

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 319/1995
~~T.A. No.~~

199

DATE OF DECISION : 17.02.2000.

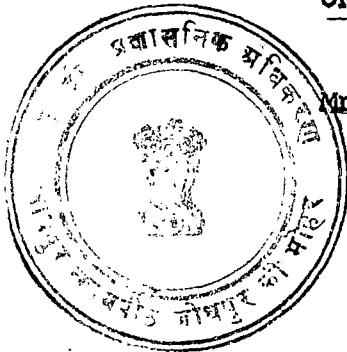
Ganpat Lal _____ Petitioner

Mr. J.K. Kaushik, _____ Advocate for the Petitioner (s)

Versus

Union of India & Ors. _____ Respondent(s)

Mr. S.S. Vyas, _____ Advocate for the Respondent (s)



CORAM :

The Hon'ble Mr. A.K. Misra, Judicial Member

The Hon'ble Mr. Gopal Singh, Administrative Member

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

Gopal Singh
(Gopal Singh)
Adm. Member

A.K. Misra
(A.K. Misra)
Judl. Member

IN THE ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 17.2.2000

O.A. No. 319/1995

Ganpat Lal son of Shri Mangal Ram aged about 56 years resident of C/o. Shri D.R. Bhatt, J.A.O., House No. C/33, P&T Colony, Subhash Nagar, Pal Road, Jodhpur, last employed on the post of Fitter (T.No.1966) under Loco Foreman, Loco Shed, Gunna, Western Railway.

... Applicant.

v e r s u s

1. Union of India through General Manager, Western Railway, Church Gate, Bombay.
2. The Divisional Railway Manager, Western Railway, Kota Division, Kota.
3. Sr. Divisional Mechanical Engineer, Western Railway, Kota Division, Kota.

... Respondents.



Mr. J.K. Kaushik, Counsel for the applicant.

Mr. S.S. Vyas, Counsel for the respondents.

CORAM:

Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. Gopal Singh, Administrative Member.

O R D E R

(Per Hon'ble Mr. Gopal Singh)

Applicant, Ganpat Lal, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for setting aside the disciplinary proceedings initiated against him vide Memo dated 17.5.82 (Annexure A/1), disciplinary authority's order dated 12.11.82 (Annexure A/2) and the order of Divisional Railway Manager, Kota, dated 18.5.84 (Annexure A/9).

Gopal Singh

2. Applicant's case is that he was initially appointed on the post of Fitter at Loco Shed in Kota Division, Kota, on 8.4.61 and he was allotted quarter No. 728, Unit A, Type II, for residential purpose. The applicant was served with a charge-sheet vide Memo dated 17.5.82 and after due process, the disciplinary authority imposed the penalty of removal from service upon the applicant vide his order dated 12.11.82. An appeal against the order of disciplinary authority was submitted to the Divisional Railway Manager, Western Railway, Kota on 2.2.84. When the appeal was not disposed of by the Divisional Railway Manager, Kota, the applicant filed an O.A. No. 578/92 before this Tribunal. That O.A. was decided on 18.3.84 with the following observations:-



"5. We have heard the learned counsel for the parties and have gone through the records. We do not consider it necessary in this case to give any finding on the question whether unauthorised occupation of Government quarter by a Government servant constitutes misconduct, in view of the order that we are passing in this case. Admittedly, the appeal filed by the applicant in this case has not been disposed of by the Appellate Authority i.e. the Divisional Railway Manager. Even if it is accepted that continued unauthorised occupation of a Government quarter constitutes misconduct and a penalty is liable to be imposed for such misconduct, the penalty imposed in this case appears to us to be wholly disproportionate to the misconduct reportedly committed by the applicant. We are conscious of the fact that since we do not sit as an Appellate Authority we cannot ourselves interfere in the matter of quantum of the penalty imposed. However, since the appeal filed by the applicant before the DRM is pending, we consider it appropriate to direct the appellate authority to dispose of the appeal within a period of 2 months from the date of receipt of a copy of this order. While disposing of the appeal, the appellate authority shall pass a speaking order and shall give specific findings as required in the following provisions of Rule 22 (2) of the Railway Servant (Discipline & Appeal) Rules, 1968 and shall particularly apply his mind to the quantum of the penalty imposed while disposing of the appeal:

- (a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
- (b) whether the findings of the disciplinary authority are warranted by the evidence on record; and
- (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe.

6. If the applicant is still aggrieved by the order of the appellate authority, he shall be free to file a fresh O.A. before the Tribunal."

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3. There upon, the appeal of the applicant was decided vide order dated 20.7.94 and the punishment of removal from service was reduced to that of compulsory retirement. However, the applicant had not been paid any amount consequent upon his compulsory retirement and he had filed another O.A. bearing No. 207/95, which was decided on 1.12.95. During the pendency of this application, the retiral benefits were released to the applicant. Thereafter, the applicant challenged the disciplinary proceedings and order of the disciplinary authority and the order of appellate authority thereon through the present O.A., which was filed on 20.7.95. The contention of the applicant is that he was served with a charge-sheet on the charge of unauthorised retention of Railway quarter No. 728, Unit A, Type II of Kota Shed and disobedience of orders in regard to non-vacation of the said quarter and this misconduct does not amount to misconduct in terms of Railway Servant (Discipline & Appeal) Rules, 1968.

4. Notices were issued to the respondents and they have filed the reply. It is contended by the respondents that the applicant did not submit the appeal in time and the appeal dated 2.2.84 submitted by the applicant was disposed of by the appellate authority treating the same as mercy petition, in compliance of the orders of the Tribunal. The learned counsel for the respondents has also pointed out that the applicant has challenged the charge-sheet dated 17.5.82 and order of the disciplinary authority dated 12.11.82 and as such, the application is barred by limitation.

5. We have heard the learned counsel for the parties and perused the records of the case.

6. Dealing with the point of limitation, it is pointed out that the applicant had submitted an appeal dated 2.2.84 against the orders of disciplinary authority dated 12.11.82 much after the prescribed time fixed for filing such appeal. The appellate authority was free to reject the appeal on this ground itself. However, he did not take any action till it was directed by the Tribunal to consider the appeal of the applicant. The appellate authority, thereafter, disposed of the appeal vide his order dated 20.7.94. This application has been filed on 20.7.95 and, therefore, we are of the view that the grievance of the applicant arose after the appellate authority had passed its orders. We,

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therefore, find that the application is within the period of limitation and, therefore, maintainable. The arguments of learned counsel for the respondents in this regard are, therefore, rejected.

7. In support of the contention of the applicant that unauthorised occupation of Government accommodation does not constitute any misconduct in terms of Railway Servant (Discipline & Appeal) Rules, 1968, learned counsel for the applicant has cited following judgements:

- (i) 1991 (2) S.L.J. (CAT) 479, Hemendra Nath Misra vs. Union of India & Others.
- (ii) AIR 1984 SC 505, M/s. Glaxo Laboratories (I) Ltd. vs. Presiding Officer, Labour Court, Meerut & Others.
- (iii) A.L. Kalra vs. The Project and Equipment Corporation of India Ltd., AIR 1984 SC 1361.



He has also drawn our attention to Rule 3 of the Railway Services (Conduct) Rules, 1966, which provides as under:-

"3. General.- (1) Every railway servant shall at all times-

- (i) maintain absolute integrity;
- (ii) maintain devotion to duty; and
- (iii) do nothing which is subversion of law and order and is unbecoming of a railway or government servant".

It is the contention of the applicant that unauthorised occupation of Government accommodation does not fall within Rule 3 of the Railway Services (Conduct) Rules, 1966.

8. In 1991 (2) S.L.J. (CAT) 479, Hemendra Nath Mishra vs. Union of India and Others, decided on 22.3.90, it was held that non-vacation of quarter is not a misconduct and no disciplinary action could be taken under Railway Servant (Discipline & Appeal) Rules, 1968 and only way is to have recourse under Public Premises Eviction Act and even Rule 10 of Railway Quarter Allotment Rules, 1988, does not hold. In AIR 1984 SC 505, M/s. Glaxo Laboratories (I) Ltd. vs. Presiding Officer, Labour Court, Meerut and Others, it has been held as under:

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"In the face of the statutory provisions it would be difficult to entertain the submission that some other act of omission which may be misconduct though not provided for in the standing order would be punishable under standing order 23. Upon a harmonious construction the expression "misconduct" in S.O.23 must refer to those acts of omission or commission which constitute misconduct as enumerated in standing order 22 and none else.

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.....

In short it cannot be left to the vagaries of management to say ex post fact that some acts of omission or commission nowhere found to be enumerated in the relevant standing order is nonetheless a misconduct not strictly following within the enumerated misconduct in the relevant standing order but yet a misconduct for the purpose of imposing a penalty. Accordingly, the contention of Mr. Shanti Bhushan that some other act of misconduct which would per se be an act of misconduct though not enumerated in S.O. 22 can be punished under S.O.23 must be rejected."

In AIR 1988 SC 1361, A.L. Kalra vs. The Project and Equipment Corporation of India Ltd., it has been held that under Rules 4 and 5 of Project and Equipment Corporation of India Ltd. Employees' (Conduct, Discipline and Appeal) Rules, 1975, the alleged misconduct not falling under any of the misconduct specifically enumerated in the rules and the removal from service is not proper. Failure to return advances for House Building and for purchasing vehicle- remedy for breach provided in the relevant rules - would not amount to misconduct.



Since there is a separate Act, namely, the Public Premises Eviction Act to deal with the offenders of that Act, any offences against that act cannot be construed as misconduct and dealt with under Railway Servant (Discipline & Appeal) Rules, 1968.

9. In the light of above discussion, we are of the view that the applicant should not have been proceeded against under Railway Servant (Discipline & Appeal) Rules, 1968, since there are separate Rules/Act for dealing with such offences. Accordingly, the charge-sheet dated 17.5.82 (Annexure A/1), order of disciplinary authority dated 12.11.82 (Annexure A/2) and order of appellate Authority dated 20.7.95 (Annexure A/3) deserve to be set aside and simultaneously, the application deserves to be allowed.


10. The O.A. is accordingly allowed with the following observations:-


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- (i) The charge-sheet dated 17.5.82 (Annexure A/1), disciplinary authority's order dated 12.11.82 (Annexure A/2) and appellate authority's order dated 20.7.95 (Annexure A/3) are hereby quashed.
- (ii) The respondents are directed to reinstate the applicant to the post from which he was removed with half back wages.
- (iii) The period between removal and reinstatement would, however, qualify for pensionary benefits.

The above directions shall be complied with within a period of three months from the date of receipt of a copy of this order.

11. Parties are left to bear their own costs.


(GOPAL SINGH)
Adm. Member


17/11/2020
(A.K. MISRA)
Judl. Member

cvr.

Rec'd CMA
S. 5000
27.2.2001

R/COPY
21/12/2000
21/12/2000

Part II and III destroyed
in my presence on 26.9.2001
under the supervision of
section officer () as per
order dated 23/8/2001

Section officer (Record)

Lib copy
for 21/12
H.G.S.
for 21/12