

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 453/93

Transfer Application No:

DATE OF DECISION 11.5.1993

Shri P. Paulraj

Petitioner

Shri M.S. Ramamurthy

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Shri A.L. Kasturay

Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri V.D. Deshmukh, Member (J)

The Hon'ble Shri

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes* *no*
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(V.D. Deshmukh)
Member (J)

NS/

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 453/93

(2)

Shri P.Paulraj ... Applicant

V/S.

Union of India & Ors. ... Respondents

CORAM: Hon'ble Member (J) Shri V.D.Deshmukh

Appearance

Shri M.S.Ramamurthy
Advocate
for the Applicant

Shri A.L.Kasturey
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 11.5.1993

(PER: V.D.Deshmukh, Member (J))

Today the application is before me for admission and interim relief. The respondents who have filed a caveat were served with the copy of the application and have filed a short reply opposing the admission and the interim relief.

2. I heard the learned counsels for the applicant and the respondents. The application is admitted and taken for hearing.

3. The applicant who was serving with the Western Railway was served with the charge-sheet dated 3.10.1991 which was replaced by the charge-sheet dated 17.12.1991. After the enquiry was held, the order of removal of service was passed on 16.4.1993. However, it appears that the applicant was not served with the order of removal till the application was filed. The order of removal of service dated 16.4.1993 is attached to the short reply filed by the respondents and it is the contention of the respondents that it was ^{was not} pasted on the premises where the applicant was last working.

4. In the above circumstances, the applicant filed this application without exhausting the remedy of the appeal which is statutorily provided. There cannot be any doubt that the applicant has to exhaust the remedy of appeal before he approaches this Tribunal. The present application can, therefore, be disposed of with appropriate directions regarding the filing of and the disposal of the appeal. The respondents agreed that the appeal lies to the General Manager.

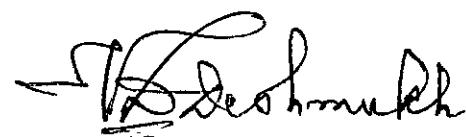
5. Mr. Ramamurthy for the applicant has very strongly relied upon the judgement of the Ernakulam Bench of C.A.T. in P. Moosa vs. Union of India & Ors. (1989) 11 ATC 344 Vol.11 and the judgement of Chandigarh Bench in the case of Satya Parkash vs. Union of India & Ors. (1991) 15 ATC 445. In both these cases, it was held that the disciplinary action on the ground that the premises which were allotted to an employee ~~for his residential purpose~~ ^{were} ~~was subletted~~ was illegal and the respondents either could have recovered the penal rent from the employee or take proceedings under the Public Premises (Eviction of unauthorised occupants) Act, 1971. In both the cases, the applicants were charge-sheeted on the ground of subletting/misuse of Government premises allotted to them. In the present case, the copy of the enquiry report which is attached to the application shows that the conclusions of the Enquiry Officer were that the charged employee, i.e. the applicant had let out the residence allotted to him by the Railway Administration exclusively for himself and for his family members to ~~outsiders~~ outsiders and from that premises a Regd. Society was functioning. With this conclusion, he ~~found~~ ^{found} that the applicant had contravened Rule 3(1)(iii). He was ~~not~~ ^{u/s rule} absolved of the other charge 3(1)(ii). It is thus obvious that prima facie the facts in this case are similar to the facts in the judgements of the Chandigarh Bench and the Ernakulam Bench (Supra). The only charge which was found to be proved against

the applicant was that the premises allotted to him were sublet~~ted~~ and a Society was functioning from the said premises. In view of the above two charges, I find that although it is necessary that the applicant should exhaust the remedy before the competent authority, the applicant should be protected till the appeal is disposed of.

6. In the circumstances, I pass the following order.

• The applicant is directed to file an appeal before the competent authority, i.e. General Manager, Western Railway within four weeks from today. The appeal shall be disposed of within three months from the date of the filing of the appeal in accordance with law. In the meantime, the removal order dated 16.4.1993 is stayed. The applicant, however, shall not insist that he shall be permitted to work on the same post where he was working on 16.4.1993 and it shall be open for the respondents to offer to the applicant any other suitable posting. The stay of the removal order dated 16.4.1993 shall be operative ~~for the period~~ ^{only for} ~~of~~ ^U ~~the expiry~~ ^{to} ~~of~~ three weeks from the date on which the appellate order is received by the applicant. The applicant shall be at liberty to approach the Tribunal if he is still aggrieved after the appeal is disposed of. As no other contentions are dealt with in this order, it will be open to both the parties to raise all the relevant contentions before the appellate authority and before this Tribunal if any fresh application is filed. No order as to costs.

7. The copies of this order shall be furnished to both the sides as expeditiously as possible.


(V.D. DESHMUKH)
MEMBER (J)