

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 298 of 2008

Thursday..., this the *29th* day of January, 2009

C O R A M :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MS. K NOORJEHAN, ADMINISTRATIVE MEMBER**

C. Balakrishnan,
S/o. Chellappan,
Station Master Grade-I,
Alwaye Railway Station,
Resident of Railway Quarters
No. 24-D, Angamaly,
Ernakulam District.

...

Applicant.

(By Advocate Mr. M.P. Varkey)

v e r s u s

1. Union of India represented by
General Manager, Southern Railway,
Chennai – 600 003
2. Chief Vigilance Officer,
General Manager's Office,
Southern Railway, Chennai : 600 003
3. Additional Divisional Railway Manager,
Southern Railway, Trivandrum : 695 014
4. Senior Divisional Operations Manager,
Southern Railway, Trivandrum : 695 014
5. Senior Divisional Personnel Officer,
Southern Railway, Trivandrum : 695 014

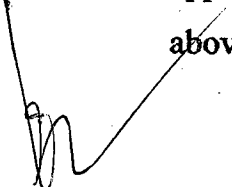
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Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil)

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The dispute in this case could be succinctly brought as hereunder:-

- (a) The applicant was in occupation of Railway Quarters 24-D at Angamali, which, even after his transfer from Angamali to Alwaye, was permitted to be retained upto 31-03-2003.
 - (b) According to the applicant, after the above said date, he had moved out from the quarters, but at the request of his successor to the quarter, allowed the telephone installed therein in his name to continue. He was in receipt of H.R.A. for the period he was not in occupation of the Railway Quarters.
 - (c) It was later on w.e.f. 26-10-2005 that the applicant was allotted the Quarter No. 23 D, Angamali where he shifted and on mutual application of the allottee of Quarter No. 24-D and the applicant, mutual exchange was permitted on 06-12-2005 and the applicant moved to the said Quarter No. 24-D, Angamali. The telephone connection continued.
 - (d) However, according to the applicant, he was issued with a charge memo dated 10-03-2006 alleging that while working at Alwaye, apart from receiving House Rent Allowance, the applicant was unauthorisedly staying in Quarter No. 24-D, Angamali. Annexure A-3 refers. The applicant denied the charges and explained the factual position as stated above vide Annexure A-4.
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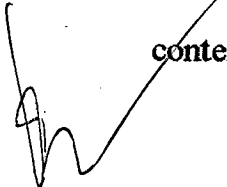
(e) Inquiry commenced, inquiry report was submitted (Annexure A-10) and the applicant made representation against the same, vide Annexure A-11. The Disciplinary authority had imposed a penalty of reducing the pay of the applicant from Rs 8300 to Rs 7900 for 2 years from 01-08-2007 vide Annexure A-12.

(f) Appeal preferred by the applicant vide Annexure A-13 was rejected by Annexure A-14 order dated 29-02-2008.

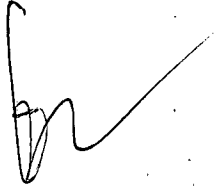
(g) The respondents had also recovered a sum of Rs 2000/- from the pay of the applicant for the month of January, 2008 towards overpayment of H.R.A. Annexure A-15 refers. The applicant filed Representation dated 20-02-2008 vide Annexure A-16. By Annexure A-17, the respondents have communicated that a total of Rs 49,522/- is held to be the extent of over payment of HRA/CCA as per the CVO and the same is being recovered from the monthly salary of the applicant in 25 instalments.

(h) The applicant has challenged the proceedings, the act of recovery of alleged overpayment of HRA and CCA and prayed for the quashing of the Annexure A-12(penalty order), A-14 (order of the appellate authority) and A-17 (order of recovery of arrears of rent and over payment of HRA/CCA).

2. Respondents have contested the O.A. According to them there is no legal lacuna in conducting the inquiry and imposition of penalty and again, the recovery of over payment of HRA/CCA is fully justified as the applicant was not entitled to the same. The applicant has filed his rejoinder, reiterating the contents of his O.A.



3. Counsel for the applicant has submitted that the impugned orders at Annexure A-12, A-14 and A-17 are all illegal, the first two on account of lacuna in the decision making process, while the last one vide Annexure A-17, being in the nature of additional penalty, is on account of lack of jurisdiction. As regards legal lacunae, the lone ground on the basis of the respondents sustain the charge is that the telephone department had confirmed retention of the telephone installed in the name of the applicant in Quarter No. 24 D, Angamali and attendant documents, vide Annexure A-6 to A-9, whereas these documents were not proved at all. As such, this is a case of no evidence. He has also submitted that the decision arrived at by the respondents is contradictory to the law laid down by the Apex Court in the case of *Central Bank of India vs Prakash Chandra Jain*, (1969 SC 983) *Narender Mohan Arya* (2006 SCC (L&S) 840), *Munna Lal Jain* (2005) SCC (L & S) 567), *M.V. Bijlani* (2006 SCC (L & S) 919) etc., The Disciplinary authority had not applied his mind which is evident from the fact that the representation of the applicant has not been considered and mechanically, Annexure A-10 report has been adopted. Likewise, the appellate authority did not act as mandated by Rule 22(2) of D & A Rules and the dicta laid down by the Apex Court. Hence, Annexure A-14 is liable to be quashed.



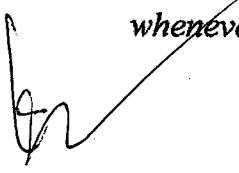
4. Counsel for the respondent submitted that the evidences are ample to prove the guilt of the applicant and Annexure A-17 had been issued as the applicant had overstayed unauthorisedly in Quarter 24 D, Angamali.

5. Arguments were heard and documents perused. The respondents have also produced the disciplinary proceedings records. After hearing the matter, the respondents were also directed to intimate the date of occupation of Quarter No. 24 D by one Shri K.I. George, Senior CC/AFK, with whom the applicant later on exchanged the quarters allotted to him, i.e. Quarter No. 23 D.

6. From the records, certain dates are ascertained. The quarter No. 24 D allotted to the applicant was retained by him upto 31st March 2003 only (Vide his explanation dated 05-04-2006 given in reply to the memorandum, as available in the disciplinary proceedings records). He was later on allotted Quarter No. 23 D Angamali on 26th October, 2005, vide the representation *ibid*. It was by an order dated 6th December 2005 that the exchange of accommodation sought was permitted and the applicant moved to Quarter No. 24 D on 7th December, 2005. These are the admitted facts.

7. The applicant did not indicate the date when the allotment of Quarter No. 24 D was allotted to the said K.I. George. Nor for that matter the respondents have. His version that in Kerala especially Ernakulam,

surrendering the BSNL Phone and reallocation of the same is not an easy affair, would be acceptable if Quarter No. 24 D stood in the name of his 'good friend' Shri K.I. George immediately after the applicant's move from the said quarters. Possibly, immediately on the vacation of the accommodation, the allotment would have been in the name of Shri K.I. George and the applicant would have, in anticipation of his staging a come back to the same locality, chosen to retain the telephone. The exact date on which Shri George had been provided the accommodation has not been known, but it is seen from the information provided by the respondents that the said George had not been paid House Rent Allowance since 11th May 2003 onwards. In other words, within a period of 40 days, the accommodation would have been allotted to the said George. (Of course, this is on the presumption that the said Shri George was not earlier in occupation of any railway accommodation) Probability of the said George after accepting the allotment, not moving to the said accommodation but allowed the applicant to use the accommodation cannot be ruled out. Thus, it could, in all probability be a case of sub-letting by the said George to the applicant without any permission from the respondents. But the same cannot be taken to justify the penalty imposed as the charge is different. In fact the inquiry officer in para 5.3.9 of the report stated, *"As this is a case of sub-letting of quarters he should have enquired the original allottee of the said quarters and also a statement from the occupant of quarters No. 24/D/AFK as well as from the CO. Further whenever the cases of subletting of quarters are noticed, instructions given by*



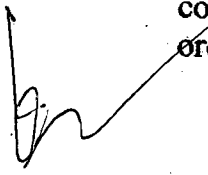
the Railway Board such as DAR action for violation of Rule 15(a) of Railway Service (Conduct) Rules, 1966, cancellation of allotment order of the quarters and eviction proceeding etc., should have been adhered to. But the investigator has utterly failed to follow the above instructions."

8. In a recent case of *Roop Singh Negi vs. Punjab National Bank & Ors.*, Civil Appeal No. 7431 of 2008, decided on 19.12.2008, the Apex Court has held as under:-

"12. In *Moni Shanker vs. Union of India & Anr.* [(2008) 3 SCC 484], this Court held :

"17. The departmental proceeding is a quasi judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The Court exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely – preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the the doctrine of proportionality."

17. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-



same evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof."

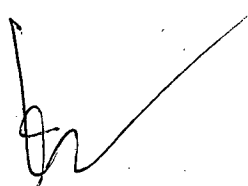
9. On the strength of the above dictum of the Apex Court, now a look at the discussion by the Inquiry Officer before he came to the finding rendered in his report is appropriate. There were in all five documents relied by the prosecution. Of these, S-2 is the salary slip, which is used to confirm that the applicant was in receipt of house rent allowance. That he has been in receipt of house rent allowance for a particular period has not been denied by him. Ex. S-1 is a statement by SW 1 who has in his deposition stated that he had not visited the house of the applicant for checking purpose on 22nd November 2005 and that the statement was obtained from him by the I.I. by force. It was further stated by the said SW 1 that the I.I. has told him that there was a complaint against the applicant and it is proposed to close the file. That the said SW 1 gave the statement due to force upon him by the I.I. has not been disproved by the presenting Officer. It is trite law that any document obtained under duress or coercion or force has no legal validity. (*See Maan Singh vs Union of India* 2003 (3) SCC 464). Another signatory to S.1 is SW 2, who had clean stated that



he did not understand the contents of S1 and that the two IIs from Railway Board asked him to sign in Ext. S-1 and as the Station Master signed, he too signed. Deposition of this witness and his statement S-1 have been evaluated by the Inquiry Officer in the following manner:-

"5.3.3. Though SW-1 has adduced the answers were written as dictated by vigilance by force (Q.15) he has clarified that "the IIs told me that there is a complaint against Shri Balakrishnan and they want to close the file and asked me to put my signature accordingly I signed" (Q.22). The averment of the CO that the statement was obtained as dictated by IIs and also by force is untenable since the statement consists of only two questions and answers. SW-1 has also admitted that CO was in occupation of railway quarters (Q.13). Even though SW-1 clearly stated in Ext.S-1 that the CO was residing at quarter No. 24/D till the date of check, during the enquiry he made volte face in order to support his own colleague. The evidence of SW-1 and also Ext.S.1 tends me to believe that though CO said to have vacated the quarters on 31.03.2003, but he was in occupation of quarters continuously i.e. till the date of check on 22.11.2005. The CO averred that he was residing outside and he had already given his residential address to the DRM/P/TVC but IIs/vig/RB/NDLs have not at all verified both the aspects. In this connection, I would like to record that the CO has not produced any document to show that he was residing at Always in private accommodation from 1.4.2003 to 26.10.2005 (from the date of vacation of quarters 24/D at AFK and occupation of quarters 23/D at AFK) either as an explanation to the charge memo to the DA or at the time of enquiry. He has only produced a copy of Sr.DPO/TVC letter dated 26.10.2005 to show that quarters No. 23/D was allotted in his favour. As the charge levelled against the C.O. is unauthorised stay in quarters No. 24/D at AFK, he has not produced any document to show that he was in private accommodation. Hence, it is only a bald statement and has no credential value."

10. The inquiry officer has disbelieved the deposition of the said witness (during enquiry he made volte face in order to support his own colleague) and



threw the burden upon the applicant to disprove that he was residing in 24 D!
The discussion by the Inquiry Officer in this para is thoroughly perverse.

11. Ext. S-3 is a document signed by SW 3 and he had during cross examination to a pointed question, *'Have you ever contacted me in the phone No. mentioned in Ex. S-3'* stated 'No, through mobile phone only' He has also stated that he does not know as to what date the statement was prepared.

12. SW 4, who had conducted the physical enquiry has stated in the cross examination as under:-

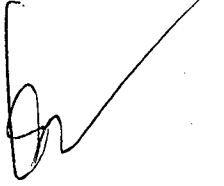
Q. 33: During your preventive check whether you have personally and physically verified or gone Quarters No 24/D at AFK?

A: No, because Shri P.P. Somarajan, SM/III/AFK has already certified the fact which we wanted to know.

There has been no discussion on the above.

13. Now coming to the conclusion as to the so called unauthorized occupation by the applicant of the accommodation Quarter No. 24/D/AFK, the inquiry officer comes to the conclusion as under:-

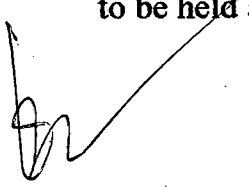
"5.3.10. Now the question arises before me is as to whether because of the lapses of the Investigator, employee can be relieved from the charge: I have already discussed and come to a conclusion that there are probabilities for the unauthorized stay of quarters No. 24/D/AFK beyond 01.04.2003 on the strength of Ext.S.1 and Ext.S.3. It is well settled position that in departmental enquiries the



proof required is not beyond doubt but a preponderance of probability. Hence, in my view unauthorized stay of quarters No. 24/D/AFK by the CO violates the Railway Services (Conduct) Rules 3.1(iii) only."

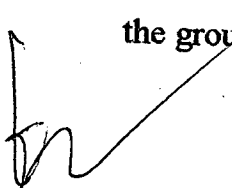
14. The so called probabilities are on the basis of S1 to S4 statements. S1 has not, as discussed above, reflect any thing to prove the guilt of the applicant as the deposition of SW 1 has been disbelieved. S-2 is merely a statement of salary of the applicant which cannot go to prove the unauthorized occupation of the railway quarters by the applicant. Ex. S-3 is only a list of names and addresses as well as telephone numbers of the occupants of some quarters in which the applicant's name too figures in but the applicant has denied about his residing at the relevant point of time in the said quarters. Thus, as rightly pointed out by the applicant this is a case of no evidence and the inquiry officer on the basis of preponderance of probability, for which also there has been no evidence however feeble it could be, came to the apparently erroneous conclusion that the charge against the applicant of unauthorized occupation stands proved. The inquiry report is thoroughly perverse and the same cannot stand judicial scrutiny.

15. Once the inquiry report is held to be legally unsustainable, the logical corollary is that any decision based on the said report is to be held as legally invalid. Thus, the disciplinary Authority's order based on the inquiry report has to be held as illegal. In fact when the inquiry authority himself has stated vide



para 5.3.7, "From the above discussion, I am of the opinion that there are possibilities and probabilities for the unauthorized stay in the quarters No. 34/D ..." the Disciplinary authority holds, "A thorough scrutiny of the Enquiry Report, proceedings and documents revealed that the charges stand erect with the solid support of evidence and there is no necessity to rely upon presumptions, assumption,s, possibilities and probabilities. The charges are proved beyond reasonable doubt. There is no missing links, in completing the chain of evidences as claimed by the charged employee." Further, without considering the deposition and answer by S.W. 1, during cross examination the disciplinary authority has stated, "The SW 1, Sri P.P. Somarajan had deposed in the enqujiry that he knew that Shri Balakrishnan (the Charged employee) was residing at Railway Quarters. In his statement dated 22/11/2005 (Ex S-1) he had made a categorical statement that the quarters No. 24/D was occupied by Sri C. Balakrishnan, SS/AWY and he had been residing in the above quarter." Once About the analysis of the disciplinary authority, nothing more need to be stated.

16. Coming to the decision by the Appellate authority, as held in the case of Negi (supra) which refers to the decision in the case of Narender Mohan Arya and Bijlani, the appellate authority is cast with the responsibility of meeting all the grounds raised in the appeal. The appellate order reads as under:-



" I have gone through the appeal dt. 5.9.2007 submitted by the Charged Employee alongwith connected records. I have also gone through the entire DAR enquiry proceedings and the decision of the Disciplinary Authority. I am satisfied that the procedure laid down under the Railway Servants (D&A) Rules, 1968, have been correctly followed and that he had reasonable opportunity to defend himself. The findings are warranted by the evidence on record.

The charges are that he was unauthorisedly staying in Qrs. No. 24D at AFK and received HRA while occupying the said Govt. accommodation. It has been proved in the enquiry that he was unauthorisedly staying in Qrs. 24D from 1.4.2003 onwards till he occupied Qrs. No. 23 D at AFK. He has not brought out any convincing points to prove that he was not unauthorisedly occupying the Qrs. but he is repeating the argument that benefit of doubt may be taken into account and he may be exonerated. As it is proved in the enquiry after perusal of records and questioning the witnesses, that he was in occupation of Qrs. at AFK beyond 1.4.03, I confirm the penalty of reduction in pay for a period of one year imposed by the Disciplinary Authority."


17. In *Narinder Mohan Arya v. United India Insurance Co. Ltd.*, (2006) 4 SCC 713 the Apex Court has held as under:-

"37. Consideration of appeals .(1) In case of an appeal against an order of suspension, the Appellate Authority shall consider whether in the light of the provisions of Rule 20 and having regard to the circumstances of the case the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 23, the Appellate Authority shall consider:

(a) whether the procedure prescribed in these Rules has been complied with and if not, whether such non-compliance has resulted in failure of justice;

(b) whether the findings are justified; and



(c) whether the penalty imposed is excessive, adequate or inadequate, and pass orders:

I. setting aside, reducing, confirming or enhancing the penalty; or

II. remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.

* * *

32. The Appellate Authority, therefore, while disposing of the appeal is required to apply his mind with regard to the factors enumerated in sub-rule (2) of Rule 37 of the Rules. He was required to show that he applied his mind to the relevant facts. He could not have without expressing his mind simply ignored the same.

33. An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part as regards the compliance with the requirements of law while exercising his jurisdiction under Rule 37 of the Rules.

34. In Apparel Export Promotion Council v. A.K. Chopra which has heavily been relied upon by Mr Gupta, this Court stated:

16 . The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the Appellate Authority, the Appellate Authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. (emphasis supplied)

35. The Appellate Authority, therefore, could not ignore to exercise the said power.

36. The order of the Appellate Authority demonstrates total non-application of mind. The Appellate Authority, when the Rules require application of mind on several factors and serious contentions have been raised, was bound to assign reasons so as to enable the writ court to ascertain as to whether he had applied his mind to the relevant factors which the statute requires him to do. The expression consider is of some significance. In the

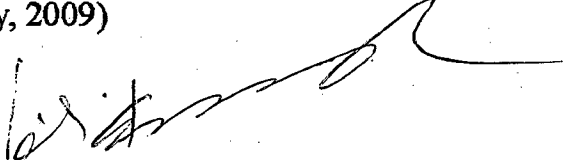
context of the Rules, the Appellate Authority was required to see as to whether (i) the procedure laid down in the Rules was complied with; (ii) the enquiry officer was justified in arriving at the finding that the delinquent officer was guilty of the misconduct alleged against him; and (iii) whether penalty imposed by the disciplinary authority was excessive."

18. The order of the Appellate Authority in the instant case does not meet the mandate as required vide the Apex Court's authority cited above. Thus, the two penalty orders are liable to be quashed and set aside. Besides, the recovery order vide Annexure A-17 has been passed without due notice to the applicant nor can it be held, without proper finding that the applicant was not entitled to the House rent allowance for the period in question that the same is legally valid. Hence, Annexure A-17 also is quashed and set aside.

19. In view of the above, the application fully succeeds. Annexures A-12, A-14 and A-17 are quashed and set aside. Respondents shall restore the pay of the applicant at Rs 8300 as on 01-08-2007 with consequential arrears and to refund the recoveries made so far from the pay of the applicant pursuant to A-17. However, under the facts and circumstances, there shall be no order as to either interest claimed or costs.

(Dated, the 29th January, 2009)


K. NOORJEHAN
ADMINISTRATIVE MEMBER


Dr. K B S RAJAN
JUDICIAL MEMBER