

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 994/93

Date of Decision: 25.6.1999

Shri V.L. Pillai

Applicant.

Shri S.Natarajan.

Advocate for
Applicant.

Versus

Union of India and others.

Respondent(s)

Shri R.K. Shetty.

Advocate for
Respondent(s)

CORAM:

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

Hon'ble Shri. D.S.Baweja, 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
(R.G. Vaidyanatha)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, MUMBAI:1

Original Application No.994/93

Friday the 25th day June 1999.

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

Hon'ble Shri D.S. Baweja, Member (A)

V.L. Pillai
Residing at
Survey No. 47/2
Bharat Forge Road
Pune.

... Applicant.

By Advocate Shri S.Natarajan.

V/s.

1. Union of India through
General Manager
Ammunition Factory
Khadki, Pune.
2. General Manager
Ammunition Factory
Khadki Pune.
3. Director General of Ordnance
Factories
Ordnance Factory Headquarters
10 -A, Auckland Road,
Calcutta.

... Respondents.

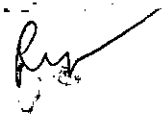
By Advocate Shri R.K. Shetty.

O R D E R (ORAL)

(Per Shri Justice R.G.Vaidyanatha, Vice Chairman)

This is an application filed by the applicant under Section 19 of the Administrative Tribunals Act. 1985. The respondents have filed reply opposing the application. We have heard the learned counsel for both sides.

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2. The applicant was working as skilled worker in the Ordnance Factory at Khadki. On the allegation of subletting the quarter charge sheet was issued against the applicant on 21.1.1990. The accused made oral and written statement admitting subletting of the premises. The Enquiry Officer acted upon the admission of the applicant and submitted that the charges are proved. On the basis of the report the Disciplinary Authority passed an order dated 18.8.1990 imposing the penalty of dismissal from service. The applicant preferred an appeal. The Appellate Authority by order dated 4.9.1993 rejected the appeal on the ground that it is barred by limitation. He did not consider the appeal on merits. Being agrieved by these two orders the applicant has approached this Tribunal.

3. The applicant's case is that he had not sublet the quarter. The applicant has stated that his son-in-law was staying with him. It is stated that son-in-law staying in the premises will not amount to subletting. Hence it is pleaded that even the admission of the applicant that he has sublet the premises to his son-in-law will not amount to mis-conduct. Further case of the applicant is that no enquiry was held to prove the charges against the applicant. Further the case of the applicant is that even if it is proved that the applicant has sublet this will not amount to mis-conduct so as to call for disciplinary action

under CCS(CCA) Rules. It is also the applicant's case that even otherwise the penalty of dismissal from service is grossly dis-proportionate to the alleged mis-conduct.

4. The respondents in their reply pleaded all the facts and circumstances of the case and justified the action taken against the applicant.

5. The learned counsel for the applicant contended that subletting of quarter is not a mis-conduct so as to invoke action under disciplinary rules. Then it was argued that so called admission of the applicant is not an admission on guilt, but it is only admission on facts which do not amount to mis-conduct. He also contended that penalty of dismissal from service is grossly disproportionate. It is also argued that the Appellate Authority did not consider the grounds urged by the applicant and rejected the calim only on the ground of limitation. On the other hand the learned counsel for the respondents stated that subletting is mis-conduct and further it is contracry to the circular issued by the General Manager dated 24.10.1989, which clearly mentions that an official who is subletting the quarter, apart from being liable to be evicted and payment of damage rent, he will be liable to be kept under suspension and disciplinary action which may result in awarding the penalty of dismissal from

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service. Further admission of the applicant must be read along with the allections in statement of impugnation which clearly shows that the applicant has admitted all the allegations including subletting of quarter for running illicit liquor business which is serious matter and therefore the penalty imposed by the competent authority is fully justified.

5. We are not impressed with the contention of the learned counsel for the applicant that subletting the quarter will not amount to mis-conduct. In fact mis-conduct is not defined under rules. In conduct rules anything done which is unbecoming of a Government servant will amount to mis-conduct. When quarter is allotted to an official for a particular purpose and if it is mis-used then conduct of the official will be that of unbecoming of Government servant. Further, in the present case, the department is relying on the circular of General Manager of 1989, which is referred to in the charge sheet, which clearly mentions that subletting of the quarter is a mis-conduct for which the official should be kept under suspension, liable to payment of damage rent and eviction. Since this is a case of mis-conduct on the basis of 1989 circular, we need not consider some of the decisions on which the learned counsel for the applicant placed reliance which are on the basis of general principles. The circular makes it clear that subletting of quarter invites disciplinary action, in addition, any other action for eviction, claiming damage rent etc.

6. The Disciplinary Authority has imposed the penalty of dismissal from service. The learned counsel for the respondents contended that in view of the serious allegation against the applicant about subletting and mis-use of the premises for running illicit liquor business, the punishment is justified. But here no evidence was recorded and no finding was given about the use of premises for illicit liquor business. The Disciplinary Authority has acted upon the finding of the Enquiry Officer who placed findings in the admission of the applicant. The learned counsel for the applicant is right in his submission that admission of the applicant does not amount to admission of all the allegations made in the statement of imputation. The admission is of limited nature namely the applicant has admitted that he had sublet the premises, it does not mention the mis-use of the premises for running illicit liquor business.

The learned counsel for the applicant contended that even the admission about subletting of quarter will not amount to mis-conduct by placing reliance on SR 317 where it is mentioned that sharing of accommodation with close relatives including son-in-law will not amount to subletting the quarter. Any how we will not go into the matter since we are remanding the matter to the Appellate Authority. The Appellate Authority is the final authority on question of facts and he has to consider all facts and then decide

whether the admission of the applicant amounts to mis-conduct as mentioned in the statement of imputation. Hence that question on facts is left open.

7. It appears that the Disciplinary Authority has presumed that the applicant has admitted all the allegations. In our view this cannot be accepted since the admission of the applicant is only about the fact that his son-in-law was staying with him and not about mis-use for illicit liquor business etc.

8. As readily stated the Appellate Authority has not considered the appeal on merits. He has rejected the same on the ground of limitation. According to him the appeal was filed in 1992, after the period of limitation and therefore it is liable to be rejected on the point of limitation. The applicant has sent a representation dated 5.8.1991 to the Defence Ministry which is at page 32 of the paper book. In this representation he has mentioned that he had already submitted the appeal to the Chairman, Ordnance Factory Board on 1.9.1990. At any rate the appeal could not be of the year 1992 but it must be prior to 5.8.1991. Therefore rejection of appeal on the ground of limitation is not sustainable.

9. If the appeal dated 1.9.1990 is not available in the office of the Appellate Authority then we give liberty to the applicant to file a fresh representation taking all grounds in support of his appeal dated 1.9.1990. Then the Appellate

Authority to give personal hearing to the applicant and then decide the appeal on merits without going to the question of limitation.

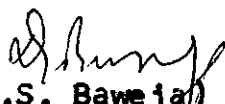
If the Appellate Authority comes to the conclusion that the statement of the applicant during the enquiry amounts to admission of subletting the premises to son-in-law then he must decide whether it amounts to subletting as per rules, and if so, what punishment should be given to the applicant.

If the Appellate Authority feels that this is a case of not only subletting but also used for illicit liquor business, then the admission on record cannot be taken as admission of that guilt. In such a case, if the Appellate Authority feels that there is serious allegation of mis-use of premises for illegal purpose, then he should not act upon the admission of guilt recorded in the enquiry and in such a case he should remand the matter to the Disciplinary Authority to hold the enquiry according to law by recording evidence and giving an opportunity to the applicant to produce defence evidence etc.

In case it decides to remand the matter, the Appellate Authority can give proper direction as to how the intervening period is to be treated, about reinstatement, deemed suspension etc.

We make it clear that if any adverse order is passed, it is open to the applicant either to accept it or challenge the same according to law.

10. In the result the O.A. is disposed of subject to the observations made in para 9 above. The order of the Appellate Authority dated 4.9.1993 is hereby set aside. The matter is remanded to the Appellate Authority. Since this is an old case of 1993, the Appellate Authority directed to dispose off the appeal within a period of four months, from the date of receipt of copy of this order. We give liberty to the applicant to submit the grounds of appeal within two weeks from today to the Appellate Authority. The Appellate Authority shall consider those grounds and give a personal hearing to the appellant and consider the same according to law and in the light of observations made above. No order as to costs.


(D.S. Baweja)
Member (A)


(R.G. Vaidyanatha)
Vice Chairman

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