

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY,
CAMP AT NAGPUR.

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Original Application No.309/87

S.Dalip Singh.

... Applicant.

V/s.

Central Railway,
Nagpur.

... Respondent.

Coram: Hon'ble Member(J), Shri A.P.Bhattacharya,
Hon'ble Member(A), Shri P.S.Chaudhuri.

Appearances:

Mr.M.M.Sudame, advocate
for the applicant and
Ms.Indira Bodade,
advocate for the
respondent.

Date of hearing : 16.1.1990
Date of Judgement : 19.1.1990

JUDGMENT:

¶Per Shri P.S.Chaudhuri, Member(A)¶

This application was received under section 19 of the Administrative Tribunals Act, 1985 by post on 17.12.1986 and after the scrutiny and removal of objections was taken on file as Original Application No.309/87. In it the applicant prays that the order dt. 22.4.1985 by which he is removed from service with immediate effect and the appellate order dated 23.8.1985 upholding this order of removal from service be set aside. He also prays for other consequential reliefs.

2. The facts. The applicant was appointed in the Loco Shed of the Central Railway at Ajni, Nagpur in 1964. When working there he was allotted and occupied Railway Quarters No.J/117-E/BPQ at Ajni. He was relieved on transfer from Ajni to Wardha on 14.2.1983. The applicant did not vacate these quarters. On 14.2.1984 he was issued a charge sheet with one article of charge,

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viz. that "during the period 14.2.1983 to till date displayed serious mis-conduct as shown in Annexure-II." Annexure II mentioned in the charge detailed the statement of imputation of misconduct or misbehaviour on the basis of which the article of charge was framed against the applicant. This annexure reads as follows:

"That the said Shri Dilip Singh Bachan Singh Welder WR on being relieved on transfer ex LR AG to WR on 14.2.1983, failed to vacate Rly Qr No J-117-E-BPQ in his occupation at AJ, during joining time or to obtain permission of the competent authority for retention of Rly Qr. No.J-117-E-BPQ at AJ and continued to occupy the said Qr in an unauthorised manner, which amounts to serious misconduct and great inconvenience to other staffs, although reminded vide letter No.NGP/P/80 /Q/40/AJ of 8.8.83."

The applicant replied to this charge sheet on 21.9.1984. In his reply he stated that he had been compelled to continue to live at Nagpur along with his family members as there was no provision of quarters at Wardha and that his application for retention of the quarter or retransfer of his services had been rejected. He mentioned that he was being charged penal rent for the quarter. He also stated that he was attending to his duties at Wardha from Nagpur on a free journey pass which had been issued to him. An enquiry was held on 31.12.1984. In his finding dated 27.1.1985 the Inquiry Officer held that the applicant was responsible for the charges framed against him. By the impugned order dated 22.4.1985 the Disciplinary Authority agreed with the findings of the Inquiry Officer and removed the applicant from service with immediate effect. The applicant submitted an appeal on 7.5.1985. By the impugned order dt. 23.8.1985 the

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the punishment of removal from service was upheld. On 9.9.1985 the applicant submitted an application to the Assistant Labour Commissioner (Central), Nagpur under the Industrial Disputes Act. On 9.6.1986 the applicant had a lawyer's notice issued to the Assistant Labour Commissioner (Central). On 27.6.1986 the Assistant Labour Commissioner (Central) Nagpur informed the applicant's advocate that "During discussion on 1.10.1985, when your client Shri Dalip Singh was present, he was advised to take up the matter with Permanent Negotiating Machinery and the file was closed." Thereafter, the applicant filed this application.

3. The respondents have opposed this application by filing their written statement. We have heard Mr.M.M.Sudame, learned advocate for the applicant and Ms. Indira Bodade, learned advocate for the respondents.

4. Mr.Sudame submitted that the findings of the Inquiry Officer were arbitrary and perverse inasmuch as unauthorised occupation of railway quarters did not constitute misconduct. He cited ABDULMOHIT MUSTAKIKHAN's case* and NAWAL SINGH's case\$ in support of his contentions.

5. In ABDULMOHIT MUSTAKIKHAN's case (supra the brief facts of that case have been reported in the judgment as follows:

"the petitioner while working at Bulsar as a 'Shunter' was allotted a Railway ~~Head~~ quarter No.179/L Unit A. He was transferred from Bulsar to Nandurbar and carried out his transfer to Nandurbar on 27.3.1976. But he did not vacate the quarter. He was served

* ATR 1987 (1) CAT 567

\$ ATR 1988 (1) CAT 264

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with standard Form of charge sheet (Form No.5) for major penalty for failing to vacate the railway quarter. A DAR enquiry was held by the Enquiry Officer i.e. Assistant Loco Foreman, Udhna, who found him guilty of the charge levelled against him. During the pendency of the departmental proceeding the petitioner promised that he would vacate the railway quarter in the first week of May 1982 vide his application dated 22.2.1982. The petitioner was informed to vacate the quarter on April 1982 but as he failed to do so till July 1982, he was served with the impugned order of removal from service."

It was contended on behalf of the applicant inter alia that:

"the alleged act of misconduct viz. "non-vacating the quarter", is not of such a nature of "unbecoming of a Government Servant" and even otherwise for such an act, a punishment of economic death i.e., "removal from service", is absolutely uncalled for.

The Ahmedabad Bench held as follows:

"Further in the case of "B.R.Vengappaya Vs. State of Mysore & Ors. (1972 Service Law Reporter, page 59)", Mr.Justice Narayana Pai (C.J. as he then was) while speaking for the Bench, held that the Government Employee in occupation of the quarters, upon transfer, is bound by the rule to vacate the same on pain of coercive steps being taken to evict him and rents at penal rates being recovered from his salary. If it is not misconduct, it can not be converted into misconduct by an unnecessary order being made to do something which the rule itself requires the person to do. If it is to be regarded as misconduct, the rule itself prescribes the punishment, viz, forcible eviction and collection of rents at penal rates. It is, therefore, held that when the Government Servant fails to vacate rent free accommodation on transfer, he is liable to pay the rent provided in the rules and hence the disciplinary proceedings are not competent. Now having regard to the facts and circumstances of this case which are very much identical, the impugned order of removal from service on the charge of the failure to vacate the quarter (Annexure 'A') is not sustainable and deserves to be set aside."

6. In NAWAL SINGH's case (supra) as the applicant was promoted as a Senior Clerk at Abu Road and was working there, he was asked to vacate the railway

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quarters occupied by him at Palanpur. Since he did not vacate the quarters, disciplinary action was initiated against him and after holding a regular inquiry the penalty of removal from service was imposed on him. The applicant relied on the judgment of the Ahmedabad Bench in Abdulmohit Mustakikhan's case. The respondents pressed in service the instructions contained in the Railway Board's letter dt. 31.5.1961. The Ahmedabad Bench held:

"We have given careful consideration to the said instructions. It is nothing more than an advisory opinion rendered by the Railway Board and instructs the authorities to take even punitive action against the Railway staff who are occupying the quarters unauthorisedly. The opinion of the Railway Board and the instructions issued by it will not make an act a misconduct which is not so otherwise. On the basis of the study of the relevant rules and the factors involved in the issue, it is held in Abdulmohit Mustakikhan (Supra) that when the Govt. Servant fails to vacate rent free accommodation, on transfer, he is liable to pay the rent including the penal rent provided under the rules and he will be subject to eviction proceedings under the Govt. Premises Eviction Act. and hence the disciplinary proceedings are not competent. The issues raised in the instant case are quite identical to the case of Abdulmohit Mustakikhan wherein, the impugned order of removal from service was passed on the charge of the failure to vacate the quarter. Similar is the situation in the present case. The case of the petitioner is therefore squarely covered by the said case."

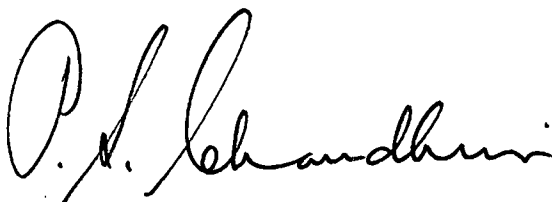
7. We are in respectful agreement with these two judgments of the Ahmedabad Bench. In this view of the matter, we cannot help but hold that the findings of the Inquiry Officer and the Disciplinary Authority are arbitrary and hence deserve to be set aside.

8. We accordingly quash and set aside the order of removal from service dt. 22.4.1985 and the Appellate Order dt. 23.8.1985 confirming the order of removal from service. The respondents are directed to reinstate—

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the applicant in service and pay him the back wages to which he is entitled as a consequence. We however make it clear that the respondents are at liberty to take action as per rules and in accordance with the law in respect of collection of rents ~~at general rates~~ and forcible eviction.

8. In the circumstances of the case, there will be no order as to costs.



(P.S. CHAUDHURI)
MEMBER (A)



(A.P. BHATTACHARYA)
MEMBER (J).