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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.578/92

Dt. of order: 18.3.1994

Ganpat Lal

: Applicant

Vs.

Union of India & Ors. : Respondents

Mr.J.K.Kaushik : Counsel for applicant

Mr.Manish Bhandari : Counsel for respondents

CORAM:

Hon'ble Mr.Gopal Krishna, Member(Judl.).

Hon'ble Mr.G.P.Sharma, Member(Adm.).

PER HON'BLE MR.G.P.SHARMA, MEMBER(ADM.).

Applicant Ganpat Lal has filed this application under Sec.19 of the Administrative Tribunals Act, 1985, praying that the disciplinary proceedings initiated against the applicant vide Memorandum dated 17.5.82 may be declared as illegal, the order of the Disciplinary Authority dated 12.11.82 by which the penalty of removal from service was imposed against the applicant may be quashed, the communication dated 18.5.84 issued by the Divisional Railway Manager, Kota and the para-wise remarks in pursuance of the representation dated 8.5.85 may be quashed and the respondents may be directed to reinstate the applicant in service with all consequential benefits.

2. The applicant while serving in the Railways in Kota Division was allotted a Railway Quarter for his residential accommodation when posted at Kota. He was transferred from Kota to Guna (M.P) on 1.9.80 and was relieved vide order dated 20.1.81. The applicant resumed duty at Guna on 7.2.81. The Sr.Divisional Mechanical Engineer, Kota, issued an order dated 16.1.81, whereby he directed the applicant to vacate the Railway Quarter allotted to him at Kota, within 7 days of the receipt of the said letter. The applicant was also informed by the said letter that if he did not vacate the quarter within the stipulated period, proceedings would be initiated against him under the Railway Servants (Discipline & Appeal) Rules. The applicant has stated that he was asked to vacate the Quarter on 16.1.81 i.e. 4 days before the date of the order Annex.A-1 dated 20.1.81 relieving him on

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transfer to Guna. A Railway servant is entitled to continue to occupy the quarter at least for a period of 3 months from the date of his being relieved on transfer. The applicant requested the authorities to permit him to continue to hold the residential accommodation and he was permitted to do so vide communications dated 26.3.81 and 30.5.81 (Annex.A-2 & A-3). According to the applicant Annexures A-2 and A-3 make it clear that he was entitled to hold the quarter when ^{the} notice dated 16.1.81 was issued.

3. Disciplinary proceedings under Rule 9 of the Railway Servant (Discipline & Appeal) Rules were initiated against the applicant vide Memorandum dated 17.5.82 on the ground that ~~thence~~ he was in unauthorised occupation of the Railway Quarter at Kota and that he had disobeyed the order dated 16.1.81. The applicant denied the charges and submitted that he could not vacate the quarter as his children were studying in Rajasthan. Enquiry was held and the charges against the applicant were held proved. Thereafter, the Disciplinary Authority, Senior Divisional Mechanical Engineer, vide order dated 12.11.82 (Annex.A-7) imposed penalty of removal from service on the applicant.

4. During the arguments the learned counsel for the applicant drew our attention to the charges framed against the applicant. In the Memorandum of charges it was stated that the applicant had failed to vacate the Quarter in spite of a notice given to him vide communication dated 16.1.81, directing him to vacate the quarter within 7 days from the receipt of the said communication. However, an extension of 2 months was granted to the applicant vide communication dated 26.3.81 (Annex.A2), to retain the quarter. Therefore, according to the learned counsel for the applicant, the charge as framed by the disciplinary authority is itself not tenable and the disciplinary proceedings are liable to be quashed on this ground alone. He has also argued that failure to vacate a government quarter allotted to a Railway servant cannot be considered to be a misconduct, because separate remedy is provided under law for getting quarters vacated wherein the occupants have stayed unauthorisedly beyond the stipulated period and there is

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also provision for charging penal rent/damages. He has also stated that the penalty imposed on the applicant is wholly disproportionate to the alleged misconduct on his part and in fact perverse. He has also drawn our attention to the fact that the applicant had preferred an appeal against the order of penalty, vide Annex.A-2 dated 2.2.84 but the said appeal has remained undisposed of by the Appellate Authority.

5. We have heard the learned counsel for the parties and have gone through the records. We do not consider it necessary in this case to give any finding on the question whether unauthorised occupation of government quarter by a government servant constitutes misconduct, in view of the order that we are passing in this case. Admittedly, the appeal filed by the applicant in this case has not been disposed of by the Appellate Authority i.e. the Divisional Railway Manager. Even if it is accepted that continued unauthorised occupation of a government quarter constitutes misconduct and a penalty is liable to be imposed for such misconduct, the penalty imposed in this case appears to be us to be wholly disproportionate to the misconduct reportedly committed by the applicant. We are conscious ~~in~~ of the fact that since we do not sit as an Appellate Authority we cannot ourselves interfere in the matter of quantum of the penalty imposed. However, since the appeal filed by the applicant before the DRM is pending, we consider it appropriate to direct the Appellate Authority to dispose of the appeal within a period of 2 months from the date of the receipt of a copy of this order. While disposing of the appeal, the Appellate Authority shall pass a speaking order and shall give specific findings as required in the following provisions of Rule 22(2) of the Railway Servant (Discipline & Appeal) Rules, 1968 and shall particularly apply his mind to the quantum of the penalty imposed while disposing of the appeal:

(a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

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(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and
(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe."

6. If the applicant is still aggrieved by the order of the Appellate Authority, he shall be free to file a fresh O.A. before the Tribunal.

7. The O.A. is disposed of accordingly with no order as to costs.

O.P.Sharma
Member (A)

G.Krishna
(Gopal Krishna)
Member (J).