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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI
NEW BOMBAY BENCH

O.A. No. 218/89 198
T.A. No.

DATE OF DECISION 20.6.1989

Shri Shitaldin Bhagwati. Petitioner

Shri G.S.Walia. Advocate for the Petitioner(s)

Versus

Union of India Respondent

Shri A.L.Kasturey Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. M.Y.Priolkar, Member(A).

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*

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

Original Application No.218/89.

Shri Shitaldin Bhagwati. ... Applicant

V/s.

Union of India & 2 Others. ... Respondents.

Coram: Hon'ble Member(J), Shri M.B.Mujumdar,
Hon'ble Member(A), Shri M.Y.Priolkar.

Appearances:

Mr.G.S.Walia,
advocate for
the applicant.
Mr.A.L.Kasturey,
advocate for the
respondents.

Oral Judgment:

{Per Shri M.B.Mujumdar, Member(J)}

Dated: 20.6.1989.

The applicant Shri Shitaldin Bhagwati was working as Gangman at Dadar Railway Station of the Western Railway. By order dated 19.6.1987 he was placed under suspension. He represented against that order, but the representation was not accepted and along with a memorandum dated 17.7.1987 a charge sheet containing the following charges was served on him:

"Shri Sitaldin Bhagwati, G/man under PWI DDR has subletted the railway quarter No.19 E/A at GTR. allotted to him. He was asked vide AEN's letter No.E/308/2/11 dated 24.3.1987 to handover the vacant possession of the said quarter to the concerned IOW of that area immediately, though he was acknowledged the said letter on 8.7.1987 but he has still not vacated the railway quarter and handed over the vacant possession to the concerned IOW.

This tantamounts to disregard of orders."

2. As he denied the charge Shri A.N.Joshi, Chief Permanent Way Inspector, Andheri was appointed as Enquiry Officer (EO). The suspension order was however revoked by

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order dated 13.8.1987 and the applicant was taken on duty from 14.8.1987. EO did not record any evidence but examined the applicant on 6.1.1988. In his statement he stated that he had not committed the offence of sub-letting of the railway quarter and hence the question of vacating the quarter did not arise. Then he was asked as to whether he was aware that order issued by superiors cannot be disregarded. He answered in the affirmative. Then he was asked as to why he had failed to hand over the vacant possession of the quarter when he was asked to do so by the Assistant Engineer, Parel. His answer was that he could not obey the direction of the Assistant Engineer because his family i.e. his wife and his two small children could not get shelter elsewhere. Then he was asked whether he agreed to the charge of "disregard of order". This was the fourth question. He answered by saying that he was a Gangman, he could not get any other job elsewhere and for him and his family the job was a matter of bread. It was in these circumstances according to him that he had no other alternative except to disregard the order.

3. Thereafter, the EO submitted his report dated 8.1.1988. He held in his report that the applicant had committed the offence of disregard of orders. While giving reasons, he pointed out that the applicant had acknowledged the order of the Assistant Engineer and he had accepted the charge while answering the question No.4. The Enquiry Officer however, pointed out that the applicant had given reasons, but it was not necessary for him (i.e. the EO) to comment on these reasons. The Disciplinary Authority accepted the finding and imposed the penalty of removal from service on the applicant from the date on which the

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applicant received the order. The Disciplinary Authority has given only the following reasons for imposing the penalty:

"The employee has disregarded the orders of vacating the quarter. The subletting of Rly. accommodation is established. The employee cannot take advantage of being illiterate."

4. The applicant had preferred an appeal dt.27.7.1988 against the order of penalty, but after waiting for more than six months he has filed this application in this Tribunal on 20.3.1989 challenging the charge sheet dt. 17.7.1987 as well as the order of penalty dt. 23.6.1988.

5. On 25.4.1989, when the case came before us for admission we thought after hearing the facts that we may be able to dispose of the application finally at the stage of admission itself. Hence we issued notices to the respondents asking them to bring the relevant records.

6. Today, we have heard Mr.G.S.Walia, learned advocate for the applicant and Mr.A.L.Kasturey, learned advocate for the respondents. Mr.A.L.Kasturey also showed us the relevant records.

7. After hearing the advocates and considering the record we are of the view that the application shall have to be allowed. Hence we admit the application and dispose it of finally.

8. We have already quoted the charge which was served on the applicant. It shows that only one charge was framed against the applicant and it was for not obeying the order dt. 24.3.1987 by which he was asked to hand over vacant possession of the railway quarter in his possession immediately. We are fortified in this view by the questions asked to the applicant by the Enquiry Officer as well as

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by the report of the EO. In other words, there was no separate charge against the applicant for sub-letting the quarter in his possession.

9. We have gone through the letter dt. 24.3.1987 which which is referred to in the charge. That letter was sent by the Assistant Engineer (Track) Parel to the applicant. According to that letter after the joint inspection carried by the Welfare Inspector, Inspector of Works and Sub-Inspector of Protection Force from 18.2.1987 to 20.3.1987 it was pointed out by them that some outsiders were found residing in the quarter of the applicant which was allotted to him. Hence the allotment was cancelled and the applicant was asked to give vacant possession of the quarter to the concerned I.O.W. immediately under advice to the office of the Assistant Engineer (Track) Parel. It was for dis-obeyance of this direction in the letter that the applicant was charged. It is true that a specific question about dis-obeyance of this direction was asked to the applicant (question No.4), and the applicant admitted the charge of dis-obeyance. It may be noted that before sending the letter dt. 24.3.1987 to the applicant he was not heard about sub-letting the quarter. No show cause notice regarding sub-letting was given to him. Hence in our view it was necessary for the disciplinary authority to frame a separate charge regarding sub-letting of the railway quarter. To hold that the quarter was sublet when there was no charge to that effect as is done by the Disciplinary Authority in the reasons given by him and to punish the applicant for disobeying the order for vacating the quarter was not proper and legal.

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10. Hence we are inclined to set aside the charge sheet dated 17.7.1987 as well as the order of penalty dt. 23.6.1988. However, we propose to give liberty to the respondents to hold a fresh inquiry if they so want.

11. In result, we pass the following order:

O R D E R

- (1) The charge sheet which was served on the applicant along with memorandum dt.17.7.87, as well as the order dt. 23.6.88 passed by the Respondent No.3, Divisional Engineer IV, Western Railway, Bombay Central (i.e. Respondent No.3) are hereby quashed and set aside. The respondents are directed to reinstate the applicant in service with all consequential benefits including full backwages due to him according to the rules within one month from the date of receipt of a copy of this order.
- (2) The respondents are at liberty to frame a separate charge sheet against the applicant and hold a fresh departmental inquiry against him according to rules, if they so desire.
- (3) In case they desire to hold a fresh inquiry they should frame a separate charge regarding sub-letting of the quarter allotted to the applicant.
- (4) We further direct that if the respondents desire to hold a fresh inquiry they should do so within two months from the date of receipt of a copy of this order.
- (5) There will be no order as to costs.


(M.Y. PRIOLKAR)
MEMBER (A)


(M.B. MUJUMDAR)
MEMBER (J).