

Central Administrative Tribunal
Mumbai Bench

OA No.694/99

Mumbai this the 20th day of June, 2002.

Hon'ble Mrs. Shanta Shastri, Member (A)
Hon'ble Mr. Shanker Raju, Member (J)

Ashok S. Bakshi,
R/o Railway Quarter No.1/5/1,
Western Railway Colony,
S.V. Road,
Bandra (W),
Mumbai 400 050

-Applicant


(By Advocate Shri G.S. Walia)

-versus-

1. The Union of India through
the General Manager,
Western Railway,
Head Quarters Office,
Churchgate,
Mumbai-400 020.
2. The Chairman,
Railway Board,
Rail Bhawan, New Delhi.
3. Divisional Railway Manager,
Rajkot Division,
Western Railway,
Kothi Compound,
Rajkot-360 001.

-Respondents

(By Advocate Shri V.S. Masurkar)

ORDER 

Mr. Shanker Raju, Member (J):

Applicant through this OA impugns respondents' order dated 27.3.98 wherein on revision the penalty of dismissal has been reduced to that of permanent reduction to the post of typist in the pay scale of Rs.3050-4590 on minimum of the pay of Rs.3,050/- and simultaneously the applicant has been deputed and posted to Rajkot Division. He has sought quashing of this order and also assails the impugned order dated 3.8.94 charging damage rent to the extent of Rs.1,22,894/- for the period he remained unauthorisedly in the accommodation during the period when he was out of service. Applicant seeks all consequential benefits as well.

2. Applicant was appointed as a typist and was elected as a Secretary of Social Welfare Centre, Bandra (West). A charge sheet was issued to him on the following misconduct:

(1) That he failed to hold election for the Managing Committee of the Social Welfare Centre, Bandra every year as per the instructions.

(2) That Shri Baxi functioned as Secretary, SWC, without authority.

(3) That he carried on work at the Centre at his will but (sic) if acting according to in consultation with an elected committee.

(4) That he unauthorisedly rented out the Centre's premises to two private parties.

(5) That he misappropriated funds collected in the Social Welfare Account.

(6) That he did not deposit funds collected in the name of the S.W.C. in Bank account.

3. Thereupon an enquiry proceeding went on and culminated into a finding of the enquiry officer holding applicant guilty of the charges against which a representation was made and the disciplinary authority imposed the punishment of dismissal upon him. On revision, by an order dated 23.2.98, Member (Staff) Railway Board, set aside the punishment as inflicted by an incompetent authority and directed the General Manager to pass a fresh order. Subsequently, the disciplinary authority by an order dated 31.5.96 upheld the punishment of dismissal. Applicant preferred a revision petition wherein by an order dated 23.7.98 the punishment has been reduced by the revisional authority and thereafter the applicant was deputed as a typist to Rajkot. Member (Staff) by an order dated 19.6.2000 further modified the punishment of permanent reduction in the post of typist to that of reduction to Clerical Ministerial Service as the typist cadre was merged on permanent basis with a stipulation that applicant will progress in the Clerical/Ministerial service as per his turn, giving rise to the present UA.

4. Learned counsel for the applicant Shri Wallia impugns^e the order on various legal infirmities which are reproduced as under:

(i) The first contention of the applicant is that on 21.1.93 he submitted an application for seeking additional documents required for his defence which were very vital to him but the same have been denied to him. It is stated that the documents have been seized by the Vigilance Branch and the investigating authority, i.e., PW-4 in his deposition admitted the existence of these documents but denied its supply which resulted in a grave prejudice to the applicant.

(ii) It is stated that the charge against the applicant has not been proved by any evidence and the finding of the enquiry officer is perverse. No misconduct is attributable to him. In his resort, by discussing the charges articlewise, learned counsel stated that no witness has supported the case of the disciplinary authority and there is no evidence that the applicant has not held the election or acted unauthorisedly by renting out the Centre premises. No material had come forth even during his examination by the enquiry officer. It is stated that in absence of the documents required to be supplied he could not controvert this part of the charge. It is stated that the applicant was appointed as a Secretary of SWC by the General Body on 6.8.98 and tried to collect Membership from the residents of Bandra but nobody paid. The membership was revived in 1991 and the collection of Membership fee figured in the balancesheet of 1991-92 which resulted in a general body meeting where the applicant was elected as a Secretary. A member cannot be taken without paying the subscription. It is only at the instance of the

applicant other residents contributed which resulted in reelection of the applicant in 1992. It is in this backdrop stated that now the SBF Committee sanctioned amount if the elections have not been held. So the general body meeting held regularly.

(iii) In so far as charge of functioning without jurisdiction as a Secretary it is contended that in pursuance of the elections applicant had been elected as a Secretary. The factum of which has not been gone into by the enquiry officer despite defence documents the grant was sanctioned where the applicant was recognised as Secretary.

(iv) As discharge was not carried with the work of Centre no documents have been produced to prove the same. The decision has been taken independently without any threat by the applicant. Sh. Rana and Pasi were functioning as Chairman and Treasurer. It is the applicant who has been singled out with some ulterior motives.

(v) In so far as unauthorisedly renting out the Centre premises to two private parties in the capacity of Secretary, SW, he merely implemented the directions of the Managing Committee according to which this space has been provided to conduct lectures wherein a decision has been taken to collect Rs.500/- as charges for running the classes from 7 a.m. to 10 a.m. This has made beneficial use of the space to raise funds for welfare activities, in accordance with the instructions issued on 8.12.82 which has been admitted by PW-4.

(ix) In so far as UA-528/96 which has not been disclosed by the applicant in the present UA in para-7 of the UA, it is contended that the same is on a different cause of action, as therein only eviction has been challenged and the same has been withdrawn it would not be an impediment in the decision of the present case.

5. Respondents' counsel Shri Masurkar in his reply took preliminary objection by contending that as per Rule 4 (1) read with Appendix A of the C.A.T. (Procedure) Rules, 1987 and in view of paragraph 4 of the UA applicant is bound to state the details of the previous cases filed and as the applicant has suppressed the fact of pendency of UA-528/96 on an identical cause he has not come with clean hands and the UA is liable to be rejected on this score alone.

6. It is contended that in so far as damages are concerned, as the applicant beyond the prescribed^W period has stayed in the Government accommodation as an unauthorized occupant, in view of para 15 of the Railway Board's letter dated 15.1.90 as the dismissed employees are not permitted to retain Government accommodation beyond a period of one month damage rent has rightly been imposed and ^{to be} recovered from the salary of the applicant.

7. As regards non-supply of the documents is concerned, the defence documents as claimed by him, he himself submitted that the documents have been washed in rain water which he will produce at the time of final submission. As these documents were not available with the Bombay Division and the relevancy has not been stated there is no legal infirmity. It is contended that these documents were not available with the

(vi) In so far as misappropriation of funds and non-deposition of the money is concerned, on the basis of the audited balancesheet applicant received SBT grant which has been accounted for. There is no evidence to substantiate the alleged misappropriation.

In a nutshell it is contended that none of the charges have been validly proved, the defence of the applicant has not been proved and such finding cannot be arrived at by a reasonable man to warrant any punishment. It is also stated that the punishment imposed is not in consonance with the Railway Servants (Discipline & Appeal) Rules, 1968. Placing reliance on a decision of the High Court of Judicature at Mumbai in CWP No.101/2002 in G.D. Bhandari v. Union of India & Urs. it is contended that the decision of this Tribunal has been confirmed by the High Court wherein it is clearly laid down that punishment or reduction to a lower grade on permanent basis cannot be sustained. Aforesaid ratio also applies on all fours to the case of the applicant.

(vii) In so far as order imposing damage rent is concerned, it is contended that having reduced the punishment it is not open for the respondents to charge damage rent from the applicant and further stated that no disciplinary proceeding under Section 7 of the Public Premises (Eviction of Unauthorised Occupants), Act, 1971 have been held and no reasonable opportunity has been accorded before resorting to such an action by the respondents.

(viii) Lastly, it is pointed out that his punishment and transfer to Rajkot is void ab initio and it does not lie within the competent^l of the disciplinary authority to order transfer.

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Bombay Division and the applicant was the custodian of the file containing the documents. During his examination it is contended that he will give minutes of the meetings held in 1988, 1991 and 1992 with written brief, but, it has transpired that the original documents have been suppressed by him. As such no suppression of the documents by the respondents.

8. Learned counsel for the respondents further stated that the available documents have been served upon the applicant. It is stated that the allegations have been amply proved against the applicant as the charges are to be collected on day ^{today} basis from the organized function and as it has been proved that the charges were collected on monthly basis and the sub lettee is evicted as his case has been dismissed by the appropriate court throws doubt over his integrity. It is also submitted that the huge amounts have been kept by the applicant shows the temporary misappropriation. As already a lenient view has been taken, it is stated that the orders passed are reasoned and in accordance with rules and no procedural illegality has been brought forward to warrant interference of this court.

9. In his sur-rejoinder Sh. Masurkar stated that as the recruitment for typists has been stopped and the post still existed the applicant can be reduced to the initial appointment post and further stated that the appellate authority taking a compassionate view in the matter has decided to modify the penalty of permanent reduction in the post of typist on the applicant to that of reduction to the Clerical (Ministerial) service on permanent basis and posting as typist in the scale of Rs.3050-4590. The appellate authority has further directed that he will progress in the the Clerical (Ministerial) service in his turn.

10. We have carefully considered the rival contentions of the parties and perused the material on record as well as the official record produced by the respondents.

11. The contention of the applicant that he has been prejudiced by non-supply of the documents is concerned, although he had requested the authorities for supplying him the documents, ~~but~~ the enquiry officer in his findings has meticulously dealt with this issue and has come to the conclusion that the available documents have been served upon the applicant and non^h of the documents have been relied upon to the detriment of the applicant. Applicant himself submitted during the enquiry that the documents of defence have been washed out in rain water but ^{he had} undertaken to produce in the final defence. He failed to produce the same and ^h his failure to indicate as to who is in possession of these documents respondents cannot be blamed for withholding of these documents as they were not in their possession. Applicant has failed to substantiate us as to how he has been prejudiced for non-supply of these documents which is a pre-requisite to vitiate the enquiry as held by the Apex Court in S.K. Sharma v. State Bank of Patiala, JJ 1996 (3) SC 722.

12. In so far as the contention of the applicant that he has not committed any misconduct and the finding is perverse and based on no evidence is concerned, in a judicial review the scope of interference is very limited and to vitiate ^a the proceedings it has to be established by the aggrieved party that either there is no evidence or the conclusion is perverse. We cannot go into the sufficiency or correctness of

W the charge and to arrive at a finding different from the departmental authorities as there is some evidence the same

cannot be interfered with, as held by the Apex Court in Kuldeep Singh v. Commissioner of Police and Urs., JI 1998 (8) SC 603. We have perused the finding of the enquiry officer and find that on the basis of evidence and dealing with the defence of the applicant the charges have been proved. The present case does not come under the exceptional cases of no evidence. The finding is neither perverse nor based on extraneous matter.

13. As regards objection of the respondents that applicant has suppressed the material information pertaining to UA-528/96 we find that the applicant has not disclosed the same in paragraph 7 of the format of the UA, which is required under Rule 4 (1) of the C.A.I. (Procedure) Rules, 1987 but as the applicant in this UA has assailed the charge of damage rent whereas in the aforesaid UA only the order of eviction was assailed we find that the same do not pertain to same cause of action and the relief and the cause of action are different. However, it is not disputed that the earlier UA has been withdrawn as such the objection of the respondents is over-ruled.

14. In so far as the penalty imposed upon the applicant in speaking order dated 19.6.2000 by the Member (Staff) the penalty was further modified as follows:

"The charges against Shri Baxi, as proved in the inquiry, especially his failure to deposit funds collected in the name of the Centre in the Bank Account reflect on his integrity. Gravity of the charges calls for very severe punishment. However, taking a compassionate view in the matter, I have decided to modify the penalty of permanent reduction in the post of typist in scale Rs.3050-4590 on minimum pay of Rs.3050/- p.m. imposed on Shri A.S. Baxi by the GM/Western Railway, to that of reduction to the clerical (ministerial) service on permanent basis and posting as typist in scale Rs.3050-4590 with pay at Rs.3050/-. Shri Baxi will progress in the clerical (ministerial) service as per his turn."

As per Railway Board's letter dated 22.1.90 reduction to a lower post in a time scale for an unspecified period is not permissible. Further Railway Board's letter dated 17.6.66 stipulates that in case of reduction of unspecified period the employee loses his original seniority in the grade and in that event it has to be indicated as to what would be the rate of the employees with regard to his promotion. Further under UM dated 16.8.60 under FR 29 the following procedure is to be adopted in case of reduction to a lower post:

(3) Reduction to a lower service, grade or post, or a lower time-scale. Every order passed by a Competent Authority under sub-rule (2) of F.R. 29 imposing on a Government servant the penalty of reduction to a lower service, grade or post, or to a lower time-scale should indicate--

(i) the date from which it will take effect and in cases where the reduction is proposed to be imposed for a specific period, the period (in terms of years and months) for which the penalty shall be operative. It should be noted that the reduction may be for an unspecified period or an indefinite period and in cases where no period has been specified in the order of penalty, the conclusion is that the penalty is for an unspecified period.

(ii) the extent (in terms of years and months) if any, to which the period referred to at (i) above shall operate to postpone future increments on restoration after the specified period. The period specified under this sub clause shall in no case exceed the period specified under sub clause (i) above.

2. When the Government servant is reduced to a lower service, grade or post, or to a lower time scale whether for a specified or unspecified period, the pay in the lower service, grade or post or lower time scale, should be regulated in accordance with FR 28.

3. Where the period of reduction specified in the order of penalty, the Government servant concerned shall be automatically restored to his old post after the expiry of the specified period.

4. The question as to what should be the pay of the Government servant on restoration to the higher post/grade, in cases where the period of reduction specified, shall be decided as follows:

(1) if the order of reduction lays down that the period shall not operate to postpone future increments, the Government servant shall be allowed the pay which he would have drawn in the normal course but for his reduction to the lower post. If the pay drawn by him immediately before the reduction was below the efficiency bar, he shall not be allowed to cross the bar except in accordance with the provisions of FR 25.

(ii) if the order lays down that the period of reduction shall operate to postpone his future increments, for any specified period which shall not exceed the period of reduction to the lower post/grade, the pay of the Government servant on restoration shall be fixed in accordance with (i) above but after treating the period for which increments are to be postponed as not counting for increment.

5. In cases where the reduction to the lower post/grade is for an unspecified period, if and when the Government servant is reappointed to the higher post in normal course, the pay in the higher post will be regulated only in accordance with the normal rules, relating to pay fixation.

15. If one has regard to the aforesaid instructions and keeping in view the decision of the High Court of Judicature at Bombay in G.D. Bahandari's case (supra) where the decision of the Tribunal was upheld wherein it has been held that the order reducing the Railway servant to a lower stage permanently is void, as there is no such provision in the recruitment rules to pass such an order.

16. Having regard to the aforesaid decision the permanent reduction of the applicant is not legally sustainable but however, keeping in view the decision of the respondents, modifying the punishment of 19.6.2000 order does not indicate that as to when the applicant will progress in Clerical (Ministerial) cadre as per his turn, the order is unspecified and is vague and is not in accordance with the instructions above. As such the same is not legally sustainable.

17. In so far as damage rent is concerned, we find that as the applicant was dismissed on 29.3.96 and was re-instated on 20.4.98 and was permitted to retain Railway Quarter for a period of one month permissible on normal rent the action of the respondents to charge damage rent under Railway Board's letter dated 15.1.90, cannot be countenanced. Having re-instated the applicant in revision and reducing the punishment to permanent reduction the intervening period

should not have been treated to charge from him damage rent. Furthermore, no opportunity to the applicant has been accorded before imposing damage rent upon him particularly when he is visited with civil consequences. Aforesaid action of the respondents cannot be sustained.

18. In so far as his transfer is concerned, the same has not been shown to be mala fide or violative of rules being a routine transfer in public interest and administrative exigencies, the same cannot be interfered with by this Tribunal in a judicial review.

19. In the result and having regard to the reasons recorded above, the present UA is partly allowed. The impugned order of reduced penalty and the appellate order are quashed and set aside. However, this will not preclude the respondents to pass an appropriate order or penalty in consonance with the rules and instructions and having regard to the observations made above. The order imposing damage rent is also quashed and set aside. The respondents are directed to re-consider the same in the light of our observations above and to pass a detailed and speaking order. The aforesaid directions shall be complied with by the respondents within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju

(Shanker Raju)
Member (J)

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(Smt. Shanta Shastri)
Member (A)

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