

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 589/2000

MONDAY the 7th day of JULY 2003

CORAM: Hon'ble Shri Justice R.R.K. Trivedi - Vice Chairman

Hon'ble Shri Shankar Prasad - Member (A)

M.A. Jaleel Khan
Residing at 118/19,
Western Railway Qrts.
Kherwadi, Bandra (East)
Mumbai.

...Applicant.

By Advocate Shri R.Ramamurthy.

V/s

1. Union of India through
The General Manager,
Western Railway,
Churchgate, Mumbai.
2. The Senior Divisional Personnel
Officer, Western Railway,
Mumbai Division, Divisional
Office, Mumbai Central, Mumbai.
3. The Senior Divisional Commercial
Manager, Western Railway,
Mumbai Division, Divisional
Office, Mumbai Central, Mumbai.
4. The Station Manager,
Western Railway,
Mumbai Central Division,
Mumbai Central, Mumbai.

...Respondents.

By Advocate Shri V.S. Masurkar.

ORDER(ORAL)

{Per R.R.K. Trivedi, Vice Chairman}

By this OA under section 19 of the Administrative
Tribunals Act, 1985, the applicant has prayed for multiple
reliefs relating to his period of suspension leading to



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disciplinary proceedings and also with regard ^{to} treatment of the period during which he was out of service.

2. The facts of the case are that applicant - M.A. Jaleel Khan who was permitted sharing of Railway quarters ^{with} the main allottee of the quarter viz. Syed Rahim. The main allottee expired and his widow vacated the quarter on 1.11.1987. The applicant was advised to vacate the quarter on 22.10.1987 but he did not do so and continued to occupy the quarter unauthorisedly. For this misconduct applicant was subjected to disciplinary proceedings. After enquiry the disciplinary authority by order dated 1.2.1990 awarded punishment of reduction of pay to the minimum of scale of Rs.950-1500/- for a period of three years with the effect of postponing future increments. The order further directed that the penalty would take effect from the date he received the order. Against the aforesaid order of punishment applicant filed appeal. The appellate authority further enhanced the punishment from reduction in pay to dismissal from service which was challenged before this Tribunal in OA 848 of 1990. The Tribunal vide its order dated 23.11.1994 allowed the OA and quashed the disciplinary proceedings initiated against the applicant on the charge of refusing to vacate the quarters. The penalty imposed was also quashed. Against the order of this Tribunal, respondents filed Civil Appeal No.10993 of 1996 wherein the Hon'ble Supreme Court decided the appeal by order dated 6.8.1998. Operative portion of the ^{Judgement of} Hon'ble Supreme Court is being reproduced as follows -

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We have considered the submission of the counsel on both sides and also appreciated the facts of the case. We have seen earlier that the respondent had given a solemn undertaking to vacate the premises when the main allottee vacates the same. Notwithstanding such solemn undertaking the refusal to vacate the premises when the main allottee vacated the accommodation cannot be appreciated or encouraged. The authorities are, therefore, right in initiating disciplinary proceedings on the facts of this case. However, the punishment imposed by the appellate authority by issuing notice to enhance the punishment given by the Disciplinary Authority requires some consideration. The Disciplinary Authority, after taking into consideration the facts and circumstances concerning the charge has imposed the punishment as noticed above. The Appellate Authority in the appeal filed by the respondents had issued notice for enhancing the punishment. No doubt the appellate authority has jurisdiction to issue such a notice, but the question is whether the facts and circumstances of the case warrant such enhancement of the punishment. On the facts, we are of the view that the enhanced punishment given by the appellate authority dismissing the respondent is too harsh and, therefore, we set aside the order of the appellate authority to that extent and restore the punishment imposed by the disciplinary authority.

We make it clear that the respondent if he has not vacated the premises in question already, should vacate the same within two months from this date failing which the appellate authority's order of dismissal will stand. This order will not prejudice any right of the respondent to apply for another quarter in accordance with law."

3. During the pendency of the appeal before the Hon'ble Supreme Court the respondent no.3 - Senior Divisional Commercial Manager, Western Railway, Mumbai passed the order dated 17.12.1997 to the following effect -

"The intervening period from 9.11.1992 to 16.1.1997 as well as suspension period from 24.3.1988 to 7.6.1990 is treated as "Not Spent on Duty" for all

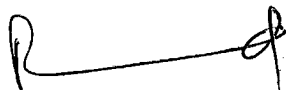


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purposes . However, 50% of the amount due will be paid to you at once and the remaining 50% amount due to you will be paid on the outcome of SLP."

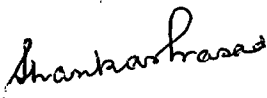
4. After the judgment of the Hon'ble Supreme Court dated 6.8.1998 the respondents have passed another order dated 10.9.1999 (Exhibit - A). In this order, order passed on 17.12.1997 has not been taken into account. Aggrieved by this, applicant ^{has} approached this Tribunal.

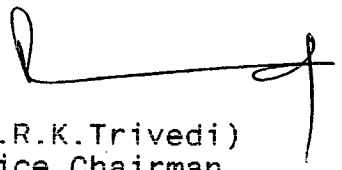
5. The order dated 17.12.1997 ^{purely} contemplated for ^{the} remaining 50% of the amount. Decision was ^{take} taken on the basis of the ^{of} Hon'ble Supreme Court. However, this aspect of the case has not been considered by the respondents. However, the Hon'ble Supreme Court while disposing of the case vide order dated 6.8.1998 directed the applicant to vacate the premises within two months failing which the order of the appellate authority was to be restored. Applicant complied with the order of the Hon'ble Supreme Court and admittedly vacated the quarter within the time permitted. All these facts were required to be considered by respondent no.3 before passing the order dated 10.9.1999. Scale of pay shown in the order dated 10.9.1999 also appeared to be incorrect. After passing the order of punishment a corrigendum was issued on 6.6.1990 for correcting the pay scale. The pay scale mentioned in the Corrigendum order is Rs.950-1500/-. This ^{was} fact ^{in respect of} also material for passing correct order ^{of} the applicant. In view of the above, respondents are required to pass further orders, taking into consideration all the facts.



6. The counsel for the applicant mentions that the applicant ^{Shankar} is ~~is~~ attaining^u the age of superannuation on 31.12.2003. It is expected of the respondents to pass an order at early date.

7. For the reasons stated above, OA is disposed of with a direction to respondent no.3 to pass orders with reference to the reliefs claimed in this OA within a period of three months from the date of receipt of a copy of this order. There will be no order as to costs.


(Shankar Prasad)
Member (A)


(R.R.K.Trivedi)
Vice Chairman

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