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## CENTRAL ADMINISTRATIVE TRIBUNAL

### JODHPUR BENCH.

O.A.NO.215 OF 2002

May 31, 2004.

**CORAM: HON'BLE MR. J. K. KAUSHIK, MEMBER (JUDICIAL) &  
HON'BLE MR.G.R.PATWARDHAN, MEMBER (ADM.)**

Tejpal S/o Shri Pukhraj, aged about 52 years, R/o Village Khanchi (Harijan Basti), Post and Tehsil - Marwar Junction, District Pali (Rajasthan), Ex-Safaiwala in the office of Health Inspector, Sojat Road, Western Railway, Marwar Jundction (Rajasthan).

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Applicant

By : Mr.S.K.Malik, Advocate.

Versus



1. Union of India through the General Manager, Western Railway, Church Gate, Mumbai.
2. Chief Medical Superintendent, Western Railway Ajmer (Rajasthan).
3. Senior Divisional Medical Officer, Western Railway, Ajmer (Rajasthan).

By : Mr. S.S.Vyas, Advocate.

### {O R D E R} **(HON'BLE MR.J.K.KAUSHIK, MEMBER (JUDL.)**

Mr. Tejpal, applicant has assailed the order dated 6/8.6.002 (Annexure A-1) and order dated 31.12.2001 (Annexure A-2) and has sought the quashment of these orders with further direction to respondents to reinstate him in service with all the consequential benefits.

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2. The case was listed for admission and with the consent of the learned counsel for both the parties the same was heard for final disposal at admission stage. We have anxiously considered the pleadings and the records of this case.

3. The factual scenery of this case, as may be succinctly put in, is that the applicant belongs to Scheduled Caste Category and was employed on the post of Safaiwala at Marwar Junction where he was allotted Railway Quarter No.E/61/C, Type-I. The applicant was transferred from Marwar Junction to Dungarpur on 9.3.1993 but due to non - availability of the accommodation at Dungarpur he could not shift his family and continued to hold the said accommodation. He was issued with a notice for vacating the quarter which he vacated on 6.4.2000. The respondent department charged damage rent which was deducted from the salary of the applicant with effect from 9.3.1993

onwards.

4. The further case of the applicant is that he was issued with a charge sheet for major penalty vide Memo dated 17.2.2000 alleging unauthorisedly occupying the above railway quarter w.e.f. 9.3.1993. In the charge sheet there was a charge for violation of rule 15 (a) of the Railway Servants (Conduct) Rules, 1966. The applicant denied the charges and a detailed enquiry was conducted. The enquiry officer found him guilty of the charges and supplied him with a finding portion of the enquiry report. Thereafter the disciplinary authority imposed penalty of compulsory retirement. He preferred an appeal which came



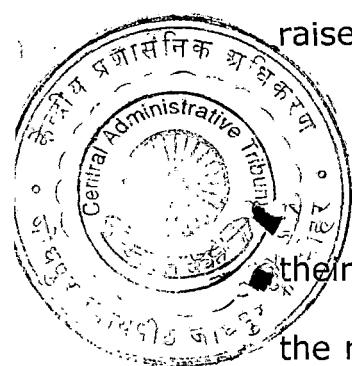
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to be rejected. The Original Application has been filed on multiple grounds narrated in para 5 and its sub paras and we are refraining from mentioning here for the reason of the order we propose to pass in this case.

5. The respondents have contested the case and have filed a detailed counter reply to the Original Application. It has been averred that the applicant was served with a charge sheet on account of keeping the Railway Accommodation unauthorisedly even after his transfer. The charges have been held proved against him on the basis of documentary and oral evidences. The applicant was required to submit a reply to the findings of the Inquiry Officer and despite sufficient time he did not submit any representation. Thereafter he was imposed the penalty of compulsory retirement on the basis of the report of the enquiry. The appellate authority has passed the speaking order and there has been no violation of any of the rules. The grounds raised in the Original Application have been generally denied.

6. Both the learned counsel for the parties have reiterated their pleadings. Learned counsel for the applicant has submitted that the respondents have charged damage rent from the applicant and he has also vacated it after issuance of notice to him. The unauthorised occupation of an accommodation could not have been a 'misconduct' at all. He also submitted that the violation of Rule 15 (a) of Conduct Rules, 1966 has not been proved at all and there is not even a word regarding it in the charge sheet. Therefore, the complete action

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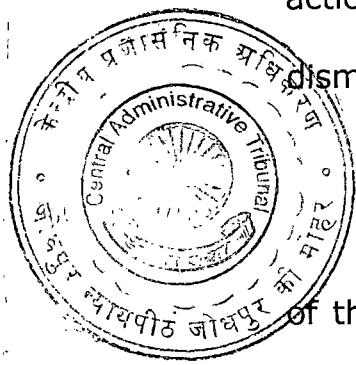
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against the applicant is without jurisdiction. He has also cited number of judgements in support of his contention regarding supply of the enquiry report; taking extraneous material into consideration; deciding of the appeal by a non - speaking order etc.

7. On the other hand the learned counsel for the respondents has vehemently opposed the contentions raised on behalf of the applicant and has reiterated the defence of the respondents as set out in the reply. It has been submitted that charging of the damage rent is a different thing than the issuance of the charge sheet to the applicant. The charge sheet has been issued for the misconduct and the damage rent has been charged as permissible under the rules issued by the Railway Board. Thus, no fault can be fastened with the action of the respondents and the Original Application deserves to be dismissed with costs.

8. We have considered the rival submissions raised on behalf of the both the parties. The preliminary question for determination in this case is - Whether unauthorised occupation of the government accommodation and non- vacation of the same despite order to that effect amounts to misconduct? If the answer to this question is negative then the applicant shall swim and in case answer is positive then he shall sink. We may also point out here that the other grounds raised in the Original Application as well as stressed during the arguments by the learned counsel for the applicant would be required



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to be examined only in case answer to the said question is in affirmative.

9. Adverting to the Preliminary Question, we find that by now the law is well settled and there are catena of decisions on this point. This very Bench of the Tribunal vide orders dated 17.2.2000 in O.A.No.319/1995 (Ganpat Lal Vs. Union of India & Others) has categorically held that non - vacation of the quarter is not a 'misconduct' and no disciplinary action could be taken under Railway Servants (Discipline & Appeal) Rules, 1968. Similar view has been held by the co-ordinate Bench at Chandigarh in the case of Satya Prakash Vs. Union of India & Others (1991) 15 ATC, Page 445. Numbers of judgements have been relied upon in this case and the coherent thread as indicated in Ganpat Lal's case (supra) has been consistently followed. We find that the matter has been amplified and discussed thoroughly in the case of Ganpat Lal's case (supra) and a copy of the same is placed on record of this case. With this we find that there is no need of repeating the various discussion and debating the matter afresh. At this juncture we are sure that independent of the various authorities, if we were to examine the matter, we would have reached to the same conclusion. Therefore, we have no hesitation in following the aforesaid decision.

10. In the premises, the Original Application has ample force and merits acceptance. The same stands allowed accordingly. The impugned orders dated 6/8.6.2002 (Annexure A-1) and 31.12.2001

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(Annexure A-2), are hereby quashed. The applicant shall be entitled to all the consequential benefits as if the impugned orders were never in existence. This order shall be complied with within a period of three months from the date of receipt of copy of this order. In the facts and circumstances of this case the parties are left to bear their own costs.

S.P.  
**(G.R.PATWARDHAN)**  
**Member (A)**

J.K. KAUSHIK  
**(J.K. KAUSHIK)**  
**Member (J)**

May \_\_\_\_, 2004.

HC\*

Received copy

of my  
fr S. S. W. A.  
3/6/04

Rec copy of  
order dt 3/6/04.

  
S. K. Marable  
3/6/04