

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 519/01

Date of Decision: 12-03-2004

G.S. Sawardekar

Applicants

Shri G.K. Masand.

Advocate for applicant

Versus

Union of India & Ors. .


Respondents

Shri S.C. Dhawan

Advocate for respondents

CORAM: HON'BLE SHRI ANAND KUMAR BHATT MEMBER (A)
HON'BLE SHRI MUZAFFAR HUSAIN MEMBER (J)

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


(MUZAFFAR HUSAIN)
MEMBER (J)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.519/2001

THIS THE 12TH MARCH, 2004

CORAM: HON'BLE SHRI ANAND KUMAR BHATT. MEMBER (A)
HON'BLE SHRI MUZAFFAR HUSAIN MEMBER (J)

C.S. Sawardekar, working
as Junior Engineer I, I.M. Shop,
Central Railway Work Shop,
Parel.

... Applicant

By Advocate Shri G.K. Masand.


Versus

1. Union of India, through the
General Manager, Central Railway,
CST, Mumbai-400 001.
2. Chief Works Manager, Parel,
Workshop, Central Railway,
Parel, Mumbai-400 012.
3. Senior Dy. General Manager,
(Vigilance), General Manager's
Office, Central Railway, Mumbai. Respondents

By Advocate Shri S.C. Dhawan.

O R D E R
Hon'ble Shri Muzaffar Husain. Member (J)

The applicant in this OA has challenged the following orders of the respondents: (a) Memorandum dated 03.3.1998 charging that he had fully sublet Railway Quarter No.RB/III/269/03 at Parel to outsider in violation of extant rules; (b) Order No. E5/228-Q/Sub dated 11.6.1998 under which recovery of damage charge at the rate of Rs.49/- per sq. meter for 76.30 plinth area amounting to Rs.3738.70 per month has been ordered from 9.6.1998 till vacation / eviction of quarter; (c) Order dated 8.1.2001 by which penalty of reduction to lower

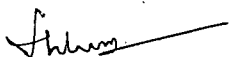


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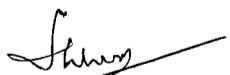
stage in time scale of pay i.e. Rs.5500-9000 from Rs.7250/- to rs.7075/- for a period of three and half years with cumulative effect has been imposed; and (d) Order No. E5/78645/CSS dated 26.4.2001 by which applicant's appeal has been rejected. The applicant has sought the following reliefs:

- (a) This Hon'ble Tribunal be pleased to quash and set aside the impugned order dated 11.6.1998 with a further direction to the respondents to refund to the applicant the entire amount that has been illegally deducted from applicant's wages in pursuance of the impugned order dated 11.6.1998 together with interest thereon at the rate of 21% per annum from the date of recovery till the same is refunded.
- (b) This Hon'ble Tribunal be pleased to quash and set aside the impugned memo dated 3.3.1998 and orders dated 8.1.2001 and 26.4.2001.
- (c) To stay the further operation of impugned order dated 11.6.1998.
- (d) That costs of this application be awarded in favour of the applicant; and
- (e) That such other and further reliefs as are expedient be granted in favour of the applicant.

2. The brief facts narrated in the OA are that the applicant was working as Junior Engineer in the I.M. shop, Parel Workshop of Central Railway at the relevant time. He had been allotted Railway Quarter No. RB/III/269/3 at Parel vide order dated 06.12.1994 and he occupied the quarter on 09.12.1994. In November, 1996 his friend Shri Arjunraj Bhandari was referred to Tata Memorial Cancer Hospital for medical treatment of radium therapy due to brain tumor. As he had to attend the



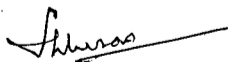
treatment periodically for a period of six months, the applicant allowed him and his wife to stay with him in his quarter and also allowed him to take temporary telephone connection at his quarters address. Applicant was staying alone in the quarter with Shri Bhandari who died on 04.01.1997. On 24.02.1997 while the applicant was away on evening walk, Smt. Abha Bhandari, sister-in-law of late Shri Bhandari with two sons of late Shri Bhandari attended applicant's quarter to take away the belongings of late Shri Bhandari. While they were at the quarter and applicant was away, the Vigilance Inspectors raided the quarter and made out a false complaint dated 24.02.1997 alleging therein that Smt. Kamal Bhandari, wife of late Shri Arjunraj Bhandari and her two sons were residing in the quarter and that applicant was not staying in quarter since June 1996. Thereafter applicant was called by Vigilance Inspector to their office to record his statement and on 07.7.1997 he was forced to sign a statement which was prepared by Vigilance Inspector in the question and answer format. The applicant has also stated that he made a representation against the impugned order dated 11.6.1998 on the ground that the said order was passed on false and unverified complaint, as such recovery of damage charges would be illegal, arbitrary and onesided. The applicant has also brought to the notice of the department to take action in accordance with the provisions of Public Premises Act. The respondents



appointed Shri S.S. Kadu working under Vigilance Department as Inquiry Officer. They also cancelled the allotment of the quarter without giving any opportunity of hearing being afforded to him and he was forced to vacate the quarters on 24.7.1999. The Inquiry Officer submitted his report on 24.8.2000 holding the applicant as guilty of charges framed against him. According to the applicant, the memorandum dated 03.3.1998 issued by Respondent No.2 at the behest of Respondent No.3 is baseless without any ground, illegal and bad in law.

3. The applicant in this OA has challenged the legality and validity of the report of the Inquiry Officer dated 24.8.2000, order of the Disciplinary Authority dated 08.01.2001 imposing the penalty of reduction to the lower stage in the time scale of pay i.e. Rs.5500-9000 (RSRP) Rs.7250-7875 for a period of 3 1/2 years. The order passed by Appellate Authority is dated 26.4.2001.

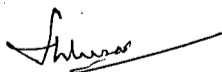
4. The applicant in this OA has challenged the legality and validity of the report of the Inquiry Officer, orders of the Disciplinary and Appellate Authority by taking a number of grounds such as Inquiry Officer working under the Vigilance Department was entrusted with the inquiry, whereas Vigilance Inspectors have conducted the surprise check and submitted a false report against the applicant. Secondly Smt. Bhandari



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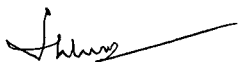
was not examined as a witness and therefore, the applicant was deprived of the opportunity of cross examination of the complainant on the basis of which charges have been framed. No independent witness was produced. The RPF constables, who have been cited as witness to the joint inspection has categorically stated that the report was prepared by Vigilance Inspector and they have put their signature at the instance of the Vigilance Department. Lastly, no independent witness was examined during the inquiry. The memorandum dated 03.3.1998 issued by Respondent No.2 at the behest of Respondent No.3 is baseless and without any ground.

5. The respondents have filed written statement denying all the allegations in the OA and justified their action in instituting the departmental inquiry. The respondents have opposed the OA on the legal grounds too. They have stated that the application is bad for mis-joinder of causes of action and multiple relief and also barred by limitation as the applicant, in para 8 (a) & (b) is challenging the order dated 11.6.1998. It was also stated that under the terms and conditions of the allotment, the applicant is required to occupy the quarters and cannot accommodate outsiders. Before allowing any person to stay with him, the allottee of the railway quarters, even if he permits his relatives to stay with him, has to take prior permission from the competent authority. The applicant in this case,



...6.

neither informed nor sought permission of the Respondents in this regard. During the surprise check conducted by the vigilance department on 24.02.1997 it was found that one Mrs. Kamal / Abha Raj Bhandari and her two sons named Shri Avinash aged 20 years a student of T.Y.B.Com and Shri Rahul aged 24 years working for City Corporation were staying in the quarters at the time of inspection and neither the applicant nor his family were residing in the quarters. It has been further stated that Smt. Abha Bhandari by her letter dated 09.6.1998 informed the respondents' office that she was residing in the said quarter since December, 1994 and was paying a rent of Rs.4500/- per month to the applicant and has deposited a sum of Rs.40000/- with the applicant. the applicant was not living in the said quarter and in order to get possession of the said quarter from the sons & Mrs. Abha Bhandari he was harassing her by sending people to threaten her to vacate the quarter. It was further stated that the inquiry conducted was proper and applicant was given full opportunity to examine the witnesses and the Disciplinary Authority after due application of mind, has passed the order and the appeal preferred by the applicant was considered by the Appellate Authority found no justification in altering the penalty and rejected the appeal. Thus, the applicant has failed to make out any case for grant of any relief and is not entitled for any relief.

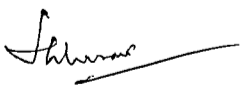


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6. We have heard the learned counsel for the parties and perused the records.

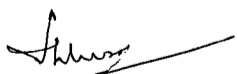
7. Learned counsel for the applicant, at the time of arguments, raised number of contentions in support of the applicant and contended that the impugned orders are illegal and liable to be quashed. On the other hand, learned counsel for the respondents refuted all the contentions and supported the impugned order and contended that there is no merit in the application. We will consider the contentions raised by learned counsel for applicant one by one.

8. Learned counsel for the applicant has contended that the action on the part of Respondent No.2 to effect the recovery of alleged damage rent from the wages of the applicant by the impugned order dated 11.6.98 is illegal and contrary to provisions of the Rule 8 of the rules framed under Public Premises (Eviction of Unauthorised Occupants) Act 1971 and violative of provisions of the Wages Act. Learned counsel for the respondents, on the other hand has raised contention that under the rules, the respondents are entitled to charge damage rent from the allottee of the quarter, who sublet the same. He has placed reliance on the decision of CAT Mumbai Bench decision in J.P. Azad Vs. Union of India OA 1159/92 decided on 21.4.1998 and decision of CAT Principal Bench in Om Prakash Vs. Union of India OA



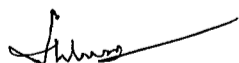
1589/01 decided on 08.4.2002. He has also raised contention that the relief claimed by the applicant in para 8 (a) & (e) is challenging the order dated 11.6.1998 whereas OA has been filed on 19.7.2001 after a lapse of three years, thus it is barred by limitation.

9. It is borne out from the record, that during surprise check by the vigilance department on 24.2.97 some outsiders were found in the quarters on the basis of joint check report respondents issued Memorandum of charge sheet to the applicant on 03.3.1998 for subletting and letter dated 11.6.1998 for recovering damage rent from him. So far as subletting is concerned, the learned counsel for the respondents brought to our notice the Railway Board Circular No.E (D&A)86 RG 6-34 dated 10.4.1986 wherein there is a clear mention that the employee is liable for disciplinary action in addition to taking steps for eviction and charging damage rent. they have also referred Railway Board circular dated 31.5.1961 wherein it is mentioned that punitive action may be taken under the Discipline and Appeal Rules subject to the condition that penalty imposed shall not amount to a deduction from wages, as defined in Section 7 of the Payment of Wages Act. In addition, the Railway Administration, when necessary, may also take suitable steps, under the Public Premises (Eviction of Unauthorised Occupants) Act to get the quarter vacated by the occupant. The railway employee



is bound to reside in the quarter allotted to him. If he does not reside then it amounts to unauthorised occupation of railway quarter. Since third party was residing in the railway quarter, the railway employee has no right to claim any railway quarter. If the railway quarter is occupied by a third party, then the railway administration can certainly initiate Disciplinary Action against the railway servant in addition to other remedy like claiming penal rent and eviction of the quarters under Public Premises Act. For these reasons we hold that the action of the respondents is permissible in law. This view finds support from the judgment of this Tribunal in OA 1159/92 in the case of J.P. Azad Vs. Union of India & Ors. and decision of Principal Bench in OA 1589/01 Om prakash Vs. Union of India decided on 18.4.2002. So far as the applicant's prayer for setting aside order dated 11.6.1998 is concerned this OA has been filed on 19.7.2001 after the lapse of three years. Hence for relief claimed by the applicant in para 8 (a) [✓](e) of OA is barred by limitation. Therefore, the argument raised by the learned counsel for applicant that recovery of damage rent is illegal has no merit.

10. Learned counsel for the applicant has also commented on the report of Inquiry Officer and the order of the Disciplinary Authority. He has argued that the alleged sub-tenant is not examined before the Inquiry



...10.

Officer. The Inquiry Officer has relied on the admission of guilt by the applicant but it was stated that the statement of the applicant was taken by force by Vigilance Inspectors and hence should not be relied upon. Then it was argued that there was no sufficient evidence before the Inquiry Officer to hold that subletting is proved. Then commented on the statement of witnesses who were examined before the Inquiry Officer. Then he argued that Inquiry Officer has placed undue reliance on the evidence of vigilance inspector who conducted the raid and the inquiry officer was deputed from the vigilance department. Then commented the statement of RPF constables who said that the report was prepared by the vigilance inspector and they have put their signature on the instructions of the vigilance inspector. Further that the inquiry officer has not examined the neighboring persons of the said quarters. The fact that Shri Arjunraj Bhandari and his wife was allowed to stay in the quarter is not disputed. He got telephone connection in his name is also established. It is also not disputed that no permission was obtained by the applicant from the department for allowing Bhandari's family to reside in the said quarter. It also borne out from the record that on 24.2.97 vigilance party made joint check by two vigilance inspectors, two I.O. - WS and two RPF constables at 1910 hours and joint check report was signed by all these persons and during the course of the inquiry they all have confirmed on



...11.

this aspect. During the check it was found that one Smt. Kamal Bhandari and her two sons Shri Avinash 20 and Shri Rahul, 24 were staying in the said quarters. Mrs. Kamal Bhandari stated that she was residing in the quarter along with her two sons since 1995 and the applicant was not residing in the said quarter since June, 1996. Applicant has also admitted the fact in his statement dated 07.7.1997. It is alleged by the applicant that his statement of admission was taken by force. This is denied by the respondents. That means, allegation by one side and denial by other. There is no other material to substantiate the allegation of applicant that his statement was recorded by force. It is purely a question of appreciation of evidence. The Inquiry Officer has written a very reasoned and lengthy order mentioning all facts including the admission of applicant and has held that subletting for consideration to a stranger is proved. The report of inquiry officer has been accepted by the Disciplinary Authority which was further accepted by the Appellate Authority. Therefore, we find that there are concurrent finding of fact recorded by the Inquiry Officer, Disciplinary Authority and Appellate Authority. The mere fact that Inquiry Officer belongs to Vigilance department has no adverse effect on the inquiry as applicant never raised any objection either before Disciplinary Authority or before Appellate Authority. The Apex Court in *Devkinandan Sharma Vs. Union of India* 2001 SCC (L&S)

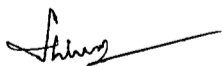


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1079 has held that the ground not raised before Disciplinary Authority / appellate Authority cannot be raised before Tribunal. Thus, Tribunal cannot be expected to reappreciate the evidence and then come to a different conclusion, even if another view is possible. Therefore contentions raised by learned counsel for applicant has no substance. It has been held by Apex Court in Union of India Vs. B.K. Srivastava 1998 SC SLJ 74 "The Tribunals could not sit in appeal against the orders of Disciplinary and Appellate Authorities in exercise of its power of judicial review. In the case of Union of India Vs. A. Nagamallesar Rao 1998 (1) SCLLJ 78 the Hon'ble Supreme Court has again reiterated the principle that the approach of the Tribunal in interfering with the orders of the disciplinary Authority was erroneous as it has proceeded to examine the matter as it was hearing an appeal. In the last portion of para 5 it has been observed as follows:

"It is really surprising that inspite of clear position of law in this behalf and as regards the jurisdiction of the Tribunal in such cases, the Tribunal thought it fit to examine the evidence produced before the enquiry officer as if it was a court of appeal."

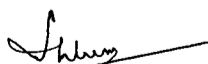
We therefore, see that the latest view of the Supreme Court on the point is that the Tribunal in matter like this, cannot sit in appeal over the findings of the Disciplinary Authority or Appellate Authority and it cannot reappreciate evidence and substitute its own



finding in the place of the findings of the competent authority. In the light of the decisions of the Apex Court we can not go into the question of sufficiency or insufficiency of evidence. We find that there is sufficient evidence on record to support the finding of Inquiry officer that applicant had sublet the quarter to Bhandari family for consideration.

11. Learned counsel for applicant has also contended that the complainant Smt. Kamal Bhandari has not been examined and the applicant has not been provided the opportunity of cross examination of the complainant. It appears from the record that Smt. Kamal Bhandari was not produced for want of address. Applicant could not furnish her address and he has not chosen to call her as a witness. The officials who were present at the time of joint inspection dated 24.02.1997 have been examined and they have proved that check report. In case of State of Tamil Nadu & Ors. Vs. Subramanyam 1996 SCC (L&S) 627 the Hon'ble Supreme Court has held that ^{it} ~~it is equally settled law that~~ ^{it} it is equally settled law that the technical rule of evidence has no application to the disciplinary proceedings and the authority is to consider the material on record. It was further held

"When the conclusion reached by the authority is based on evidence, the Tribunal is devoid of power to reappreciate the evidence and come to its own conclusion on the proof of the charge. The only consideration the Court / Tribunal has in its judicial review is whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence."



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Hon'ble Apex Court in U.P. State Road Transport Corporation Vs. Musairam & Ors. 1999 SCC (L&S) 686, in para 9 it was held that

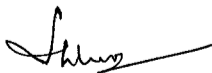
The question whether the authority can act upon the reports filed by the Assistant Traffic Inspector or not and whether these reports should be accepted or not is a matter which has to be examined by the enquiry officer. The Court does not sit in appeal over the findings of the enquiry officer. If the findings are based on uncontroverted material placed before the enquiry officer, it cannot be said that these findings are perverse."

In view of the aforesaid discussion, the evidence of Smt. Kamal Bhandari was not required as the charges are established on the basis of evidence adduced during the course of the inquiry. In the light of the decisions of the Apex Court, we cannot go into the question of sufficiency or insufficiency of evidence as particularly when there are concurrent findings recorded by the authorities. The arguments raised by the learned counsel for the applicant in this regard has no force.

12. In Apparel Export Promotion Council Vs. A.K. Chopra AIR 1999 SC 625 the Hon'ble Supreme Court laid down the following proposition of law:

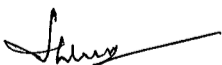
In departmental proceedings, the Disciplinary Authority In departmental proceedings, the Disciplinary Authority is the sole Judge of facts and in case an appeal is presented to the Appellate Authority, the Appellate Authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact

...15.



finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in Writ Jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and / or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since, the High Court does not sit as an Appellate Authority, over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot normally speaking substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even in so far as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the Departmental Appellate Authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Even though Judicial Review of administrative action must remain flexible and its dimension not closed, yet the Court in exercise of the power of judicial review is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial Review, is directed not against the decision, but is confined to the examination of the decision making process.

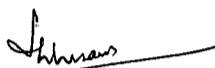
13. We have gone through the inquiry proceedings. There is no flaw in the inquiry proceedings. It is neither violation of principle of natural justice nor in violation of statutory rules prescribing the mode of inquiry. The Disciplinary Authority and Appellate Authority have passed the speaking order and the decision of the authorities are not vitiated by



...16.

consideration extraneous to the evidence and the merit of the case. The punishment is commensurate with the gravity of the misconduct.

14. In the result, the OA being devoid of merit, fails, and dismissed accordingly. No order as to costs.



(MUZAFFAR HUSAIN)
MEMBER (J)



(ANAND KUMAR BHATT)
MEMBER (A)

Gajan