IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1159/92.

Date of Decision: 21/4/98

Joginder Pal Azad, ... Applicant.

Shri L. M. Nerlekar, ... Advocate for Applicant.

Versus

Union Of India & Another, ... Respondent(s)

Shri S. C. Dhavan, ... Advocate for Respondent(s)

CORAM:

Hon'ble Shri. Justice R. G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri, P. P. Srivastava, Member (A).

(1) To be referred to the Reporter or not? No

(2) Whether it needs to be circulated to other Benches of the Tribunal? No

(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1159/92

Dated this Pronounced the 24 day of April, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA, VICE-CHAIRMAN.

HON'BLE SHRI P. P. SRIVASTAVA, MEMBER (A).

Joginder Pal Azad,
Ex-Sub Station Inspector,
under Divisional Electrical
Engineer, Central Railway,
Kalyan.

Residing at -
C/o. Shri Rakesh Sharma,
5, Zonal Apartment,
Dr. Ambedkar Road,
Kalyan - 421 301. ... Applicant

(By Advocate Shri L.M. Nerlekar)

VERSUS

1. Union Of India
through General Manager,
Central Railway,
Bombay V.T.

2. The Divisional Railway Manager,
Central Railway,
Bombay V.T. ... Respondents.

(By Advocate Shri S.C. Dhavan)

: ORDER :

PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply. The Learned Counsel for the respondents has made available the records pertaining to the disciplinary enquiry. We have heard the Learned Counsels appearing on both sides.

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2. The applicant was working as a Sub-Station Inspector in the Central Railway at the relevant time. He had been allotted quarter No. 953/A, Mitra Type, Kalyan. The applicant joined the railway service in 1960. It appears, in connection with some matters, the officers of the Railway Protection Force raided the quarters of the applicant. Then it came to light that the applicant had sublet his quarter to one Mrs. Weltshire on rent. The R.P.F. Officers recorded the statement of that lady. Subsequently, they recorded the statement of the applicant and then the matter was reported to the administrative-wing of the railways. Then the railway administration initiated disciplinary enquiry against the applicant for subletting the official quarters to a third person. The applicant sent a statement denying the allegation of subletting. Then an enquiry officer was appointed. He issued notice to the applicant, both to his residential address and official address. It appears that the applicant remained absent from office since October/ November, 1980 till 01.09.1982. Number of letters were sent to the applicant by registered post and one more notice was also sent to applicant's Defence Assistant, but the applicant did not participate in the disciplinary enquiry. The Inquiry Officer examined some witnesses and submitted his report holding that the charge of subletting was proved against the applicant. The Disciplinary Authority accepted the

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report of the Inquiry Officer and passed an order dated 12.03.1982 imposing penalty of removal from service on the applicant. As already stated, the applicant had remained absent and according to him when he went to report to duty on 01.09.1982 he came to know about the punishment order. Then after taking a copy of the order he preferred an appeal to the Divisional Railway Manager. Since he did not get any information about the disposal of the appeal, he filed a writ petition in the High Court at Bombay in W.P. No. 559/83. Subsequently, he withdrew the appeal since it involved the disputed questions of fact and filed a suit bearing no. 195 of 1983 in the Court of Civil Judge (Junior Division), Kalyan, challenging the punishment order. After the constitution of this Tribunal, the said suit came to be transferred to this Tribunal and was numbered as T.A. No. 60 of 1988. This Tribunal by order dated 26.02.1991 allowed the application and gave a direction to the Appellate Authority to dispose of the applicant's appeal within a particular time limit. In pursuance of this order, the Appellate Authority disposed of the appeal by an order dated 24.02.1992 under which the appeal came to be dismissed. The present application is filed challenging the order of the Appellate Authority and Disciplinary Authority. In the meanwhile, the applicant preferred a petition to the Revising Authorithy. Even the Revising Authority concurred with the findings of the Disciplinary Authority and Appellate Authority on

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merits, but however, taking a lenient view on humanitarian grounds, modified the punishment of removal from service to one of retirement with full pensionary benefits by order dated 19.02.1996. After the order was passed by the Revising Authority, the O.A. has since been amended to challenge that order also.

3. The applicant in this Original Application is challenging the legality and validity of the report of the Inquiry Authority, the orders of the Disciplinary Authority, the Appellate Authority and the Revisional Authority, by taking number of grounds. It is alleged that the whole enquiry was an ex-parte enquiry with no notice to the applicant and hence vitiated. Then it is alleged that there is violation of principles of natural justice since the documents demanded by the applicant was not furnished. That there was delay in issuing the charge-sheet. That the applicant was sufferring from illness and hence he could not participate in the enquiry and he was not served with any notice to attend the enquiry. That the copy of the Inquiry Officer's report was not furnished to the applicant before the Disciplinary Authority passed the order of punishment. The allegation of sub-lease is false and there is no evidence to prove the same. That the report of the Inquiry Officer is perverse and biased and passed on no evidence. After amending the O.A., a new ground is taken that the punishment given to the applicant is harsh when

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compared with minor penalties given to some others who were also charged for the same conduct of subletting the quarters. It is, therefore, alleged that there is discrimination in awarding the punishment to the applicant, thereby, there is violation of Articles 14 and 16 of the Constitution of India. Hence, it is prayed that all the orders of the respective authorities be quashed and the applicant be reinstated in service with full back wages and continuity of service.

4. The respondents have filed a reply denying many of the allegations in the application and pleading justification in the institution of departmental enquiry and about holding ex-parte enquiry. It is alleged that the applicant had unauthorisedly sublet the quarter in question to an outsider. The applicant never demanded copies of any documents, as he is now alleging. The applicant and his Defence Assistant never participated in the enquiry inspite of number of notices sent by registered post. Some of the notices could not be served on the applicant and therefore, they were pasted at his residence at Kalyan. Notices were also sent to the applicant's permanent address in his native place, namely Jalandar. Notices were also published on the notice board of the place of work where the applicant was posted at the relevant time. It is alleged that the applicant purposely and deliberately avoided the enquiry. That the applicant has not made out any case for interfering with the

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impugned orders. Hence, it is prayed that the application be dismissed with cost.

5. At the time of argument, Mr. L.M. Nerlekar, Sr. Counsel appearing for the applicant, raised number of contentions in support of the application and contended that the impugned orders are illegal and liable to be quashed. On the other hand, the 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 the Learned Counsel for the applicant one by one.

6. In the light of the arguments addressed before us, the question is, whether the finding of guilt about subletting recorded by the respective authorities and the final order of punishment of compulsory retirement from service w.e.f. 12.03.1982 is sustainable or not ?

7. The main argument of the Learned Counsel for the applicant is that subletting of Government quarters is not a mis-conduct, punishable under the disciplinary rules. He therefore argued that even if subletting is proved, it is not a misconduct and therefore, the penalty imposed by the concerned authorities is not sustainable in law. He has invited our attention to some authorities, in particular -

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(i) (1989) 11 ATC 816 .. ‖ Siraj Ahmad V/s. Union Of India & Others ‖.

(ii) A.T.R. 1987 (1) CAT 567 .. ‖ Abdulmohit Mustakikhan V/s. Union Of India & Ors. ‖

(iii) A.T.R. (1988(1) CAT 264 .. ‖ Nawal Singh V/s. Union Of India & Others ‖

(iv) 1990 (2) ATJ 365 .. ‖ Shri Satya Prakash V/s. Union Of India through Secretary, Ministry of Railways & Others ‖

(v) 1990 (2) SLJ 482 .. ‖Purna Chandra Sahoo V/s. State of Orissa & Others ‖

In support of his contention that continued unauthorised occupation in the quarters is not a misconduct punishable under the disciplinary rules, we have perused all the above decisions. In four cases it was a case of the employee continuing in the quarter without vacating the same inspite of his transfer to a different place. In one case, it is a case of cancellation of allotment and a direction to vacate the quarters and sincehe did not vacate, disciplinary action was taken. But none of these cases pertain to subletting. It is observed in these cases that if an employee does not vacate the quarter inspite of transfer, retirement or cancellation of allotment, it does not amount to misconduct punishable under the disciplinary rules. It is pointed out that in such a case, the employee being in unauthorised possession, is liable to be evicted by taking recourse to Public Premises Act and he will be liable to pay damage rent but it is not a case for initiating disciplinary action.

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In our view, none of these decisions have any bearing on the question of subletting, which is the subject matter in the present case. As far as subletting is concerned, the Learned Counsel for the respondents brought to our notice the master circular of Railways on allotment of quarters, etc. where there is a clear mention that in the case of subletting, the employee is liable for disciplinary action in addition to taking steps for eviction and claiming penal rent. Nodoubt in the master circular it is seen that the Railway Board circulars are issued in 1980 and 1986.

8. The Learned Counsel for the applicant contended that 1980 or 1986 circular cannot be made the basis of disciplinary action against the applicant since the alleged subletting pertains prior to 1979. He also relied on some decisions in support of his contention that the subsequent rule or circular cannot be applied retrospectively to previous incidence. But in our view, the argument that the subletting was made a misconduct in 1980 or 1986 is not correct. We find that from the beginning subletting was made a misconduct to be punished under the disciplinary rules.

9. Both the counsels have placed reliance of M.L. Jand's Railway Servants (Discipline & Appeal) Rules, 1968 (1997 Edition) in support of their contention regarding many points. The Learned Counsel

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for the respondents invited our attention to para 4 at page 86 of the said book where there is a reference to Railway Board's circular dated 31.05.1961. It is mentioned there, that in case of unauthorised occupation of railway quarters, punitive action may be taken under the Discipline & Appeal Rules, subject to claiming penal rent and taking steps for eviction, etc. Therefore, even in the 1961 circular there is a provision as per the Railway Board Circular that action may be taken under the disciplinary rules in case of unauthorised occupation. Then we find in 1980 and 1986 there are circulars issued which are found in the master circular about initiating disciplinary action for subletting railway quarters.

A railway employee is bound to reside in the quarters allotted to him. If he does not reside in that house and if he allows a stranger or a third party to reside, then it amounts to third party being in unauthorised possession railway quarters, since the third party, who is not a railway employee, has no right to reside in railway quarters. In such a case of unauthorised possession of the railway quarters by a third person, the railway administration can certainly initiate disciplinary action against the railway servant who has inducted a third party, in addition to other remedy like claiming penal rent, damage rent and taking steps for eviction under the public premises act, etc. For these reasons we are holding that the initiation of disciplinary action against the applicant for subletting the quarters is justified and permissible in law.

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10. The Learned Counsel for the applicant contended that the charge is vague and on this ground the charge-sheet should be quashed. We are not impressed by this argument. The ~~crust~~ gist of the charge is that the applicant being a railway employee, has sublet~~ted~~ the quarter to a third person, therefore, he has committed misconduct. The charge is very simple and there is no merit in the submission that it is vague. The applicant know as to what case he has to met, namely - that he has unauthorisedly allowed a third person to reside in the quarter by subletting the same for consideration. The period mentioned in the charge-sheet may or may not be correct. The subletting may be for one year, two years or many years. The question is, whether the applicant had sublet the quarters to a third person or not and the period is not wholly relevant. If there is subletting even for three months or six months, it is a misconduct. Therefore, we reject the argument urged on behalf of the applicant that the charge-sheet should be quashed on the ground that the charge is vague.

11. Then there ~~is~~ was an argument about delay, namely 1 year and 4 months in issuing the charge-sheet. Even in this point, we find no merit. The Railway Protection Force Officers during the surprise raid on the applicant's quarter regarding some other case came to know that the applicant was not residing there and he had sublet the quarters to a lady. Then the R.P.F. Officers have reported the matter to the railway administration, who initiated action under the disciplinary rules. A period of one year and four months can by no means be

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said to be such a delay so as to quash the entire proceedings.

The Learned Counsel for the applicant invited our attention to some authorities on this point, which are -

(i) A.T.R. 1990 (1) SC 581 .. (State of Madhya Pradesh V/s. Bani Singh & Another).

(ii) 1989 (4)(CAT) SLJ 495 .. (Shri K. K. Sood V/s. Union Of India & Others. (

(iii) 1990 (13) ATC 156 .. (K. K. Sood V/s. Union Of India & Others).

In the first case, the delay was 11 years in issuing the charge-sheet. In the second case there was a delay of 16 years in issuing the charge-sheet after the alleged misconduct and further, the charge-sheet was served on the date of retirement. The third case is not an independent case but it is the same case as is reported in the second case, namely - 1989 (4)(CAT) SLJ 495. That means, the second and third cases pertain to same case but reported in different journals.

The Learned Counsel for the applicant also invited our attention to Swamy's Case Law Digest 1995 (2) where it refers to a case of delay of 6 to 7 years in issuing the charge-sheet.

In the very nature of things, there cannot be any hard and fast rules as to how many years delay is permissible or as to after how many years a charge-sheet could be quashed. It all depends upon

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the facts and circumstances of each case, the nature and gravity of the allegation, conduct of the employee, etc. Taking in view of the matter, the delay of one year and 4 months can by no means be said to be an undue delay so as to quash the charge-sheet, hence we are not impressed by the argument about delay in issuing the charge-sheet.

12. The next argument of the Learned Counsel for the applicant is about the ex-parte enquiry held by the Inquiry Officer and about non-service of notice on the applicant during the enquiry.

Admittedly, the charge-sheet had been served on the applicant and he had sent his reply to the charge-sheet denying the allegations made against him. According to the Inquiry Officer, the applicant never participated in the enquiry and remained absent and notice sent to him by different modes could not be served on him.

The Learned Counsel for the respondents has placed before us two files pertaining to this enquiry. We have carefully examined the enquiry papers. It is seen that the notices dates of enquiry were sent to the applicant by registered post but they could not be served since he was not available. Then notices were pasted on the door of the residential premises of the applicant. Then notices were also pasted on the notice board of the workshop where the applicant had been posted. It is interesting to note that on his

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own admission, the applicant never attended office from later part of October 1980 till end of August, 1992. He has remained absent for nearly two years. How could we expect the administration to serve a notice on him since whenever notice was sent by post or through messenger, he was not to be found. The notices were affixed on the door of his house. The Inquiry Officer took precautions to send one more letter by Registered post to the applicant's address in the native place, namely - Jallandar, but even that notice could not be served. Then notice also has been sent to the applicant's Defence Assistant, C. Radhakrishna. Even Mr. Radhakrishna did not appear before the Inquiry Officer to conduct his case. In our view, the Inquiry Officer has taken all necessary steps to inform the applicant about the enquiry dates, but in vain. The Learned Counsel for the respondents invited our attention to page 295 of M.L. Jand's book mentioned above, where there is a reference to two railway board's circulars dated 19.11.1971 and 17.11.1970 where they provide that in case the notices cannot be served personally on the railway servant, then notices should be pasted on the notice board of the place of work of the official and also on the door of the residential of the official. In the present case, the Railway Administration has followed the circular by pasting notices on the residential premises of the applicant and also on the notice board in the place of his work. Having sent a reply to the charge-sheet, the applicant could also have made some enquiry about the progress. He should have told Mr. Radhakrishna, his Defence Assistant, to find out as to what has happened to the enquiry.

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Having regard to the facts and circumstances of the case, we could reasonably conclude that the applicant has deliberately stayed away from the enquiry. No other influence further interference is possible in the circumstances.

Infact, the Learned Counsel for the applicant has himself relied on a case reported in 1989 9 ATC 726 (Y. Danial Thakaran V/s. Head P.G.A., Vikram Sarabhai Space Centre, Trivandrum & Another) where it is observed that the notice sent by Registered Post to the applicant had been returned unserved as "Left". Then it is observed that it was necessary for the respondents to get the notices pasted at the previous known address of the applicant or in a news-paper before proceeding ex-parte. But in the present case, we have found that the railway administration has on two to three occassions pasted notices on the last known residence of the applicant and also on the notice board of the place of work.

The Learned Counsel for the applicant submitted that the applicant was not well. Few xerox copies of the medical certificates are produced in this case. This O.A. was filed in 1992 but we are concerned with an enquiry of 1980-81. There is nothing to show that the applicant informed his illness either to the Disciplinary Authority or Inquiry Authority or atleast his immediate official superior. On the other hand, this is the case of applicant remaining absent unauthorisedly for two years. Now he hcomes out with a plea that he was never aware of any of these proceedings. Therefore;

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we are inclined to hold that this is a case of applicant's deliberately staying away from the enquiry and the administration has taken all necessary steps according to rules for serving the notice and rightly proceeded with ex-parte enquiry.

12. Another submission of the Learned Counsel for the applicant is that the Inquiry Officer was appointed even before the written statement of the applicant and hence it is illegal. Reference was made to some of the clauses of Rule 19 of the Disciplinary Rules to highlight this point. In our view, it is not necessary to consider the relevant provisions since on admitted facts the Inquiry Officer has been appointed only after the written statement of the applicant. Hence we need not consider the question about the legality or otherwise of appointing and Inquiry Officer before the receipt of written statement.

The Learned Counsel for the respondents produced a true copy of the writ petition no. 559 of 1982 filed by the applicant before the High Court challenging the very disciplinary enquiry and later withdrew the same and filed a suit. In this writ petition in para 6, the applicant has stated that after receiving the charge-sheet he submitted a written reply dated 01.08.1979 and denied all the charges. It is seen from the record that the first

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Inquiry Officer was appointed in 1980 and the second officer was appointed in 1981 . At any rate, both the Inquiry Officers were appointed long after the applicant submitted his written statement dated 01.08.1979. Therefore, the argument that the Inquiry Officer was appointed even before the receipt of charge-sheet has no merit on the admitted facts. We may also mention that after withdrawing the writ petition, the applicant filed a suit bearing No. 195 of 1983 which came to be transferred to this Tribunal and renumbered as T.A. 60/88. We have sent for the file of T.A. No. 60/88 and perused the plea in that case. Here also the applicant has clearly stated that he sent a written statement or reply to the charge-sheet on 01.08.1979. Therefore, the Inquiry Officer has been appointed after the receipt of charge-sheet and no illegality is committed on this ground.

13. Another submission is that the applicant had demanded copies of some documents and they were not furnished to the applicant and, therefore, there is violation of principles of natural justice and the enquiry is vitiated. The applicant must establish that he did ask for certain documents. In this case, the applicant has not produced any copy of the letter or copy of application asking for any particular documents. Even granting for a moment that certain documents were not given, he has to further establish that non-furnishing a copy of the particular document has caused prejudice to the applicant. Even on this point there is no

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sufficient and clear pleadings nor any material to support the same. When the applicant has not participated in the enquiry, even if some documents have been furnished to the applicant, it would not have helped him in any way. If the applicant had participated in the enquiry and wanted to rely on a particular document by producing the same or wanted to comment on the documents produced by the prosecution, then the matter would be different. We have already given a finding that the applicant deliberately stayed away from the enquiry and, therefore, he has nothing to show that any prejudice was caused to him by not giving a copy of the particular document. For one thing, he has not placed any material on record to show that he made a request for such a document. For another, he has not made out any case of prejudice being caused to him due to this, particularly when he has stayed away from the enquiry.

14. Then it was argued that the charge-sheet was issued by an officer who was not the Appointing Authority of the applicant, and therefore, the charge-sheet is illegal and liable to be quashed. As rightly argued by the Learned Counsel for the respondents, this plea is not taken in the original application which was filed in 1992. The O.A. was amended in 1996 but not attempt was made to amend the O.A. to take this plea. Before the Appellate Authority no such stand was taken. Before the Revisional Authority no such stand was taken. Though the applicant had filed previous writ petition,

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previous suit and previous O.A., this point was never taken. The charge-sheet was issued in 1979 and enquiry was held in 1981. Now for the first time in March 1998 when we heard the argument for the first time, the applicant is raising this plea that the officer who issued the charge-sheet was not the appointing authority and hence it is illegal. Inspite of so many previous litigations and the O.A. pending for the last six years before the Tribunal, the question is now raised for the first time in March, 1998 in respect of a charge-sheet issued in 1979. It is a highly belated plea and further, it is not purely a question of law. It is a mixed question of law and fact. There should be sufficient pleadings about the post of the applicant, about his appointing authority, etc. In these circumstances, we hold that this belated point raised now at the time of argument about the competence of the officer who issued the charge-sheet is liable to be rejected summarily.

15. Having observed that this argument about the competence of the officer who issued the charge-sheet should not be entertained and should be rejected summarily, we have still applied our mind and examined the same but find that there is no merit in that argument. We briefly give our reasons on this point.

The charge-sheet was issued by the Divisional Electrical Engineer but the penalty is imposed by the Senior Divisional Engineer. There is no dispute about the competence of Sr. Divisional Engineer to impose the penalty of removal from service.

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The argument is that the Disciplinary Authority, namely - Sr. Divisional Engineer, should have himself issued the charge-sheet and that the charge-sheet issued by his subordinate, namely - Divisional Engineer, is illegal. The Learned Counsel for the applicant was not able to point out anything from the 1968 Rules to support his contention that the charge-sheet must be issued only by the authority who is empowered to impose a particular penalty.

Rule (8) of the Railway Servant (Discipline and Appeal) Rules, 1968, provides about the authorities to institute proceedings. Clause (1) is not relevant for our purpose. Clause (2) of Rule 8 reads as follows :

> "A disciplinary authority competent under these rules to impose any of the penalties specified in Clauses (i) to (iv) of Rule 6 may; subject to the provisions of Clause (c) of sub-rule (1) of Rule 2, institute disciplinary proceedings against any Railway servant for the imposition of any of the penalties specified in Clauses (v) to (ix) of Rule 6, notwithstanding that such disciplinary authority is not competent under these rules, to impose any of the latter penalties."

A perusal of the above sub-clause shows that even an authority who has powers to impose any of the minor penalties can issue a charge-sheet in respect of major penalties also.

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In the present case, it is not disputed before us that the Divisional Electrical Engineer who issued the charge-sheet was the Controlling Officer under whom the applicant was working and he had power to impose minor penalties, but he had no power to impose major penalties, since the appointing authority for the applicant's post was the Senior Divisional Engineer. If once it is not disputed that the Divisional Electrical Engineer had power to impose minor penalties, ~~can~~ by virtue of Rule 8(2) of the 1968 Rules he gets power to issue a charge-sheet even in respect of major penalties, though he may have no power to impose major penalties.

But the Learned Counsel for the applicant placed strong reliance on para 7 in page 9 of Mr. M.L. Jand's Book, where there is reference to a Railway Board's letter dated 04.02.1971 stating that the Railway Board is clarifying that the authority who is competent to impose major penalties can alone initiate disciplinary proceedings and issue the charge-sheet. It is not a regular circular but it is only a letter of clarification by the Railway Board. When there is a statutory rule providing that an authority who can impose minor penalties can issue a charge-sheet for major penalties, that cannot be taken away by a letter from the Railway Board. The Railway Board circulars and letters may have some force, provided the area is not covered by the statutory rules. Here when the statutory rules are

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specific and unambiguous, the effect of the statutory rule cannot be taken away by a clarificatory letter of the Railway Board.

We are fortified in our view since there is another provision in the rules which is Rule 10 of the 1968 Rules. It says that if the disciplinary authority during the proceedings of the enquiry finds that he cannot impose proper penalty warranted by the facts of the case, then it is provided as follows :

> " ..... that authority shall forward the records of the enquiry to the appropriate disciplinary authority who shall act in the manner has hereinafter provided."

It is, therefore, clear that the Disciplinary Authority who has issued the charge-sheet finds at a later stage that he is not competent to impose a major penalty which is warranted by the enquiry, then he can submit the papers to the appropriate disciplinary enquiry, therefore, even though a particular authority has no powers to impose major penalty, still he could issue charge-sheet and hold the enquiry but he cannot impose the major penalty but he should send the papers to the concerned appropriate authority.

16. There are number of decisions on this point, of which one is cited by the Learned Counsel for the applicant himself, which is reported in

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1993 SCC (L&S) 206 (P.V. Srinivasa Sastry & Others V/s. Comptroller & Auditor General & Others (where the Supreme Court has observed that any authority below the appointing authority can initiate disciplinary enquiry and issue charge-sheet, unless there is a rule that appointing authority alone should initiate the disciplinary enquiry.

17. The Learned Counsel for the respondents invited our attention to some decisions on the point. In 1996 SCC (L&S) 433 (Inspector General of Police and Another V/s. Thavasiappan (the Supreme Court observed that there is no necessity for the very authority empowered to impose the proposed penalty to issue the charge-sheet. In that case, the Deputy Superintendent of Police had issued a charge-sheet against a Sub-Inspector but he had no power to impose major penalties. The enquiry papers were submitted to the appointing authority, namely - the Deputy Inspector Chief of Police, who imposed a major penalty of compulsory retirement. The matter was challenged before the Madras Bench of this Tribunal. The Madras Bench of this Tribunal took the view that since the charge-sheet was issued by a subordinate to the appointing authority and that the authority had no powers to impose major penalty, the issuance of charge-sheet and subsequent proceedings were quashed. The Supreme Court reversed the findings of the Tribunal and held that it is not necessary that the charge-sheet should be issued

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only by the Appellate authority who has power to impose major penalties. It was held that there is nothing illegal in the subordinate authority issuing the charge-sheet.

Similar view was taken by the Supreme Court in the case of Commissioner of Police V/s. Jayasurian & Another (1997 SCC (L&S) 1649). It is held there that the charge-sheet need not be issued by the Appointing Authority himself but any other authority who is the Controlling Authority can initiate departmental proceedings and issue the charge-sheet.

In 1995 (2) ATJ 80 (Brijlal M. Godara V/s. The Divisional Rly. Manager & Others). A Division Bench of this Tribunal also took the same view, that an officer higher than the delinquent officer can initiate the Disciplinary proceedings, though he may not be competent to impose major penalty.

We have already referred to the rules and the authorities bearing on the point and, therefore, we hold that there is no illegality in the Divisional Electrical Engineer issuing the charge sheet and holding the enquiry but it may be noted that the Divisional Electrical Engineer did not pass the order of penalty but he submitted all the papers to the ~~Appellate~~ appointing Authority, namely - the Sr. Divisional Engineer who has passed the order of penalty. Hence, there is no illegality in the issuance of charge-sheet.

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Another submission on behalf of the applicant is that, there is discrimination in the ~~proposition~~ imposition of penalty. According to him, in the present case the applicant was first given the penalty of removal from service by the Disciplinary Authority, which is now reduced to compulsory retirement by the Revisional Authority. The Learned Counsel for the applicant submitted that in two or three other cases, different authorities, either in Railways or else where, have imposed lesser penalty. It is, therefore, submitted that there is discrimination in awarding penalty and it violates article 14 of the Constitution of India. We are not impressed by this argument. There is no rule as to what punishment should be levied in what case. Each case depends on its own facts and circumstances. The Law provides the maximum punishment. It is open to the concerned authority to impose any penalty within the maximum permissible limit. Even in criminal cases, for example - for an ordinary theft case, the punishment is 3 years. In one case a Magistrate may give punishment of three years, in another case another magistrate may give punishment of three months, in another case one magistrate may give punishment of one week or one day. Suppose in a given case one magistrate has given a punishment of one month in theft case, all accused in theft cases cannot say that they must be given punishment of only one month and nothing beyond that. There is no such rule or law. The Learned Counsel for the applicant has referred to some authorities which are wholly beside the point.

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The Learned Counsel for the applicant has invited our attention to Note 247 in Swamy's case Law Digest 1995 (1). That was a case where it was found that two officers had been separately charge-sheeted in respect of fradulent weigh bills regarding transfer T.A. Both the officers had taken the fradulent weigh bills from the same transport company on the same day. In those circumstances it was mentioned that since both the officers had committed identical offences at the same time and at the same place and in respect of the same transport company, there should be no discrimination in ~~issuing~~ giving punishment to them.

Similarly, the Learned Counsel for the applicant also relied on Note 177 in Swamy's case Law Digest of 1994. That was a case where during a surprise visit by a Sub-Inspector two constables were found in a drunken condition on duty. Then two separate charge-sheet~~s~~, ~~was~~ were issued to them and enquiry was held. One constable in one enquiry was given punishment of with-holding of two increments whereas in the other case~~s~~ regarding another constable, the punishment was compulsory retirement. In those circumstances it was observed that ~~since~~ the case of both the constables were identical and they had committed the identical misconduct at the same time and the same date and examined by the same doctor and the misconduct came to light at the time of surprise visit by the Sub-Inspector and further, the constable who was given lesser punishment had greater percentage of alcohol than the other constable, then the punishment should not be ~~discriminated~~ different.

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In the present case, the other cases of sub-letting are on different dates and by different disciplinary authority and there is nothing common at all. In those circumstances, the question of discriminatory punishment does not arise at all. Further, the judicial review on this point is also very limited. We are not sitting in appeal over the finding of guilt or quantum of punishment given by the Disciplinary Authority. This is only a judicial review. We can interfere if there is any illegality or irregularity in the decision making process and not in the decision itself. Anyhow, having regard to the facts and circumstances of the case, we do not find that the theory of discriminatory punishment is attracted to this case.

18. Then the Learned Counsel for the applicant commented on the merits of the case. He argued that the alleged sub-tenant was not examined before the Inquiry Officer. Then 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 the R.P.F. Officers and hence, should not be relied upon. Then it was argued that there was no sufficient evidence before the Inquiry Officer to hold that sub-letting is proved. Then he commented on the statement of three witnesses who were examined before the Inquiry Officer. Then he has also relied on some decisions.

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As far as merits are concerned, the allegation against the applicant as per charge is, during the relevant period the applicant had committed gross misconduct and acted in a manner unbecoming of a Railway Servant in subletting his railway quarter allotted to him to one Mrs. C. Weltshire, on a rent of Rs. 60/- per month and also took Rs. 500/- as deposit and thereby obtained pecuniary gains for himself and committed misconduct under the Service Rules.

The fact that Mrs. Weltshire resided in the quarter is not disputed. Infact, in the original suit filed by the applicant which came to be transferred to this Tribunal in T.A. No. 60/88, the applicant has really admitted that he permitted Mrs. Weltshire to stay in the room of the quarters for few months. We have perused the original file in that case, which came to be registered as T.A. 60/88 by getting the file of that case. But the applicant's explanation is that, he had allowed his friend's sister to stay in the premises for a temporary period with no monetary gain to himself. Anyhow the fact that Mrs. Weltshire resided in that quarter took some time is not disputed at all. Then it is also brought out from records that the R.P.F. Officers raided the quarters during February, 1978 and then found that the applicant was not residing there but instead Mrs. Weltshire and her family members were residing there. Then the R.P.F. Officials questioned that lady, who admitted

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before them that she has taken the quarter from the applicant on a rent of Rs. 60/- per month and she also paid Rs. 500/- as deposit. Her statement came to be recorded. This is spoken to by three witnesses, Prosecution Witness No. 1 - V. P. Kulkarni, Prosecution Witness No. 2 - V. L. Chaudhary, Prosecution Witness No. 3- Deoram Shankar, who were examined in the disciplinary enquiry. Then it has also come in evidence that the R.P.F. Officers recorded the statement of the applicant who admitted ~~that~~ of having let out the quarters to Mrs. Weltshire and collected money from her. It is also borne out from record that the applicant was residing elsewhere at the relevant time.

It is purely a question of appreciation of evidence. The Inquiry Officer has written a very reasoned lengthy order mentioning all the facts, including the admission of the applicant and has held that subletting for consideration to a stranger is proved. The report of the Inquiry Officer has been accepted by the Disciplinary Authority. This is further accepted by the Appellate Authority and Revisional Authority. Therefore, we find that there are concurrent finding of facts recorded by the Inquiry Officer, Disciplinary Authority, Appellate Authority and Revisional Authority. This Tribunal cannot now be expected to reappreciate the evidences and then come to a different conclusion, even if another view is possible.

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19. It is alleged by the applicant that his statement of confession or admission was taken by force, which is denied by the respondents. That means, allegation by the one side and denial by the other. There is no other material to substantiate the allegation of the applicant that his statement was recorded by force. He never participated in the enquiry to give evidences in this behalf. A bald or vague allegation and self serving statement in the application by the applicant that his statement was taken by force cannot be accepted in the absence of any material to support the same. Even if we ignore the statement of Mrs. Weltshire on the ground that she was not examined during the enquiry, the presence of Mrs. Weltshire with her family members residing in the quarters is proved by the Prosecution Witnesses No. 1, 2 and 3. Then this fact is admitted by the applicant in the previous O.A., T.A. No. 60/88 and further, the admission of the applicant made before the R.P.F. Officers about giving the quarter to Mrs. Weltshire by collecting some rent. We must bear in mind that technical rules of evidence do not apply to disciplinary enquiry. Further, there is no necessity to prove the case beyond reasonable doubt like a criminal case. There is some evidence on record, which if accepted, leads one to conclusion that the applicant had sublet the quarters to a third person for consideration. There are concurrent finding of facts by all the competent authorities. This is not a case of no evidence at all. The sufficiency or insufficiency

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of the evidence is not a matter which can be considered in a judicial review. We are not sitting in appeal over the findings of the competent authority.

20. The Learned Counsel for the applicant referred to some authorities in support of the contention on merits of the case. It is not necessary to consider them, since the recent ~~rendered~~ trend of decisions of the Apex Court clearly points out that the Tribunal cannot sit in appeal over the decision of the competent authority and cannot re-appreciate the evidence like an Appellate Court.

In 1998 (1) SC SLJ 74 ‖ Union Of India & Others V/s. B. K. Srivastava ‖ the Bench of this Tribunal at Allahabad had set aside the findings of the Disciplinary Authority by re-appreciating the evidence. The Supreme Court allowed the appeal and set aside the order of the Tribunal. In para 6, the Supreme Court observed that the Tribunal was not right in its approach and it has acted more as a court of appeal which it was not entitled to do so. In para 7 at page 78, the Supreme Court again observed as below :-

> "The Tribunal could not sit in appeal against the orders of the Disciplinary and Appellate Authorities in exercise of its power of judicial review."

Again in para 8 it has observed as follows :

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> "There has been lawful exercise of power by the Disciplinary and Appellate Authorities. There has been no abuse of power. In these circumstances, the Tribunal should have stayed its hands. It is no part of the function of the Tribunal to substitute its own decision when enquiry is held in accordance with rules and punishment is imposed by the authorities considering all the relevant circumstances and which it is entitled to impose."

In another recent judgement in 1998 (1) SC SLJ 78 (Union Of India & Others V/s. A. Nagamalleshwar Rao) the Supreme Court has again reiterated the principles that the approach of the Tribunal in interfering with the orders of the Disciplinary Authority was erroneous, as it had proceeded to examine the matter as if it was hearing an appeal. In the last part of para 5 at page 80, it is 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 matters like this, cannot sit in appeal over the findings of the Disciplinary Authority or Appellate Authority and it cannot re-appreciate evidence and substitute its own findings in the place of the findings of the competent authority.

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In the light of the latest decisions of the Apex Court, we cannot go into the question of sufficiency or insufficiency of evidences, particularly when there are concurrent findings of facts recorded by all the authorities. We also find that there is sufficient evidences on record to support the finding that the applicant had sublet the quarter to Mrs. Weltshire for consideration.

The Learned Counsel for the applicant also contended that the statements recorded during preliminary enquiry cannot be relied upon during final enquiry without examining those persons who give those statement and referred to certain decisions on this point. In our view, this argument has no merit because the statement recorded by the R.P.F. was not during any preliminary enquiry at all.

21. The next and the last submission by the Learned Counsel for the applicant is that, inspite of the order of the Revisional Authority imposing a penalty of compulsory retirement with full pensionary benefits, the applicant is not being paid full pension. It appears, the Railway administration is not giving full pension to the applicant, presumably on the ground that he has not put in 20 years service to get the full pension, including right to get railway passes, etc.

The Chief Electrical Tractional Engineer is the Revisional Authority. His order is dated 19.02.1996. After holding that the charge is proved against the applicant, as far as penalty is concerned, this is what the Revisional Authority has observed in the last para of his order :

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"However, taking into consideration of the fact and circumstances of the case, I am considering your revision petition after your superannuation date i.e. 31.03.1995 and also of your long 22 years of service as rendered to the Railway Administration, I find that the penalty of 'Removal from Service' is quite harsh. As an act of climancy, I have decided to take a lenient view in the matter purely on humanitarian grounds. I hereby decide to modify the penalty of 'Removal from Service to 'Compulsory Retirement' with full benefit of pension and pensionary benefits, etc. from the date you had been imposed with the penalty of 'Removal from Service' i.e. with effect from 12.03.1982 as it will meet the ends of justice."

(Underlining is ours.)

The Revisional Authority has taken note that the applicant has put in 22 years of service and he has taken a lenient view on humanitarian grounds in view of his long service and modified the penalty from 'Removal from Service' to one of 'Compulsory Retirement' with full pensionary benefits, etc. Therefore, the Revisional Authority has in unequivocal terms, imposed the penalty of Compulsory Retirement with full benefit of pension and pensionary benefits, etc. It is not open to a subordinate authority to interpret this order and grant a lower rate of pension on the ground that the applicant had not completed 20 years of service. Probably, if it would have been brought to the notice of the Revisional Authority that the applicant has not put in the required number of years of service to get full pensionary benefits, the Revisional

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Authority might have given still lesser punishment. When the order of penalty says full pension and pensionary benefits, etc, the lower authorities cannot deny the full pension to the applicant on the ground of want of required number of years of service. The Lower authorities are bound to give effect to the order of Revisional Authority, who has given full pension and pensionary benefit to the applicant with compulsory retirement w.e.f. 12.03.1982. We, therefore, hold that the applicant is entitled to full pension and pensionary benefits, etc. Though the order of the Revisional Authority is unequivocal and unambiguous, this clarification has become necessary in view of the applicant being denied the full pension by the subordinate officers in the railway administration.

22. In the result, the application fails and is hereby dismissed. However, it is hereby declared and clarified that in view of the order of the Revising Authority dated 19.02.1996, the applicant is entitled to full benefit of pension and pensionary benefits, etc. In case the applicant has been paid less pension and other benefits from 12.03.1982, the applicant is entitled to get the difference in the pension and other benefits from 12.03.1982 till now and in future he must get the full pensionary benefits. The respondents shall pay the difference in the pension and pensionary benefits to which the applicant is entitled in view of the clarifications in this order within a period of three months from the date of receipt of this order.

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In the circumstances of the case, there will be no order as to costs.

(P.P. SRIVASTAVA)
MEMBER (A).

21/4/98
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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