

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

O.A.905/95

Pronounced this the 29th day of Aug. 1996.

Coram : Hon'ble Shri M.R. Kolhatkar, Member (A)

Shri Laxminarayan Raghunath
Railway Quarter No.TY 39 B,
Near Five Temple in front of Ramabai Nagar,
At Post Manmad,
District Nasik - 423 104.

.. Applicant.

By Advocate Shri S.C. Tathed.

Vs.

1. Union of India, through
General Manager,
Central Railway,
Mumbai.

2. D.R.M.,
Central Railway,
Bhusaval.

3. X.E.N. (Track Machine),
T.T.M., Central Railway,
O/o Dy. Chief Engineer,
Central Railway,
Bhusaval, Dist. Jalgaon.

.. Respondents.

By Advocate Shri R.R. Shetty,.

O R D E R

(Per : Hon'ble Shri M.R. Kolhatkar, Member (A)

In this O.A. the applicant has challenged the deduction of the amount of Rs.549/- per month from the salary of the applicant started with effect from May,95.

He has further requested for having his headquarters fixed at Manmad and that residential quarter No.T.Y.39 B at Manmad be allotted to him and the charge sheet dated 18.3.1993 may be set aside. The applicant who was working as Khalashi at Manmad was promoted with retrospective effect as Helper Khalashi from 1.1.1984 and by office order dated 19.12.1990 he has been transferred to Bhusaval. The applicant has also raised a dispute regarding his transfer having been ordered on 7.8.1991 with retrospective effect from 19.12.1990 but on a perusal of the written statement of the respondents dated 2.2.1996 it is clear that his transfer was ordered on 5.11.1990. In the subsequent order dated 7.8.1991 it is clarified that upon his transfer from Manmad to Bhusaval he would be entitled to all the privileges under transfer rules. It is also not disputed that the applicant has been further transferred to Belwandi with effect from 14.6.1994. The transfers are in the normal course and no ground has been made out for the interference of the Tribunal with the transfer of the applicant who is transferred successively from Manmad to Bhusaval and then from Bhusaval to Belwandi.

2. The main relief claimed is that of quashing penal rent of Rs.549/- levied on the applicant with effect from May, 1995. The applicant had stated in the

O.A. that he had occupied un-numbered quarter at Manmad in the year 1987. The applicant claims a lawful occupation of the quarter on the ground ^{of} implied consent but there is no order of allotment in his favour. On the other hand, the respondents have produced order No.BSL/W/TM/50/110 dated 14.2.1995 under which the said quarter has been allotted to Shri Gorakh Punjaram, Helper Khalashi. Apparently the respondents have not taken action against the applicant for the unauthorised occupation of the quarter from 1987 upto April 1995, but they have imposed a penal rent so as to induce the applicant to vacate the quarter. The main contention of the applicant is that the provisions of P.P. Act have not been followed before levying the penal rent on the applicant and moreover he has also been subjected to Departmental Enquiry on the same ground. The Counsel for the applicant contends that it is well settled that unauthorised occupation of quarter is not a misconduct within the meaning of Railway Servants (Conduct) Rules and he cannot be proceeded against for misconduct under Railway Servants (Discipline & Appeal) Rules, 1968.

3. The respondents have opposed the O.A. According to them the quarter in question was never allotted to the applicant and since he continues to occupy the same even after allotment of the quarter in

question to another railway employee, action to recover damage rent was taken and moreover applicant cannot challenge the disciplinary proceedings as part of this O.A. as it amounts to multiplicity of reliefs in one O.A.

4. Admittedly the applicant does not have any allotment order in his favour. He is a trespasser. The Counsel for the applicant relies on O.A.673/92 Ramchandra Deochandra Sheley Vs. Union of India decided by this Tribunal on 2.8.1995. The contention of the applicant there that the respondents cannot without taking steps under Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 recover damage rent found favour with the Tribunal which relied on O.A.439/95 Urman Singh Vs. Union of India decided on 25.7.1995. However, since then, the Full Bench in Ram Poojan Vs. Union of India [1996 (1) ATJ 540] of C.A.T., Allahabad Bench decided on 22.2.1996 has laid down as below:

"(a) in respect of a railway employee in occupation of a railway accommodation, in our considered opinion, no specific order cancelling the allotment of accommodation on expiry of the permissible/permitted period of retention of the quarter on transfer, retirement or otherwise is necessary and further retention of the accommodation by the railway servant would be unauthorised and penal/damage rent can be levied."

In the instant case, the applicant is in occupation of a quarter which was never allotted to him, respondents railways might have permitted him to stay in the quarter till it was regularly allotted to an eligible railway employee. The applicant therefore does not deserve to have any relief even on equitable grounds. However the Disciplinary Enquiry against the applicant which is based on the fact of unauthorised occupation of quarter cannot be allowed to stand. The respondents have admitted that several Disciplinary Enquiries have been started against the applicant vide written statement dated 29.12.1995 of which disciplinary enquiry initiated on 29.3.1993 is in respect of unauthorised occupation of quarter which is not a misconduct and the action of the respondents in starting disciplinary enquiry is therefore illegal. The same is therefore liable to be quashed and set aside. It is a relief which is consequential and not hit by the vice of multiplicity.

5. The O.A. is therefore dismissed with no order as to the costs except to the extent of limited relief of quashing the departmental enquiry dated 29.3.1993.

M.R.Kolhatkar
(M.R. KOLHATKAR)
MEMBER (A).