS, which was not in accordance with the aforesaid para 4 & therefore, the report submitted by such committee was of no consequence. It was further emphasised that the applicant had suffered numerous punishments in the form of cancellation of Govt. accommodation; (2) recovery of damage/ penal rent and thirdly the disciplinary proceedings as well as reversion. It was contended that all these action tantamount to double jeopardy, which is impermissible in law. These contentions were disputed by the respondents.

We have bestowed our careful consideration to the above aspects, but did not find any merit in the said contentions raised by the applicant. On perusal of RBE 219/ 1992, as relied upon by the applicant, we find that the constitution of the committee was not statutory in nature & it was only advisory in nature. Moreover, in the present case, both the members of the said committee who conducted the surprise check were cross examined by the applicant in the disciplinary proceedings; the applicant did not produce any defence witness. He was afforded an opportunity of hearing to place his defence, which was availed of. It is not denied that he appeared in the said departmental proceedings along with Defence Assistant. Originally, there was no witness mentioned in the charge memo dated 24.9.94 and yet the applicant



was afforded an opportunity of examining/ cross examining the author of the report which had been the basis for initiating action against him. If he wanted to examine Smt. Laxminarayananamma who according to him was his dependent sister he should have produced her in the departmental proceedings, instead of insisting the department to produce her. Similarly, two persons who were witness to the said surprise check by the 2 Dy. SS, being the resident of nearby area of the same locality, ought to have been produced by the applicant. In our considered view, there was neither violation of principle of natural justice nor of fair play. No prejudice was either caused to the applicant at any stage. The penalty was enhanced only after issuing show cause notice as well as affording an opportunity to place/ submit his representation, which was duly availed of. In judicial review, the Court/ Tribunal cannot either reappreciate the evidence or substitute their own view.

9. In view of the discussion made hereinabove, we find no merit in the present application and accordingly the same is dismissed. No costs.



(M.K. Misra)
Admn. Member



(Mukesh Kumar Gupta)
Judicial Member

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