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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

1. M.A. No. : 124/1998

2. O.A. No. : 186/1998

Date of Order : 08.3.2000

Smt. Bharti Shakya W/o Shri Sanjay, By Caste Schedule Caste, Aged about 35 years, R/o Qtr. No. L-260D Railway Work Shop Colony, Jodhpur, presently working on the post of Clerk in the office of Deputy Controller of Stores, Northern Railway, Jodhpur.

..Applicant.

Versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. Deputy Controller of Stores, Headquarters Office, Northern Railway, Baroda House, New Delhi.
3. District Controller of Stores, Northern Railway, Jodhpur.
4. Assistant Controller of Stores, Northern Railway, Jodhpur.

..Respondents.

Mr. S.K. Malik, 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.

PER HON"BLE MR. A.K. MISRA :

The applicant has moved this OA alongwith an application for condoning the delay, with the prayer that the impugned memo of charge sheet dated 15.9.1993 Annexure A/1 issued by respondent No. 4, impugned orders dated 5.2.1997 Annexure A/2 passed by respondent No. 3, dated 6.2.1997 Annexure A/3 passed by respondent No. 4 and dated 2.6.1997 Annexure A/4 passed by respondent No. 2 be declared illegal and be quashed. It is

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further prayed by the applicant that respondents be directed to pay arrears of pay and allowances to the applicant which have been deducted vide impugned orders Annexures A/2 and A/3 respectively alongwith the interest at the rate of 18 per cent per annum.

2. Notice of the OA and the MA was given to the respondents who have filed their replies to the OA and the MA.

3. It is stated by the respondents that the applicant had taken the law in her own hand and occupied the Railway Quarter unauthorisedly by breaking upon the lock of the said quarter and illegally occupied the same without any orders of allotment. The applicant was accordingly dealt with departmentally and panel rent as per rules was ordered to be recovered from her pay and that is how the deductions from the salary were made. It is also stated by the respondents that the applicant is not entitled to any relief whatsoever.

4. In order to understand the controversy in hand, it would be necessary to mention few facts in brief. The applicant was promoted to the post of Senior Clerk with effect from 22.8.1990 in the pay scale of 1200-2040/- after due selection. Thereafter, the applicant as per her own allegation occupied quarter No. L-260D which was lying vacant, and as per the allegations of the respondents by breaking open the lock of the said quarter illegally. The applicant was served with a charge sheet Annexure A/1 in which it is stated that she as a Senior Clerk committed serious mis-conduct by way of occupying Railway Quarter No. L-260D located in Workshop Colony unauthorisedly and thus failed to maintain absolute integrity and acted in a manner unbecoming of Railway servant and thereby contravened rule No. 3

(1). (i) and (iii) of the Railway Service Conduct Rules. The disciplinary authority nominated an inquiry officer who after completion of inquiry submitted his report. Acting on the report of the inquiry officer, the disciplinary authority passed impugned punishment order Annexure A/2. Thereafter, the applicant challenged the finding of the disciplinary authority by filing an appeal which was disposed of by the appellate authority vide its order dated 02.6.1997 Annexure A/4. The punishment awarded by the disciplinary authority reads as follows :-

"Reduction to the post of Junior Clerk grade 950-1500/- (RPS) at the fixed pay of Rs. 950/- per month for the period of five years with cummulative effect with effect from 06.02.1997.

2. She will draw the present basic of Rs. 1380/- per month after completion of five years alongwith permissible annual increments.

3. Her seniority will be fixed in the cadre of Sr. Clerk (Rs. 1200-2040) accordingly at that time."

In the same order it is mentioned that "if she vacates the said unauthorisedly occupied quarter in question within a period of two months, her current status of pay and seniority will be restored."

5. The applicant has challenged the impugned punishment order on many grounds i.e. the punishment order has been passed by an authority who is not the disciplinary authority, the applicant was not provided with necessary documents which were essential for her defence and was also not provided with the defence helper, no witnesses as listed in the charge-sheet were examined by the department, copy of the inquiry report was not supplied to the applicant before the order imposing the penalty was passed against her, the orders passed by the appellate authority is a non speaking order and is a result of non-application of mind, the applicant has been reduced in rank and her pay has also been reduced and thus, she has been punished

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twice for the alleged act of misconduct, the punishment order is disproportionate to the alleged misconduct and the conduct of the applicant in occupying the government accommodation does not amount to misconduct yet the same has been treated as misconduct and, therefore, the order passed by the authorities is liable to be set aside on the grounds as mentioned above.

6. We have heard the learned counsel for the parties and have gone through the case file.

7. First of all it was argued by the learned counsel for the respondents that the application of the applicant is highly belated and deserves to be rejected on this count alone. No cogent and convincing reasons have been mentioned in the Miscellaneous Application which may enable the Tribunal to treat the OA in time. In reply thereof, it was argued by the learned counsel for the applicant that the case is not highly time barred, the applicant could not manage the requisite finance for fighting out the case. Moreover, the departmental inquiry case is full of illegalities and irregularities which amount to illegalities. The case is otherwise meritorious for interference by the Tribunal and, therefore, the same can not be thrown away on the ground of limitation.

8. We have considered the rival contentions. In our view, the departmental inquiry case suffers from more than one illegalities and the case is otherwise meritorious. In our opinion the same deserves to be discussed in detail. Therefore, the case can not be dismissed simply because the OA was filed with a delay of few weeks. In this case the appellate authority passed order on 2nd June, 1997 upholding the punishment. This order was challenged by the applicant vide OA dated 24th July, 1998. She would have challenged the official order of the appellate authority within

one year. Instead of doing so she has challenged the order after about 7 weeks of the statutory limitation which in the given circumstances can not be treated as much belated. Therefore, the contention of the learned counsel for the respondents is rejected. The delay in presenting the OA deserves to be condoned.

9. The MA stands accepted accordingly. The application of the applicant is now dealtwith on merits as per following discussion.

10. We have considered the rival arguments of the learned counsel for the parties which they developed as per the pleadings. In this case, we find that the disciplinary authority, before passing the punishment order, did not deliver to the applicant the inquiry report which was considered by him. It is also noted that defence helper was not provided to the applicant as required by the Rules. By not providing the defence helper to the applicant, prejudice has been caused to her and she has not been able to defend the case properly. No doubt, the applicant was delivered the copies of the documents as relied on by the department, therefore, the prayer of the applicant to provide copies of the demanded documents should have been disposed of as per the Rules but it appears that the Enquiry Officer did not do the needful in this regard. Sometimes it so happens that in order to prolong the proceedings, copies of irrelevant documents are demanded by the delinquent. To meet out this situation reasoned and speaking order should be passed deciding the relevancy of the claimed documents as per Rules or an opportunity should be provided to the delinquent to inspect the demanded documents so that after termination of such proceedings such objections are not raised. It is also seen from the punishment order that the applicant has been punished by reduction of rank and at the same time her pay has also

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been brought down to Rs. 950/- In our opinion, this amounts to double jeopardy as these two penalties are quite different to each other. Penalties No. 5 and 6 as mentioned under the heading Major Penalties are separate penalties and in our opinion, while holding the applicant guilty of charges only one penalty should have been awarded to the applicant whereas ~~she~~ has been awarded with two penalties i.e. reduction to the lower grade and her pay has also been reduced equal to that of lower grade.

11. All the foregoing lapses which we have described amount to illegalities and in our opinion, have caused great prejudice to the applicant relating to the disciplinary case which was dealt with against her.

12. In view of the above finding, it would be of no use to discuss in detail and deal with other objections which the applicant has raised in the OA relating to the punishment having been passed by the incompetent officer, appellate order being non-speaking order and punishment order being disproportionate. At this stage, we would also not like to discuss whether unauthorisedly occupying the Railway quarter by the delinquent amounts to misconduct or not because it may affect the merits of the case one way or the other. Therefore, this question still remains to be decided by the disciplinary authority.

13. In view of the above discussion, we are of the opinion that the impugned orders Annexure A/2, A/3 and A/4 deserve to be quashed and the matter deserves to be remanded to the disciplinary authority for proceeding with the case against the applicant strictly in terms of the rule and procedure from the stage of disposing of the applicant's application for providing

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her copies of demanded documents etc. as per rules.

14. Before we conclude, we observe with pain that the applicant had occupied government quarter by breaking open the lock or otherwise yet no action has been taken by the departmental authorities to evict the applicant from such illegally occupied Railway quarter. It appears that the departmental authorities are giving a tacit consent to the applicant for continuation of her illegal occupation of the government quarter. In our opinion, such action of occupying government property by force and without any lawful authority by such applicants creates bad example and wrong precedent which can be conveniently followed by others and such instances can be cited as an example to support their ill-deeds. Therefore, in our opinion, while the department may proceed against the applicant for the alleged misconduct departmentally it is not debarred from taking action to evict the applicant from her alleged illegal occupation of the quarter. This is nobody's case that the applicant has been allotted the accommodation in question. We also do not find anything on record to show that the applicant has been made to pay damage rent for her alleged illegal occupation relating to the quarter in question. We may again observe that pendency of departmental action in the shape of disciplinary action does not debar the departmental authorities from levying and recovering from such persons rent, panel rent, damage rent, market value rent etc. as per Rules. It should be noted that offering to pay damage rent or the market value rent does not entitle such person to continue in possession of the government quarter grabbed illegally as such. Illegal occupation is a continuing wrong and, therefore, for continuing wrong, action has to be taken. Payment of rent does not absolve such occupant from liability of eviction. Therefore, appropriate action be taken by the departmental authorities as discussed above in order to avoid further mounting of liability of damage rent on and recovery thereof from the applicant.

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15. In view of the above discussion, the OA deserves to be accepted and is hereby accepted. The impugned order dated 05.2.1997 Annexure A/2 passed by respondent No. 3, dated 06.2.1997 Annexure A/3 passed by respondent No. 4 and dated 02.6.1997 Annexure A/4 passed by respondent No. 2 are hereby quashed and set aside. The case is remanded back to the ~~Disciplinary~~ authority with a direction to inquire into and dispose of the matter as per rules from the stage of considering the applicant's prayer of supplying the demanded documents and decide the same as provided in the law.

16. The departmental authorities are given six months time to complete the inquiry. Needless to say that if the applicant does not cooperate with the inquiry by her non participation or intentionally delays the inquiry then she will have to thank herself in the matter. The departmental authority should also see that the inquiry is completed within the aforesaid time. The parties are left to bear their own costs.

Gopal Singh
(GOPAL SINGH)

MEMBER (A)

8/2/2000
(A.K. MISRA)

MEMBER (J)

File
Copy of order
Sikandar
Sikandar
13/3/2000

Read by
Sikandar
(Sikandar)
Adar

Part II and III destroyed
In my presence on 10-12-06
under the supervision of
Section Officer (J) as per
order dated 23/12/06

Section Officer (Record)