

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH  
AT HYDERABAD.

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O.A.No. 99 of 1987.

Between:

G.Anjaiah. .. Applicant.

Vs.

The Divisional Safety Officer,  
S.C.Railway, Vijayawada and  
two others. .. Respondents.

Sri N.Venkatarayudu, Counsel for the Applicant

Sri P.Venkatarama Reddy, Standing counsel for Railways.

CORAM:

Hon'ble Sri B.N.Jayasimha, Vice-Chairman.

Hon'ble Sri J.Narasimhamurty, Member(Judicial).

Judgment of the Bench delivered by Hon'ble  
Sri J.Narasimhamurty, Member  
(Judicial).

This application is filed seeking a declaration that the order dated 23--6--1986 of the 1st respondent as confirmed by orders dated 14-8-1986 and 29--10--1986 of respondents 2 and 3 as arbitrary and illegal and to direct the respondents to reinstate the applicant into service with all consequential benefits.

1.The averments in the application are as follows:

The Applicant joined the Railways as a Gangman in the year 1964. He was allotted Railway Quarter No. 62-D/T, p.-I at Engole on 10--4--1974.



The applicant was transferred to the 1st respondent's Office at Vijayawada on 4--3--1983. On his transfer to Vijayawada, the applicant was not in a position to secure suitable accommodation at Vijayawada. All his children were studying at Ongole. He was not able to shift his family to Vijayawada and continued to stay in the Railway Quarter at Ongole. The applicant made representations to transfer him back to Ongole. Ultimately he was transferred to Ongole on 30--3--1985.

3. The applicant states that he came to know that on some false complaints made by persons inimical to him, the authorities contemplated to initiate disciplinary proceedings against him for not vacating the Railway Quarter at Ongole on his transfer to Vijayawada. While he was working at Vijayawada, he did not draw House Rent allowance and he continued to pay penal rents as demanded by the Department. Thus he did not commit any fraud so as to cause any loss to the Department.

4. The Authorities were bent upon taking disciplinary action against the applicant with the result by an order dated 19--7--1985 he was kept under suspension with effect from 8--10--1985 on the ground that disciplinary proceedings are contemplated against him. The applicant gave a representation on 26--11--1985 seeking revocation of the suspension order and also requesting the Authorities that he might be allotted Railway Quarter/Type-II pertaining to Cabin Department which is lying vacant. Ultimately the applicant was allotted Railway Quarter No.4/B at Ongole which was occupied by the applicant on 7--3--1986.

5. The Authorities continued the disciplinary proceedings against the applicant inspite of the fact that he vacated the earlier quarter on 16--1--1986. Three months

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after the applicant vacated the said quarter, the applicant was served with a charge-memo dated 1--4--1986. The main charges levelled against the applicant are as follows:

- "(i) While the applicant was functioning as Peon at Vijayawada, he has committed serious misconduct i.e., he has not vacated the Railway Quarter No.62-D/Type-I/Ongole while he was relieved on his transfer to Vijayawada on 4--3--1983 and vacated the said quarter on 16--1--1986. Thus he violated Rule 3(1)(iii) of the Railway Servants Conduct Rules, 1966;
- (ii) While functioning as peon in Traffic Inspector's Office at Ongole, he was residing in a hut raised by brick wall in the Colony near Railway Qr. No.68-A unauthorisedly. Thus he violated rule 3(1)(iii) of the Railway Servants Conduct Rules, 1966"

6. The applicant submitted his written explanation on 29--4--1986 bringing to the notice of the authorities that the applicant has not committed any misuse of Government funds i.e., the applicant did not draw any house rent during the period of his stay at Vijayawada and that the applicant has been paying penal rent for the quarter under his occupation at Ongole. Even though the applicant joined at Ongole on his retransfer on 30-3-1985 i.e., after six months the applicant was kept under suspension for not vacating the quarter at Ongole on his transfer to Vijayawada. In deference to the ~~xxx~~ wishes of the authorities, the applicant had vacated the quarter on 16--1--1986. Even before vacating the quarter, the applicant made an application for allotment of another quarter which fell vacant at Ongole and accordingly the said Quarter No.4/B was allotted to the applicant on 7--3--1986. During this period of about two months, the applicant has kept his family in a thatched cattle shed for want of alternative accommodation at Ongole. The applicant also vacated the said shed on

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allotment of Quarter No.4-B which was occupied by him on 7--3--1986. However, the authorities issued the charge-memo on 1--4--1986 and they did not drop the proceedings though the applicant brought to their notice several instances where persons similarly situated like the applicant continued to remain in the Railway quarters after their transfer and that the action contemplated against him is discriminatory. However, the authorities proceeded with the enquiry and imposed a major penalty of removal from service with effect from 30--6--1986 vide order dated 23--6--1986.

7. Aggrieved by the said order of removal, the applicant preferred an appeal before the 2nd respondent who has rejected the appeal, confirming the penalty of removal by order dated 14--8--1986. The revision preferred by him was also rejected. Hence this application.

8. The respondents filed their counter contending as follows:

The applicant was working as Pointsman at Ongole. He was transferred to Vijayawada as Peon on 4-3-1983. Before the applicant was transferred, he was in occupation of Railway Quarter No.62-D/Type.I at Ongole. On his transfer to Vijayawada, he did not vacate the quarter and he is still in possession of the quarter unauthorisedly. He did not make any request to the Railway Authorities for permission to retain the quarter beyond the period of transfer. On his request, he was re-transferred to Ongole as Peon on 30--3--1985. On 16--1--1986 he vacated the Quarter. He raised a hut near Railway Quarter No.68-A unauthorisedly and resided there. On his request for allotment of quarter, the applicant was allotted railway Quarter No.4/B at Ongole which he occupied from 7--3--1986. A charge Memo was issued for violating Rule 3(1)(iii) of the Railway Servants

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Conduct Rules, 1986.

9. The applicant submitted his explanation on 29--4--1986 and the Disciplinary Authority having not been satisfied with the same appointed an Enquiry Officer to enquire into the charges levelled against him. The Enquiry Officer had given a report on 2-5-1986 holding the applicant guilty of the two charges. Based on the report and the enquiry proceedings, the Disciplinary Authority passed an order dated 23--6--1986 removing the applicant from service with effect from 30-6-1986. Aggrieved by the order of the Disciplinary authority, the applicant preferred an appeal to the appellate authority. While admitting the irregularities, he pleaded for mercy. The appellate authority rejected the appeal by a speaking order dated 14--8--1986. The revision petition preferred by him was also rejected by the Division, 1 Railway Manager.

10. The applicant did not bring to the notice of the authorities the several instances where persons similarly situated continued to remain in the Railway Quarters after their transfer without any action being taken. The plea of discrimination is therefore baseless. By any reasonable standards, it is highly unbecoming of a Railway Servant to unauthorisedly stay in the Railway Quarter for a period of 2½ years and also to encroach upon the Railway land. The fact that action could be taken under the Public Premises Eviction Act and the applicant could have been vacated from the quarters by resorting to the provisions of the said Act, is not a mitigating factor nor does it wipe out the misconduct of which the applicant is guilty. The mere fact that the applicant did not draw House Rent Allowance while working at Vijayawada and that he was paying penal rent for the quarter at Ongole does not

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absolve him of the misconduct alleged. The allegation that the disciplinary proceedings were initiated at the instance of persons inimical to the applicant is wholly baseless.

11. The applicant's contention that the Appellate and revisional authorities passed the orders confirming the penalty of removal in a mechanical way is untenable. The appeal and revisional authorities considered all the aspects and passed speaking orders. Unauthorised stay in Railway quarters for a long period of 2½ years much to the detriment of another eligible employee and also construction of a temporary structure on the Railway land without permission are serious charges and do not warrant lenience. The application is liable to be dismissed.

12. Heard Sri N.Venkatarayudu, learned Counsel for the Applicant and Sri P.Venkatarama Reddy, learned Standing Counsel for Railways.

13. The applicant contends that he is an ~~employee~~ ~~of~~ ~~the~~ ~~Railway~~ Gangman working in South Central Railway since 1964. He was allotted Railway Quarter No.62-D/Type-I at Ongole on 10--4--1974. He was transferred to 1st Respondent's Office at Ongole on 4--3--1983. On his transfer to Vijayawada the applicant was not in a position to secure suitable accommodation at Vijayawada. His children were studying at Ongole. In such circumstances, the applicant could not shift his family to Vijayawada and his family members continued to ~~stay~~ <sup>stay</sup> in the Railway Quarter at Ongole. He made representations to that effect to the higher Authorities. During that period

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he did not draw house-rent allowance and he continued to pay penal rent as demanded by the Department. Because he was paying penal rent as per demand made by the Department, he might be under the impression that the respondents have agreed for ~~xxx~~ occupying the Govt. Quarter at Ongole by his family members. There is no evidence to show that he was served with a notice asking him to vacate the Quarter. While so, he was ~~a~~ again transferred to Ongole on 30--3--1985. The applicant vacated the Railway Quarter on 16--1--1986. Though he was transferred to Ongole, he was not allotted any quarter after his vacating the quarter on 16--1--1986. In the meantime having no other alternative to secure a house, he erected a thatched hut temporarily on the Railway site to take shelter till a quarter is allotted. He was allotted <sup>a</sup> quarter on 7--3--1986. Immediately he was shifted to that quarter. He lived in the thatched hut temporarily erected just to take shelter for two months. He raised the thatched hut not to claim any right over the land nor the hut but only just to live and take shelter in that hut because <sup>he</sup> has no other accommodation and the Department has not allotted him a quarter. That too for a very short period i.e., for two months. He is a poor Gangman with a very meagre salary. He cannot afford to take any private Accommodation and the rents are very high. Because of his pecuniary circumstances, he erected a thatched ~~xxx~~ hut on the Railway land for just living. It is <sup>a</sup> purely temporary arrangement. Some of the Officers in the Railways feeling inconvenience with the accommodation allotted to them, sometimes used to raise temporary sheds just by the side of the quarters. This is only a temporary adjustment. They are not being termed as trespassers

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nor unauthorised occupants.

14. Before imposing penalty the Authorities should take into consideration in what circumstances, he had committed that mistake or violated the rules and what is the loss sustained by the Department. In this case the applicant was under mis-conception that he is paying the penal rent and also not drawing H.R.A. and therefore he is eligible to occupy the Railway Quarter. The Department has to take all these circumstances into consideration in imposing the punishment. The applicant is a Gangman and not conversant with the rules and implications. He raised the thatched hut just to take shelter as he was not provided with any alternative accommodation. He has no capacity to take any private accommodation as the rents are too high. Taking into consideration all these factors, the Authorities have to take a lenient view not affecting his livelihood.

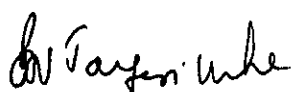
15. The applicant has no intention to violate the rules or to occupy the Railway land unauthorisedly. This is evident from his paying the penal rent and not drawing his house rent allowance. Strictly speaking and according to the rules, there is violation. If the authorities apply the Rules too technically the poor Gangman cannot escape from the liability. But on examining the circumstances and the precarious position of the applicant, we are of the opinion that the punishment is too severe and we feel that the applicant deserves some sympathetic consideration to eke out his livelihood.




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16. Viewing the matter in this perspective, we are of the opinion that the applicant deserves sympathetic consideration and that the punishment imposed is severe, we are remanding the matter for re-examination and consideration of the circumstances of the applicant and disposing of the matter.

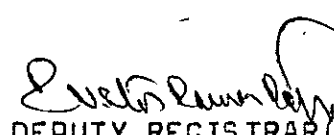
17. Accordingly the matter is remanded to the respondents for disposing the case within two months from the date of receipt of these orders. Ordered accordingly.

  
(B.N. JAYASIMHA)  
Vice-Chairman.

  
(J. NARASIMHAMURTHY)  
Member (Judl.)

SSS

Date: 22-3-90

  
DEPUTY REGISTRAR (J)

22/3/90

TO:

1. The Divisional Safety officer, south central railway, vijayawada, Krishna Dist.
2. The Senior Divisional Operating Superintendent, S.C. Railway, Vijayawada, Krishna Dist.
3. The Divisional Railway Manager, S.C. Railway, Vijayawada Krishna Dist.
4. One copy to Mr. N. Venkatrayudu, Advocate, 16-2-733/A/8 Asmangadh, Malakpet, Hyderabad-500 036.
5. One copy to Mr. P. Venkataranga Reddy, SC for postal dept., CAT., Hyderabad.
6. One spare copy.

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