

Office Notes, Office Memo-
randum, of Coram, Appearances,
Tribunal's Orders or
Directions and Registrar's
Orders.

TA 3121/86

Tribunal's Orders

1

Original Reg Civil Suit
No 37/84 on the file of the H.E. Jt.
Civil Judge JD Bhusaval stands
transferred to his Tribunal
and bears TA No 312/86.

Written Statement of the
Original Defendants (now Respondents)
is set on record

Issue usual notices (30
days) to Respondents and fix
for reply and directions
on 27.10.1986.

Notice issued
on 23/9/86

23/9

23/9/86

W

23/9/86

Notice dt. 23/9/86 served
to the Rept. No. 2 on dt.
27/9/86. Recd
110.

Mr. A.M. B. & Z. P. T. M.
Served in time & file
written statement

Notice dt. 23/9/86
served to the Rept.
No. 1 on dt. 29/9/86.

23/9/86.

dt. served to 19-10-86
for W.S & directions

27-10-86

27-10-86

2

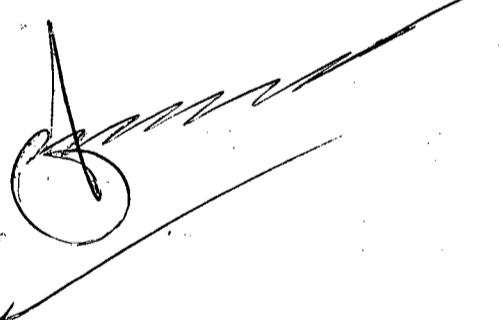
19-12-86

Mr. S.R. Atre, Advocate ~~too~~
appeared for the Respondents.
He wants time to file reply.
Hence, we fix the following
date.

23-1-1987 for filing reply
and directions.

No notice about this date
should be given to the applicant
and the applicant would be
informed later about the
hearing date when fixed.

P.C. Chaudhary



Dated 23-1-87

Reply is filed.

Keep on 9-4-87 for final
hearing

We have informed the above
date to the applicant. Respondents
need not be informed because
Mr. S.R. Atre, Adv. is present
on their behalf.

SUBMITTED SIR.

3

One ~~two~~ part-heard matters having Nos. ~~Tr. 506/86~~ and Tr. 506/86 are kept for further hearing on 9.4.87. There are also other seven matters as detailed below kept for final hearing on the day. It is presumed that the part-heard matters will get precedence over the other matters. As such other matters cannot be heard on the day. In view of this, the other matters need adjournment. We may adjourn the following matters kept on 9.4.87 to dates shown against each case and inform the parties accordingly.

S.l. No.	Case Number	To be adjourned to
1.	DA 196/86	15.7.87
2.	Tr. 171/86	15.7.87
3.	Tr. 1/86	16.7.87
4.	Tr. 312/86	16.7.87
5.	DA. 15/87	17.7.87
6.	DA. 238/86	17.7.87
7.	Tr. 153/86	17.7.87

Submitted for kind directions please.

S. M. GONAL
Section Officer.

Dated 3.4.87.

Telegrams issued
on 3.4.87

PH
3/4/87

We agree

B
3/4/87

V

Dated: 16/7/87:

(U)

Applicant and learned
counsel for the applicant are
present. Mr. S.R. Atre for the
Respondents. For want of
time post this case on
17th September, 1987.

(K.S.PUTTASWAMY)
V/C.

Sd/ 16.7.87
(L.H.A.REGO)
M(A).

17-9-87

Applicant is present in person
and requests for time as his
advocate is indisposed.
Mr. S.R. Atre for the respondents
has no objection.
Ajourned to 24-9-87 for hearing.

24.9.1987

V.K.Broadhan
advocate for applicant & T.
S.R. Atre (for T.S. Pm Broadhan)
Adv for Respondents.

both concluded their
arguments. Judgment delivered
verbally today. (as dictated)

✓

Sd/

Judgment copies dt. 24.9.84

are served on the Applicant on
F-11.84; R-No. 1 on r/c & R-No. 2
on 31.10.84.

By
T2-61

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH, NEW BOMBAY - 400 614

XXXXXX
T.A. No. 312/86

198

DATE OF DECISION 24-09-1987

Mr. Embiniser E. Sojwal Petitioner

Mr. V.K. Pradhan Advocate for the Petitioner(s)

Versus

Divisional Rly. Manager, Central Rly
Bhusawal Respondent

Mr. S.R. Atra, (for Mr. P.M. Pradhan) Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. J.G. Rajadhyaksha, Member (A)

The Hon'ble Mr. M.B. Mujumdar, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Transferred Application No.312/86.

Mr. Embiniser E. Sojwal,
Occupation : Majoori,
At & Post Bhusawal,
District - Jalgaon.

... Applicant.

v/s.

1. The Union of India
through General Manager
Central Railway,
Bombay V.T.

2. The Divisional Railway Manager,
Central Railway,
Bhusawal.

... Respondents.

Coram: Hon'ble Member(A) J.G. Rajadhyaksha,
Hon'ble Member(J) M.B. Mujumdar.

ORAL JUDGMENT

Dated : 24-9-1987.

(Per : M.B. Mujumdar, Member(J)).

The applicant had filed Regular Civil Suit No.37/84 in the Court of the Civil Judge at Bhusawal challenging the order of penalty of removal from service and that suit is transferred to this Tribunal under section 29 of the Administrative Tribunals Act, 1985.

2. The applicant was appointed as Carriage and Wagon Khalasi at Bhusaval in 1972. He was allotted a Railway Quarter bearing No.RB-I/1004 in Block No.15 at Bhusawal. Finding that the applicant had sub-let the block to some persons a charge was framed against him on 3-12-1976. The charge was that he had sub-let his quarter to four persons on rent of Rs.70 per month and thereby committed serious mis-conduct.

3. One Mr.S.D.Kulkarni, Senior Personnel Inspector, was appointed as Inquiry Officer. However, no Presenting Officer was appointed, nor did the applicant appoint any defence assistant. As the applicant pleaded not guilty

to the charge, the Inquiry Officer examined four witnesses. They were 'Rakshaks' who according to the charge were staying with the applicant as his sub-tenants. The applicant cross-examined two of them but did not ask any questions to the remaining two. The Inquiry Officer, on the basis of the evidence led before him, held that the charge was proved. The Assistant Mechanical Engineer, Carriage & Wagon Department at Bhusawal, who was the Disciplinary Authority accepted the findings given by the Inquiry Officer and imposed the penalty of removal from service upon the applicant by his order dated 8-9-1980. The order was served upon the applicant on 18-11-1980 and since that date he is not in service. Without preferring any appeal against that order he, through his advocate, sent a notice dated 20-9-1983 to the respondents under section 80 of the Civil Procedure Code and thereafter on 7-2-1984 filed the suit.

4. The respondents have filed their written statement after the suit was transferred to this Tribunal. They have supported the findings of the Inquiry Officer as well as the penalty imposed upon the applicant by the Disciplinary Authority.

5. We have heard Mr. V.K. Pradhan, the Learned Advocate, for the applicant and Mr. S.R. Atre (for Mr. P.M. Pradhan) the Learned Advocate for the Respondents. Unfortunately, the original papers of the inquiry were not made available to us because they could not be traced. However, we have gone through the copies of record of the Departmental Enquiry. Even these copies were not complete in themselves.

6. Mr. Pradhan, the Learned Advocate, for the applicant urged three points before us: (1) the enquiry held against the applicant was not fair and proper; (2) the charge was not proved by the evidence which was recorded by the Inquiry Officer; and (3) the Punishment of removal from service imposed upon the applicant was disproportionate to the gravity of the charge.

7. Mr. Pradhan divided the first point into three sub-points. According to him no Presenting Officer was appointed by the Authorities for presenting the case before the Inquiry Officer. But the relevant rules provide that the Authority may or may not appoint a Presenting Officer. It is true that in case a Presenting Officer is not appointed, the work of the Enquiry Officer becomes onerous inasmuch as he has to examine the witnesses as well as the applicant and ask certain questions to them for getting clarification which may appear to be in the manner of cross-examination. But when the rules provide that Presenting Officer need not be appointed in each and every case, we cannot blame the authorities for this situation. Apart from this, in view of the statements of the witnesses examined before the Inquiry Officer and the statement of the applicant we feel that no prejudice is caused to the applicant in this case by not appointing a Presenting Officer. Secondly, Mr. Pradhan submitted that the Inquiry Officer had examined the applicant completely on the first day itself i.e., on 20-5-1980. Mr. Pradhan is justified in making this submission from the copy given to him as well as from the copy shown to us. But on going through the copy of the statement we find that the applicant was not examined on one day at a stretch. It appears that five preliminary questions were asked to the

applicant and, thereafter, the witnesses were examined by the Inquiry Officer. This is clear from question no.5 which was asked to the applicant. By that question, the applicant was asked to clarify what he had to say about the statements of four Rakshaks who had stated that they were paying Rs.70 per month to the applicant in advance on the 10th of every month. The reply of the applicant was that the four Rakshaks came to him and requested for accommodation and since there were no family members residing with him, he allowed them to stay with him for two to four days without any rent. This answer and the subsequent answers show that the ~~applicant~~ applicant was not examined at one stretch. The third submission was that there was a delay of four years in concluding the enquiry after the charge was framed. We do not know why so much delay was caused, but we do not think that it is fatal to the enquiry.

8. The second point urged by Mr. Pradhan was that the charge framed against the applicant was not proved by the evidence before the Inquiry Officer. As already pointed out, all the four Rakshaks, who according to the charge were staying with the applicant as subtenants were examined before the Inquiry Officer. They stated that they were paying Rs.70 to the applicant as rent. The say of the applicant that he had allowed them to stay with him for two to four days was in our opinion rightly rejected by the Inquiry Officer.

9. The last submission of Mr. Pradhan that the penalty of removal from service is too severe however, deserves to be accepted in view of the circumstances on record. The applicant appears to be a poor person working as a Khalashi. He told us that since he is

removed from service he is working as a 'Hamal'. He has to support his family. Though his conduct in sub-letting the quarter allotted to him deserves to be deprecated, we find that the penalty of removal from service is not proportionate to his misconduct. We, therefore, feel that interests of justice would be met by directing that he should be reinstated in service without any arrears or back wages of any kind. Depriving him of about 7 years wages will in our opinion be adequate punishment for his conduct viz., subletting the quarters allotted to him.

10. With this we pass the following order :

O R D E R

- (1) The finding of the Inquiry Officer as well as the Disciplinary Authority that the charge framed against the applicant was proved is upheld. However, the penalty of removal from service imposed upon the applicant by the Disciplinary Authority by his order dated 8-9-1980 is hereby quashed and set aside.
- (2) The respondents are directed to reinstate the applicant to his original post of Khalashi within one month from the receipt of a copy of this order.
- (3) After reinstatement his pay shall be fixed at the stage at which he was before he was removed from service, but in the new revised scales.

(1)

(4) However, we clarify that the applicant shall not be paid any wages or salary of any kind from the date of his removal from service i.e. from 18-11-1980 till the date of his reinstatement. That period, however, should not be treated as break in service.

(5) The respondents shall keep with the applicant the Railway Quarter which was in his possession prior to his removal from service, even after his reinstatement. The proceedings started for eviction shall be dropped. The respondents shall recover rent of the intervening period i.e., from 18-11-1980 till his reinstatement according to rules and by suitable instalments from his salary. After reinstatement, rent according to rules shall be recovered from him for current occupation of the quarters.

(6) Parties to bear their own costs.

(J.G. RAJADHYAKSHA)
MEMBER(A)

(M.B. MUJUMDAR)
MEMBER(J)

Receipt

(12)

Received Court Section
File bearing No. BSL/P/Court/240
maintained in favour of
E. E. Sojwal Ex- Cd w Khalani
B&R TA No. 312/86 before
C.A.T. New Bombay Bench on 23/11/87.

✓ J. Shandhar

23/11/87
(T. J. Chaudhary)
Head Clerk DRPT's office
C. Rly. Bhujawal
425201.

Contempt Petition No.
9/88 for not complying
with judgment dtd. 4/9/87.

19/8/88

Notices are issued to
the All Respondents on
clt 31-8-88

MSD
31/8/88

Notice dt 31/8/88 served
on R.R.C. on 19/8/88 &
R.No. 2 on 21/8/88

✓
29/9/88

25-8-88
Shri V.K. Pradhan for
the petitioners in the Contempt
petition heard.

Issue notice to the respon-
dents to file their reply
to the petition.
Call on 19-9-88 before
the Tribunal.

✓
25/8/88

(B)

Dated: 19/9/88.

Order dt 27/10/88
Served on applicant
on 24/11/88.

A
25/11/88

MR. S.R. Atre (for MR. P.M. Pradhan)
for the respondents states that
the respondents have filed
S.L.P. in the Supreme Court
and that they would be
moving the Supreme Court
for stay. Hence this matter
stands adjourned to 27/10/88.

O. S. Chaudhuri *Signature*
(P.S. CHAUDHURI) (B.C. GADGIL)
MCA. V/C.