

CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.540/2001.

DATE OF DECISION : 22.10.2003

S.K.Jaffar

... Applicant.

Shri S.V.Marne

... Advocate for  
the Applicant.

Vs.

Union of India & Ors.

... Respondents.

Shri R.R.Shetty

... Advocate for  
Respondents.

Coram: Hon'ble Shri S.Biswas, Member (A),  
Hon'ble Shri Muzaffar Husain, Member (J).

1. To be referred to the reporter or not?
2. Whether it needs to be circulated to other Benches  
of the Tribunal?
3. Library?

S - A

(S.BISWAS)  
MEMBER (A)

B.

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CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH. MUMBAI.

ORIGINAL APPLICATION NO.540/2001.

, this the 22<sup>nd</sup> day of Oct 2003.

Hon'ble Shri S.Biswas, Member (A),  
Hon'ble Shri Muzaffar Husain, Member (J).

S.K.Jaffar,  
New Silver Plaza Soc.,  
Flat No.10, 4th Floor,  
Madan Challa,  
Ansari Chowk,  
Kalyan (W).  
(By Advocate Shri S.V.Marne)

...Applicant.

v.

1. Union of India through  
The Secretary of the Govt. of India,  
Ministry of Railways,  
Railway Bhawan,  
New Delhi.
2. The General Manager,  
Central Railway,  
HQ, C.S.T.,  
Mumbai - 400 001.
3. The Chief Works Manager,  
Central Railway Workshops,  
Parel,  
Mumbai - 400 012.
4. The Deputy Chief Mechanical Engineer (D),  
Central Railway,  
Workshop, Parel,  
Mumbai - 12.
5. The Sr. Dy. G.M. (Vigilance),  
Central Railway,  
C.S.T.M.,  
Mumbai.  
(By Advocate Shri R.R.Shetty)

...Respondents.

: O R D E R :

{S.Biswas, Member (A)}

By this application, the applicant has sought for quashment of the order dt. 25.04.2000 and the charge sheet dt. 09.03.1998 along with the Enquiry Report dt. 10.09.1999.

1.02 ...2.

2. Heard the Learned Counsel for the parties and gone through the case record and the legal points raised in the course of the day's argument, as well as, in the O.A.

3. The case was moved for admission on 16.08.2001. A disciplinary proceeding was initiated against the applicant and a penalty of reversion to one lower pay scale at the bottom most from Section Engineer scale from Rs.6500-10500 (RSRP) to Junior Engineer-I in the scale of Rs.5500/- for a period of 3 years with cumulative effect was imposed. This order was passed after initiating a major penalty proceedings under RS (DA) Rules, 1968 against the applicant and after having found that he had sublet his official quarters for a period from 31.01.1994 to 03.04.1997. It was discovered by the joint inspection team who visited the site on 24.02.1997 that one Shri M.Y.Quoreshi was staying in the quarters and a memorandum was prepared for unauthorised occupation for framing the allegation of sub-letting later. Shri Quoreshi who was unauthorisedly occupying on the alleged terms of subletting was evicted on 04.04.1997 as he was a retired Railway employee. The said charge sheet dt. 09.03.1998 was initiated under the Railway Servants (Disciplinary & Appeal) Rules, 1968. As usual an Enquiry Officer was appointed, who furnished his report and held the charges as proved against both the Articles No.I and II. The major penalty imposed upon the applicant was confirmed by the Appellate Authority after due process and the Enquiry Officer, Disciplinary Authority, as well as, the Appellate Authority have discussed in their orders discussed in their orders how the applicant was guilty unauthorisedly sub-letting his official quarters, which is why this OA was filed

S. A. J.

challenging the facts and proceedings adopted in his case.

4. At the very preliminary stage itself, it was contended that the disciplinary authority Dy. Chief Mechanical Engineer was not his appointing authority and therefore, not competent to pass a major penalty order and the Chief Works Manager was the competent authority who acted as an Appellate Authority. The OA was admitted subject to the objections to be raised at appropriate time by the Respondents.

5. As far as this allegation is concerned, we have perused the reply of the respondents, they have contended that the Dy. CME is indeed competent Disciplinary Authority as far as the applicant is concerned and the departmental inquiry was correctly conducted under the RS (DA) Rules, 1968. We have perused a copy of the Schedule annexed to the said reply at (Ex. R-3) which is a copy of Rule 4 and sub-rule (2) of Rule 7. We are satisfied that this schedule authorises the Dy. CME to impose a penalty of reduction to lower stage in time scale for Group 'C' and Group 'D' staff.

6. This is a IIIrd round litigation. The Learned Counsel for the applicant has brought to our notice an order dt. 09.03.2001 in OA 336/2000. This order was passed in a Single Member Bench in pursuance of Hon'ble High Courts direction for expeditious hearing in the case. By this order the cancellation of allotment of quarters which was allegedly sub-let by the official allottee was cancelled on 27.02.1999. After hearing the case, the Single Hon'ble Member (A) set aside the impugned order dt. 27.02.1999. It is also brought to our notice that when this

S - O ...4.

case was under consideration and hearing, another O.A. was filed. Further in this application, the question of payment of penal rent was adjudicated and an order was passed in his favour, but respondent authorities went in a review application No.40/2001 which was disposed of on 27.03.2002. It was held as follows :

"I have also considered the arguments made about the facts of the circumstances of the case of Shri Qureshi. These are deductions that are sought to be made against the applicant on the basis of facts of Shri Qureshi's case and his circumstances. These cannot go against the Applicant, specially in the absence of the show cause notice, as discussed above."

Accordingly, damage rent recovered from the applicant was also refunded.

7. The sum and substance of this case which survives after all these litigations is that today the applicant is in occupation of the same very quarter which was permitted to be restored to him by virtue of the order of this Tribunal. Even damage rents were refunded. So the applicant practically does not suffer any civil consequences because of the allegation of sub-letting. The order dt. 25.04.2000 has been passed after following necessary procedures and the orders stand upto its merits.

8. The other points which have been raised in the grounds to the OA and also during the hearing is that a copy of the preliminary report/fact finding report was not supplied to him. We are not able to entertain this, at this stage, as no such request was made before the Enquiry Officer as per Rules.

9. Even on the question of supply of certain documents which was

 ...5.

raised only subsequently, a request was made to the Dy. CME i.e. the Disciplinary Authority on 06.05.1999 for a copy of the vigilance branch report dt. 04.02.1999 which was statedly mentioned in the letter as a reference, so that he could cross-examine vigilance officers. It appears that it is not the case of the applicant that this letter was sought for during the inquiry. On the other hand, the department has relied on documents and records which are relevant to the charges. The Appellate Authority is not required to give a speaking order, which if depends on the findings of the Disciplinary Authority. This he has done in the order dt. 11.08.2000. He has specifically mentioned that he has relied on the speaking order of the Disciplinary Authority to come to his conclusion. In our view, therefore, the disciplinary process has been judiciously and legally applied for sustaining the proven part of the charge which is sub-letting. It is an admitted fact, however, that the applicant statedly proceeded with his family to visit his ailing mother-in-law in February, 1997. He requested his neighbour Shri M.Y. Quoreshi to look after the house during his absence for security reasons. The applicant further stated that his Railway Quarter was inspected on 24.02.1997 and Shri Quoreshi was found with two other members of his family in occupation as per the arrangement of watch and ward security of his official flat and he was admittedly not staying there during the impugned period.

9. The allegation of occupation and so-called sub-letting to

*S. A. ...6.*

this extent stands explained. We are not going to question how it was satisfied that the sub-letting was established after due process of enquiry and disciplinary action.

10. What we however notice is the propriety of the allegation in para 4 of the appeal to the Appellate Authority in the appeal dt. 12.05.2000 reads as follows :

"It is worthwhile to mention that the point check sheet prepared and signed by the Investigation Team of vigilance branch on dtd. 24.02.1997, clearly states that there was no outsider in the house as the column earmarked for unauthorised outsiders/Rly employees has been kept blank."

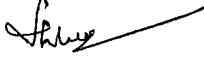
It was necessary for the appellate authority to give his observation on this point raised by the appellant which says that there was no outsiders in the house as per the said prepared check sheet. We are, of course, not able to accept that also because Shri Quoreshi has admitted that he was staying in the quarters. What seemingly has struck our mind is that sub-letting has been established though in a limited sense of occupation by Qureshi. But, the charge interconnected with sub-letting documentary evidence of payment of rental by the person who had taken occupation from the applicant is not forthcoming. As both of them had subscribed to each other it was only an arrangement without any financial consideration in the interest of security. We are of the view, that sub-letting as it is understood in common parlance has not been established both in the enquiry report, as well as, orders and Appellate Orders. None of them have commented on this. In the situation, we think that there is a lapse in the investigation particularly in the framing of charges and coming to the conclusion that it was indeed sublet.

S. A. 7.

No evidence are there on record to show that the sub-letter has got any financial advantage for sub-letting under consideration.

11. We have already observed that the damage rent has been refunded and the cancellation of the quarter to the applicant is also vacated and he is in occupation of the said quarters.

12. In the circumstances, we find that the charge of sub-letting in effect has not been established and consequently, we set aside the impugned order dt. 25.04.2000 and 11.08.2000. The factual distinction of this case is that both have admitted that this was an arrangement for security during the applicant's absence. No costs.

  
(MUZAFFAR HUSAIN)  
MEMBER (J)

  
(S.BISWAS)  
MEMBER (A)

B.

**CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, MUMBAI.**

Dated this Tuesday the 9<sup>th</sup> day of February, 2010

**Coram:** Hon'ble Shri Justice A.S.Bagga - Member (J)  
Hon'ble Shri R.C.Joshi - Member (A)

**Contempt Petition No.61 of 2009  
in  
OA 540 of 2001**

S.K.Jaffar,  
Senior Section Engineer,  
Central Railways, Parel Workshops,  
Parel, Mumbai.  
R/o Railway Quarter,  
No.RB/III/273/2, Railway Colony,  
Parel, Mumbai.

**(By Advocate Shri K.R.Yelwe)** - **Petitioner**

**Versus**

Shri S.S.Khurana,  
The Chairman,  
Railway Board,  
Ministry of Railways,  
Rail Bhawan, New Delhi.

Shri B.B.Modgil,  
The General Manager,  
Central Railways,  
Headquarters, CST, Mumbai.

Shri B.L.Patil,  
The Chief Works Manager,  
Central Railway Workshops,  
Parel, Mumbai.

Shri Sourav Prasod,  
The Deputy Chief Mechanical  
Engineer (D),  
Central Railway Workshops,  
Parel, Mumbai.

Shri Rakesh Vatash,  
Senior Deputy General Manager (Vig),  
Central Railway Headquarters,  
CST, Mumbai.

- Respondent/Contemnors

O R D E R

Heard the learned counsel for the petitioner.

2. We have seen order dated 22.10.2003 passed in OA 540 of 2001 (**S.K.Jaffar Vs. Union of India & others**)

but this order has been modified by the High Court in

W.P.No.2984 of 2004 decided on 27.3.2008 and it is

stated that the Railways have moved the Hon'ble Supreme

Court in SLP. ~~Whatever final orders will be passed~~  
~~respondents will be under obligation to comply with it.~~

We are not inclined to entertain this Contempt Petition

for two reasons. One is that the order which is sought

to be implemented has been modified by the High Court

and secondly, the order of the High Court is challenged

before the Hon'ble Supreme Court. Whatever orders will

be passed by the Hon'ble Supreme Court, the respondents

will be under obligation to comply. There is no

urgency in the matter. Therefore, the learned counsel requests for withdrawing the Contempt Petition. The Contempt Petition is disposed of as withdrawn.



(R.C. Joshi)  
Member (A)



(Justice A.S. Bagga)  
Member (J)

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