

के.प्र.प्र. (प्रक्रिया) नियमावली के नियम 20 के अंतर्गत निः शुल्क प्रति
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR ~~JALPUR~~ BENCH, ~~JALPUR~~ JODHPUR.

O.A. No. 246/2001
T.A. No.

199

DATE OF DECISION _____

Jagram Singh

Petitioner

Mr. Bharat Singh

Advocate for the Petitioner (s)

Versus

Union of India & Ors.

Respondent

Mr. Kamal Dave

Advocate for the Respondent (s)



CORAM :

The Hon'ble Mr. Justice G.L. Gupta, Vice Chairman

The Hon'ble Mr. Gopal Singh, Adm. Member

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

(Gopal Singh)
Member (A)

(G.L. Gupta)
Vice Chairman

I/8

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH, JODHPUR.

* * *

Date of Decision: 5.12.02

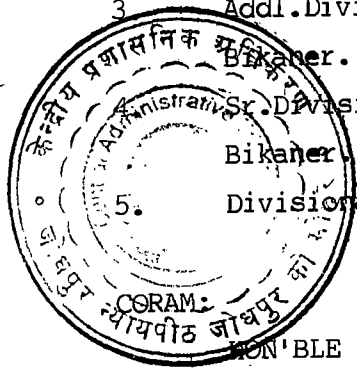
OA 246/2001 with MA 162/2001

Jagram Singh, Pointsman-A under Station Supdt., N/Rly, Hanumangarh Jn.

... Applicant

Versus

1. Union of India through General Manager, N/Rly, Baroda House, Nw Delhi.
 2. Chief Operating Manager, N/Rly, Baroda House, New Delhi.
 3. Addl.Divisional Railway Manager, N/Rly, Divisional Office, Bikaner.
 4. Sr.Divisional Operating Manager, N/Rly, Divisional Office, Bikaner.
 5. Divisional Personnel Officer, N/Rly, Divisional Office, Bikaner.
- ... Respondents



HON'BLE MR. JUSTICE G.L.GUPTA, VICE CHAIRMAN

HON'BLE MR. GOPAL SINGH, ADM.MEMBER

For the Applicant

... Mr.Bharat Singh

For the Respondents

... Mr.Kamal Dave

ORDER

PER MR.JUSTICE G.L.GUPTA

The applicant was working as Pointsman during the period 1993 to October, 1997. He was under suspension for the period from 16.12.96 to 4.4.97. A major penalty charge-sheet was served upon him and inquiry was held. The disciplinary authority held the following charges proved against the applicant :

- i) He raised huts unauthorisedly on the Railway land and leased them out.
- ii) He provided light and power connection unauthorisedly in those huts.
- iii) In raising the huts, material belonging to the Railway was used.

2. The disciplinary authority imposed the penalty of removal from service on the applicant. The applicant preferred appeal against the said order. The Senior Divisional Operating Manager (Sr.DOM, for short), Northern Railway, Bikaner, vide order dated 29.10.98 setting aside the penalty of removal, imposed the penalty of reducing the pay of the applicant by one stage for one year. The appellate authority

furhter directed that the penal/damage rent for raising the huts on the Railway land be assessed and recovered from the applicant.

3. The applicant challenged that order by prefering Revision under Rule-25 of the Railway Servants (Discipline & Appeal) Rules, 1968. The same was rejected vide order dated 23.4.99 (Ann.A/3).

4. Pausing here, it may be stated that the Sr.DOM passed another order on 9.10.98/28.10.98 directing the Divisional Personnel Officer (DPO, the Short) deduction of penal rent from the applicant in a sum of Rs.44925/-.

5. Hence this OA challenging the penalty order as well as order of recovery of penal rent amounting to Rs.44925/-. The applicant has filed MA-162/2001 for condonation of delay.

It is averred that double punishments have been imposed on the applicant and that the damages could be assessed only under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short, the Act, 1971) but no steps have been taken by the authority in that regard.

6. In the counter, the respondents pleaded that the OA is liable to be rejected on the ground that it has been filed after the expiry of the period of limitation. It is further stated that the applicant has not called in question Anns.A/1, A/2 & A/5 and, therefore, he cannot get relief in this case. It is also stated that the order dated 28.10.98 was passed in furtherence of the order of the disciplinary authority.

7. In the rejoinder it is stated that the damages have been assessed without taking recourse to the provisions of the Act, 1971 and, therefore, the order is illegal and void ab-initio.

8. We have heard the learned counsel for the parties and perused the documents placed on record.

9. The main contention of the learned counsel for the applicant was that there is no provision under which the Railway authorities could assess the damages for raising the huts on the Railway land and hence the order Ann.A/2 was issued without jurisdiction. He pointed out that though he did not specifically pray for the quashment of the order Ann.A/2 yet a clear prayer has been made under para 8(ii) of the OA

[Signature]

seeking the quashment of the order of recovery of Rs.44925/-. He further pointed out that by mistake the order Ann.A/2 was not typed in para 8(i) and some blank space was left. He convassed that the order Ann.A/2 is without jurisdiction as the Sr.DOM had no legal power to issue such an order. The order Ann.A/2, he urged, is void ab-initio and the bar of limitation cannot be raised against the said order. At the same time, the learned counsel for the applicant conceded that he would not challenge the order of the penalty imposed under Order Ann.A/1 or affirmed by the revisional authority under order Ann.A/3.

10. On the other hand, the learned counsel for the respondents contended that when the applicant has not challenged the order Ann.A/2, in specific terms the court should not consider the arguments advanced on the recovery of penal rent and that the OA should be dismissed on the sole ground of limitation.

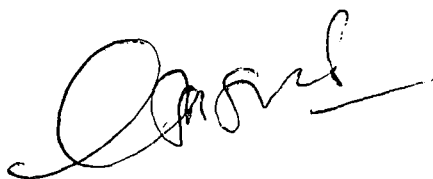
11. We have considered the rival contentions. It is true that in the relief clause there is no specific mention of the order Ann.A/2. However, under para 8(ii) it is clearly stated that the order of recovery of damages/penal rent amounting to Rs.44925/- may be set aside by the Tribunal. There is no other order whereby the recovery of Rs.44925/- was directed. Obviously, the applicant when made prayer under para 8(ii) he meant that the order Ann.A/2 be set aside.

It is also noticed that there is some blank space left in para 8(i). It is further evident from the reading of this para that the applicant did want to challenge more than one document. That being so, it has to be held that the applicant has called in question the order Ann.A/2.

12. The next point to be considered is whether the application should be rejected as barred by limitation.

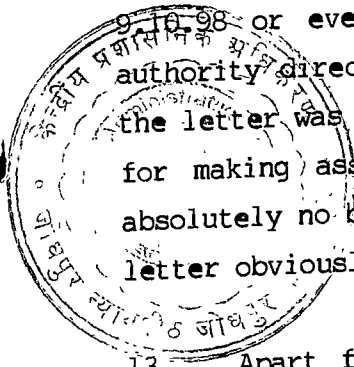
The order Ann.A/2 was issued on 28.10.98. It was sent to the DPO with a direction that a sum of Rs.44925/- be recovered from the applicant. The order does not indicate that a copy of the same was sent to the applicant. The applicant could know about the order only after the recovery started from his salary.

Apart from that, it is significant to point out that the appellate authority in its order dated 30.10.98 had directed the assessment of the penal rent to be recovered from the applicant. It is not understood as to how before the order dated 30.10.98 a letter like



Ann.A/2 could be issued by the same authority i.e. Sr.DOM on 9.10.98/28.10.98.

The date 9.10.98 is written on the letter Ann.A/2, which was addressed to the DPO. The letter was however despatched on 28.10.98. Be that as it may, it is evident that this letter had been signed by the Sr.DOM on 9.10.98. It is not understood as to how this letter could have been typed or signed on 9.10.98 or on 28.10.98 when before 9.10.98 or even 28.10.98 no order had been issued by the competent authority directing the recovery of the penal rent. On 9.10.98, when the letter was typed, there was no direction of the competent authority for making assessment of the penal rent and, therefore, there was absolutely no basis for addressing the letter Ann.a/2 to the DPO. The letter obviously was without jurisdiction.



13. Apart from that, the learned counsel for the respondents could not point out the provision under the Rules applicable to the Railway employees, wherein damage/penal rent could be assessed by the Sr.DOM. It was not the case where the applicant had over-stayed in the accommodation allotted to him unauthorisedly or that he had let out the premises allotted to him. What is alleged against the applicant is that he had raised some construction on the Railway land, which was near the Railway quarter allotted to him. Obviously, it is the case where the allegations were that the applicant had taken possession of the Railway land unauthorisedly. No provision under the Railway Rules has been brought to our notice by the learned counsel for the respondents which authorised the Sr.DOM to pass an order to make assessment of the penal/damage rent.

14. The Act, 1971 provides for the eviction of the unauthorised occupants from the public premises and for certain incidental matters. Under Section-7, the Estate Officer appointed under the Act has a power to order requiring a person to pay arrears of rent or damages payable. A procedure is provided under the Act for recovering the damages from a person who is in unauthorised occupation of the public premises.

Section-5(B) of the Act, 1971 provides for the demolition of the unauthorised construction raised on the public premises.

'Unauthorised occupation' has been defined in Section-2(2), which says that if a person occupies the public premises without authority, he will be deemed to be an unauthorised occupant.

15. As per the case of the respondents, the applicant had taken

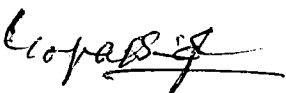
possession of the Railway land unauthorisedly and raised huts thereon. In our opinion, if the respondents wanted to recover damages from the applicant for the unauthorised occupation of the Railway land, recourse to the provisions of the Act, 1971 was required to be taken.

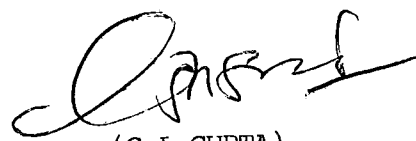
16. It is not the case for the respondents that Sr.DOM was an Estate Officer under the Act, 1971 and the order Ann.A/2 was passed by him in that capacity. That being so, the order Ann.A/2 dated 9.10.98/28.10.98 is bad being without jurisdiction. The bar of limitation cannot be raised when an order is held to be illegal and void ab-initio. Therefore, it has to be held that the order Ann.A/2 is not sustainable in law.

17. Consequently, the OA with regard to the order Ann.A/1 dated 29.10.98 is dismissed as not pressed. The OA is allowed in part and the order of recovery of Rs.44925/- issued by the Sr.DOM (Ann.A/2) is hereby quashed. If any recovery has been made from the salary of the applicant under this order, the same shall be refunded to him within a period of three months from the date of communication of this order. However, it is made clear that this order will not prevent the respondents to recover the damage/penal rent by following the procedure prescribed in law.

18. In terms of the order passed above, MA 162/2001 also stands disposed of.

19. No order as to costs.


(GOPAL SINGH)
MEMBER (A)


(G.L.GUPTA)
VICE CHAIRMAN