CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 400/99

Date of Decision : 11-03-2004

P.D.Nivate — Applicant

Shri G.K.Masand — Advocate for the Applicant.

VERSUS

Union of India & Ors. — Respondents

Shri S.C.Dhawan — Advocate for the Respondents

CORAM :

The Hon'ble Shri A.K.Agarwal, Vice Chairman

The Hon'ble Shri Muzaffar Husain, Member (J)

(i) To be referred to the reporter or not ?

(ii) Whether it needs to be circulated to other Benches of the Tribunal ?] X

(iii) Library

(A.K.AGARWAL)
VICE CHAIRMAN

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.400/99

Dated this the 11th day of March 2004.

CORAM : Hon'ble Shri A.K.Agarwal, Vice Chairman

Hon'ble Shri Muzaffar Husain, Member (J)

Shri P.D. Nivate,
R/at 512, Danda Khar (West),
Mumbai. ...Applicant

By Advocate Shri G.K.Masand

vs.

1. Union of India
through the General Manager,
Central Railway, CST,
Mumbai.

2. Sr.Dy.General Manager (Vig.),
CST, Mumbai.

3. Chief Works Manager,
Parel Workshop,
Parel, Mumbai. ...Respondents

By Advocate Shri S.C.Dhawan

O R D E R

{Per : Shri A.K.Agarwal, Vice Chairman}

This OA. has been filed by the applicant P.D.Niwate for quashing and setting the chargesheet dated 3.9.1997 issued to him as well as the order dated 13.5.1998 imposing a punishment upon the applicant of withholding of one increment for a period of six months . There is a second prayer also in this OA. and that is for quashing and setting aside the order dated 5.3.1999 whereby it was ordered to recover from his wages the damage rent for the quarter allotted to him.

..2/-

2. The facts of the case in brief are as follows. The applicant was working in the Office of Respondent No.3 and was allotted a Railway quarter at Mazgaon. One Shri V.S.Saxena who was earlier employed as a Senior Personnel Officer in that office requested the applicant to permit his ailing wife and a young son to stay along with the applicant in the Railway quarter since Mrs.Saxena was undergoing medical treatment at Bombay. The applicant requested the Respondent No.3 for granting the requisite permission vide his letter dated 4.2.1995 followed by a reminder dated 31.7.1995. Office of Respondent No.3 replied to the applicant vide letter dated 24.8.1995 that the administration has noted that Shri V.S.Saxena, Ex-SPO, Parel is staying with him. The applicant took this reply as a permission and allowed the family of Mr.Saxena to live with his family in the Railway quarter allotted to him. The applicant has stated that when he had gone to Kolhapur along with his family on leave, a surprise check of applicant's quarter was conducted and it was found that the wife and son of Shri V.S.Saxena were living there. The applicant was served with a chargesheet dated 3.9.1997 under Rule 11 of Railway Servants (D&A) Rules,1968 on the allegation that neither the applicant nor any of his family members were residing in the Railway quarter and that the same had been fully subletted. In his reply, the applicant denied the charges saying that the family of Mr.Saxena was staying with him with necessary permission granted by the administration. The applicant has further stated that according to his information, the Respondent

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No.3 after receiving his reply dated 19.11.1997 took a tentative decision to impose a minor penalty of withholding of one set of PTO. According to the applicant, this tentative decision was not considered adequate by Respondent No.2 and he advised Respondent No.3 to impose a stiffer penalty. Thereafter, vide Office Note dated 2.2.1998 it was tentatively decided by the disciplinary authority to impose the punishment of stoppage of two sets of PTO. However, even this punishment was considered mild by Respondent No.2 and he advised the Respondent No.3 to impose a still more harsh punishment. Thereafter, disciplinary authority has imposed a punishment of stoppage of increment for a period of six months. It has also been alleged by the applicant that Respondent No.2 insisted that Respondent No.3 should also pass an order for the recovery of the rent at the market rate. After receiving the advice from Respondent No.2 vide letter dated 24.2.1999, the Respondent No.3 issued the order dated 5.3.1999 by which the applicant was advised that the damage rent at the rate of Rs.34/- for certain period and Rs.42/- per sq.mt. for the balance period would be recovered from his wages for allegedly having fully subletted the Railway Quarter.

3. This OA. was first considered by the Tribunal on 7.5.1999 and the Tribunal gave an ad-interim order restraining the respondents from making any recovery of damage rent from the applicant in pursuance of the letter dated 5.3.1999 till the next date of hearing. The Tribunal had also observed that the applicant has not challenged the impugned order of punishment.

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Therefore, the Tribunal gave liberty to the applicant to file an appeal before the competent authority as far as the imposition of the punishment was concerned.

4. The respondents filed an M.P.No.700/2000 on 14.9.2000 for vacating interim order which had stayed the recovery of damage rent from the applicant. This was considered by the Tribunal on 4.12.2000 and it was decided that the M.P. will be heard along with OA. on merits and the hearing of OA. should be expedited. When the case came up for hearing before the Tribunal on 6.9.2001, then it was felt that the pleadings are not complete and the applicant was directed to file an additional affidavit in respect of certain matters. On this date, the learned counsel for the applicant also placed on record that the appeal filed by the applicant against the order of punishment has been rejected vide order dated 26.7.1999 of the appellate authority. On 17.12.2002 the Tribunal was informed that the applicant has expired on 16.12.2002. M.P.No.285/03 for bringing the legal heirs of the applicant on record was filed on 28.3.2003. This was after a gap of nearly 3 months from the death of the applicant. This M.P. came up for consideration on 23.4.2003 whereby necessary permission was given for bringing the legal representatives on record. We find that on 24.6.2003 adjournment was taken on the ground that another OA.No.408/02 filed by the applicant has been dismissed in default only a few days back and its decision has implications on this OA. also. Therefore, this OA. should be heard along with the other OA. when the latter is revived. Another adjournment on this plea was taken on 20.1.2004 saying that the other OA. has to be heard first and concerned counsel of that OA. is not available.

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5. The learned counsel for the applicant in his pleadings, firstly, mentioned that the chargesheet dated 3.9.1997 as well as the order dated 13.5.1998 imposing a penalty of with-holding of two increments is bad in law because this was done by putting a pressure on the disciplinary authority. He said that the records of the Railways will show that the disciplinary authority had the view of imposing a minor punishment of withholding of one set of PTO. Thereafter, on a reference from Respondent No.2, it decided to impose a penalty of with-holding of two sets of PTO. When for the third time he was advised to impose more stiff penalty, only then penalty as given in the impugned order of with-holding of increment for six months has been imposed. Thus, the disciplinary authority has not acted in a quasi-judicial manner and has come under the influence of an outside agency. In addition, the penalty has been imposed on the charge that the applicant sub-letted the Railway quarter without the permission. He said that the letter dated 24.8.1995 (Ex.E) shows that the applicant had requested the authorities for permission and such request was noted by the concerned authority. The applicant is not responsible for the words used by the Chief Workshop Manager in his letter. This also confirms that the applicant had no intention to allow a retired Railway officer to live in his quarter keeping the authorities in dark. Thus, according to the learned counsel for the applicant, there has been no misconduct on the part of the applicant. Secondly, even the procedure adopted for imposing the penalty is not sustainable in the eyes of law. The proceedings have got vitiated because of the interference of an outside agency putting pressure on the disciplinary authority to impose a more stiff punishment. As far as the second order dated 5.3.1999 relating to the recovery of damage rent is concerned, the learned counsel argued that the

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applicant had allowed a retired Railway officer to stay with him only after seeking the requisite permission from the appropriate authorities. Under these circumstances, it is totally unfair to charge any penal or damage rent from the applicant. Moreover, for the same misconduct, i.e. for allowing a retired officer to stay in the quarter the applicant has been punished twice. He has been given a penalty of stoppage of increment for six months and also recovery of damage rent has been ordered. The applicant cannot be subjected to this type of double jeopardy, i.e. two punishments for one misconduct.

6. The learned counsel for respondents starting his arguments, firstly, mentioned that in this OA. the applicant is seeking plural remedies which are not admissible as per Rule 10 of the CAT (Procedure) Rules. In the prayer clause, the applicant, on the one hand, has prayed for quashing and setting aside order dated 13.5.1998 relating to a minor punishment imposed on him. In the same OA. he has also requested for quashing and setting aside another order dated 5.3.1999 whereby it was ordered to recover damage rent for unauthorisedly sub-letting the house. As far as the first order is concerned, the applicant did not file any appeal against it in time. It was only when the OA. was filed and the Tribunal in its order dated 7.5.1999 observed that the applicant has not challenged the impugned order of punishment, the applicant filed an appeal before the appropriate authority on 26.7.1999. This was rejected by the appellate authority holding it time barred. Such conduct

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of the applicant establishes that the applicant had accepted the penalty and also admitted his misconduct. As far as the allegations of putting outside pressure by Respondent No.2 on the disciplinary authority is concerned, the learned counsel for the respondents mentioned that there is nothing on record to show it. Moreover, internal notes of the department cannot be relied upon for the purpose of giving any relief. The learned counsel further mentioned that in para 11 of the written statement it has been pointed out that the advice given by the vigilance department, which is a Government department cannot be considered as an interference. He said that no permission as required under the rules was granted to the applicant to allow any other employee for staying in the quarter allotted to the applicant. Moreover, such permission is never given to allow an outsider to stay in the quarters. Only a serving Railway servant can be allowed to stay in the quarter along with the original allottee. The appeal filed by the applicant against the decision 5.3.1999 was rejected on 6.9.1999. The rates at which the damage rent is to be recovered are given in the Railway Board Circulars of 1987 and also in subsequent Circulars of 1996.

7. The learned counsel for the applicant mentioned that the argument relating to plural remedies is not sustainable in this case. He said that both the remedies sought in this case flow from the same incident. The main allegation is that the applicant unauthorisedly sub-let the railway quarter. He has been given a minor punishment as well as the financial punishment in the form of recovery of damage rent for this alleged misconduct only.

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8. The learned counsel for the applicant has contended that one cannot be subjected to double jeoparady while the learned counsel for the respondents has taken the objection to plural remedies sought by the applicant in this OA. After examining the facts of the case we find that the charge of misconduct relates to unauthorisedly subletting a Railway quarter. For such action one is liable to pay market rent for the quarter as per the instructions of the Railway Board. Similarly the relief sought by the applicant is based on the action of subletting the quarter. Therefore he was given a minor punishment as well as recovery of the rent of quarter at market rate. Thus the two actions in each of the case flow from the same incident and therefore we hold that neither plural remedies nor double jeopardy are relevant in this case.

9. The contention that the order dated 31.5.1998 is vitiated because of the advice of Vigilance Branch does not have any merit. Because the surprise check was conducted by the Vigilance Department of the Railways and when it was found that the applicant has sublet the quarter that Department, in normal course, it had to submit a report to the concerned authorities for taking suitable action against the delinquent. We therefore hold that the correspondence between Vigilance and administrative branch does not vitiate the decision of the Disciplinary Authority. We therefore do not see any ground to interfere with the minor punishment order dated 30.5.1998.

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10. The subletting of Railway Quarter has been proved beyond reasonable doubt. It was noticed by the party which conducted surprise check on 27.2.1997 that the applicant and his family were not living there. Even if some family goes out of station for a month or so one can make out that they were staying in the quarter or not. Secondly, the applicant did not file any appeal against the order of minor penalty, imposed on him for subletting the house, within the stipulated period of limitation. It was filed only after filing of the OA. and direction of the Tribunal that the applicant should exhaust the remedy of appeal first. The Appellate Authority has rejected the appeal as time barred. Now when subletting is proved beyond reasonable doubt then recovery of market rent becomes a consequential action. We therefore do not find any illegality or infirmity in the order dated 5.3.1999 which was also confirmed by the Appellate Authority.

11. In view of the facts indicated above we see no ground for interference with the impugned orders, i.e. order dated 30.5.1998 relating to imposition of a minor penalty and order dated 5.3.1999 relating to recovery of damage rent for the quarter. The OA. deserves to be dismissed and is dismissed accordingly. No order as to costs.

(MUZAFFAR HUSAIN)
MEMBER (J)

(A.K.AGARWAL)
VICE CHAIRMAN

mrj.