

ORIGINAL APPLICATION NO. 12 of 1987

The applicant herein is a Class IV employee working as Helper Khalasi in the Zonal Training School, Moulali. Consequent upon a raid conducted on the house No. C-94 allotted to the applicant, by the Vigilence Inspectors of the ^{Sonik Central} ~~Railway Department, they came to know~~ (it came to light) that the applicant had sub-let the said quarter to one Sambasiva Rao. The Principal, Zonal Training School, Moulali, Hyderabad (3rd respondent) directed recovery of the penal rent from the applicant from May 1984 by his order dated 19.5.1984. The total amount to be recovered from the applicant was ~~worked out~~ at Rs. 2,121.75 on the ground that he had sub-let the quarter in question from July 1982 to July 1983. This ^{under the Railway Servants (D & A) Rules} was followed by a Memorandum of charge dated 18.1.1984, which reads as follows :-

" Sri P. Venkateswara Rao while functioning as Khalasi in the ZTS/MLY during 1983 committed serious misconduct in that he subletted (sic) Railway Quarter No. C-94 Type-I at MLY to Sri Y. Sambasiva Rao working as Lab. Asst. In Republic Forge No. MLY Sri. P. Venkateswara Rao thus failed to maintain absolute integrity expected of a Railway servant and violated Rule 3(1) of RS (Conduct) Rules, 1966."

 The statement of imputations was served on the applicant along with the charge sheet. It discloses that he had

sublet the quarter No.C-94 to one Sambasiva Rao till
July 1983, ^{that} ^{he} When asked to produce the ration card, the
applicant stated that ^{he} had no ration card, that as per
declaration given by Sambasiva Rao, ^{the} ration card was issued
in his name at the address of the said Railway Quarter No.C.94,
that the said declaration was signed by Smt. Nagavalli wife of
Shri Sambasiva Rao, that the said ration card was cancelled
^{therefore} and that ^{the} said Sambasiva Rao had shifted his residence to
R.R.District. It was ^{also} stated that F.Venkateshwara Rao (applicant)
had obtained the ration card in August 1983. It is on the
basis of this evidence that it was sought to be established
that the applicant had sublet the quarter in question. ^{Then}
An Inquiry Officer was appointed to inquire into the matter.
It is the case of the applicant that after completion of the
inquiry, he was exonerated by the Inquiry Officer whereupon
the 3rd respondent/disciplinary authority by his order dated
9.7.1985 decided to drop the charge levelled against the
applicant. However, the Chief Traffic Safety Superintendent,
SCR., Secunderabad (2nd respondent) issued a notice dated
20.10.1985 in the capacity of the Revising Authority under Rule 25
of the RS (D&A) Rules, 1968 stating that he does not agree
with the decision of the disciplinary authority on the ^{following} grounds;—
that (a) though the ration card by itself is not adequate
proof of subletting the quarters yet in this particular case,
it was proved by evidence that ration card was issued in favour
of Shri Y.Sambasiva Rao occupying Railway Quarter No.94 at

MLY on 19.2.1983 based on a declaration of one of his family members. This was cancelled on 14.7.1983 when Shri Sambasiva Rao moved to R.R.District (b) that the ration card with the same address was issued in favour of Shri P.Venkateswara Rao in August 1983 and that (c) the charge of subletting his quarter upto July 1983 is held to be proved. The applicant submitted a representation dated 6.11.1985 to the 2nd respondent complaining that in all fairness a copy of the Inquiry Officer's report ought to have been furnished to him along with the Memorandum of charge dated 20.10.1985. The substance of the representation was that no effort was made to contact the alleged sub-tenant or the signatory to the declaration relied upon to sustain the charge levelled against the applicant. The other contention raised was that no neighbour has been examined and that merely because the applicant could not produce the ration card, it was sought to be contended that he had sublet the quarter. It is his case that no evidence whatsoever was produced to establish that the Railway Quarter in question was sublet or that any rent was collected by the applicant. Since the very existence of the said Sambasiva Rao or issue of ration card to the said Sambasiva Rao was not established, the applicant prayed the Revising Authority to drop the proceedings initiated against him. Thereafter the Chief Traffic Safety Superintendent, SCR., Secunderabad (2nd respondent) after considering the explanation dated 6.11.1985 furnished in reply to show cause notice dated 20.10.85, together with the disciplinary proceedings initiated against the applicant

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pursuant to the charge sheet dated 18.1.1984, came to the following conclusion:-

" I have carefully gone through the reply from Shri P.Venkateswara Rao, Khalasi, ZTS/MLY. In this particular case, it was proved that the Ration Card was issued in favour of Sri Y.Sambasiva Rao with the address of Railway Quarter No.94 at MLY. This particular ration card was cancelled on 14.7.1983 and Shri Venkateswara Rao got a ration card with the address of Railway quarter No.94 at MLY. Thus the charge of subletting the quarters is held proved. Further Sri Venkateswara Rao in his reply has not brought out any new points. For the charges proved held against him, Shri Venkateswara Rao may be reduced to the lowest of the grade of Rs.290/- (RS) for a period of three years recurring with loss of seniority."

The applicant submitted an appeal to the Chief Operating Superintendent, SCR., Secunderabad (1st respondent) stating that he had furnished a detailed explanation to the 2nd respondent and prayed that the order of the revising authority may be set aside. The Chief Personnel Officer by his order dated 11.4.1985/15.4.1986 passed the following order :-

" I have gone through the papers and I find that the penalty has been imposed in accordance with the prescribed procedure. There is no alternative to deterrent penalty in dealing with such cases. I, therefore, do not propose to intervene in this case. The penalty will stand."

^{the aforesaid}
It is aforesaid orders which are sought to be impugned in this application.

2. We have heard the learned counsel for the applicant and Shri N. R. Devaraj, Standing Counsel for Railways.
3. The first point that arises for consideration is whether the applicant has been given a reasonable opportunity

(Signature)

to enable him to question the impugned orders of the 2nd respondent dated 10/14.2.1986 and the orders of the Chief Personnel Officer dated 11/15.4.1986. It may be noted that the applicant had been exonerated by the Inquiry Officer and the Disciplinary Authority viz; the Principal of the Training School who is also the Appointing Authority. The 2nd respondent by his order contained in Memo dated 20.10.1985 proposed to impose one of the penalties mentioned in Rule 6 of the RS (D&A) Rules, 1968. While doing so, he never enclosed a copy of the Inquiry Officer's report. The applicant in his reply dated 6.11.1985 had clearly stated that in all fairness he should have been furnished with a copy of the Inquiry Officer's report. This was not at all adverted to by the revising authority (2nd respondent). It is to be further noted that under Rule 25 of the RS (D&A) Rules, no order imposing or enhancing any penalty shall be made by the revising authority unless the Railway Servant has been given a reasonable opportunity of making a representation against the penalty proposed.

Now the question is whether the applicant is entitled to a copy of the Inquiry Officer's report and whether non-furnishing of the same would amount to not affording a reasonable opportunity of making a representation. It is to be noted that the power exercised by the revising authority under Rule 25 is similar to the power exercised by the disciplinary authority under Rule 10(3) of the RS (D&A) Rules when it is proposed to differ with the Inquiry Officer. When a disciplinary authority disagrees with the findings of the Inquiring authority and seeks to

impose a punishment upon the delinquent employee, he should give reasons. Rule 10(3) of the Rules lays down as follows :-

"The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any articles of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record, is sufficient for the purpose."

When the disciplinary authority has agreed with the Inquiring Officer and exonerates an employee, the revising authority, if it seeks to impose a penalty, would necessarily on the analogy of Rule 10(3), have to record his reasons for disagreement, record his own findings and thereafter only pass orders in the matter. In doing so, if he does not enclose a copy of the Inquiry Officer's report, it would follow that no adequate opportunity has been afforded to an employee to properly represent his case and sustain the order of the Inquiry Officer. In any event, at least at the stage when the revising authority had imposed a punishment, he ought to have enclosed a copy of the Inquiry Officer's report so that the applicant could have adequately represented his appeal to the appellate authority and pointed out the discrepancies in the order of the revising authority vis a vis the report of the Inquiry Officer. Even at that stage, the employee/applicant was not given a copy of the Inquiry Officer's report. It is, therefore, clear that no reasonable opportunity has been afforded to the applicant by non-supply of the Inquiry Officer's report. On this ground alone viz; non-supply of a copy of the Inquiry Officer's report

appellate authority, the impugned orders are liable to be set aside.

4. *The case warrants interference as*
On the merits also, it is a clear case of no evidence. The charge itself and the imputations in support of the charge disclose that all that is sought to be established is that the applicant never had a ration card issued prior to August 1983 showing the Railway Quarter No.C-94 in his occupation. Obviously not having a ration card would by itself not establish that the applicant had sublet the said quarter. A reference has been made in the statement of imputations given in support of the charge that the family members (wife of one Sambasiva Rao) had given a declaration in February 1983 to the rationing authority. The original declaration has not been produced.

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Merely on the basis of some particulars *7* *by the Vigilence*
Inspectors of the Railway from the Rationing Office, it cannot be held to have been established that one Sambasiva Rao *was* *given a Ration card* *wherein it was mentioned that he was* *residing in the Railway Quarter No.C-94 situate at Moulali* and that the applicant had sublet the same. It is clearly a case of no evidence. It is not open to the 2nd respondent to hold the applicant guilty of the charge levelled against him and impose upon him the punishment of reduction to the lowest of the grade in the time scale of Rs.210-290 for a period of three years recurring with loss of seniority. The order of the appellate authority confirming the same is wholly a non-speaking order and is also illegal, is liable to be set aside. We, therefore, set aside the impugned orders.

To

- 1). The Chief operating Superintendent,
South Central Railway,
Secunderabad. ✓
- 2). The Chief Traffic safety Superintendent,
South Central Railway,
Secunderabad. ✓
- 3). The Principal,
Zonal Training School,
Moulali, Hyderabad. ✓
one copy to
- 4). Mr. P. Krishna Reddy,
Advocate,
3-5-899, Himayat Nagar,
Hyderabad - 500029. ✓
one copy to
- 5). Mr. N. R. Deva Raj,
SC for Railways,
Hyderabad. ✓
- 6). One copy to Mr. D. K. CHAKRAVORTY, Itr. Member (Admn.) ✓
- 7). One spare copy. ✓

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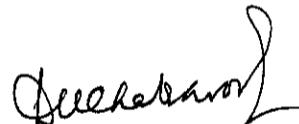
Done
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5. Consequent upon setting aside the order of punishment passed against the applicant, the further consequential relief that has to be granted to the applicant is to direct the respondents to refund whatever the amount recovered from him on the ground that he had sublet the Railway Quarter No.C-94 situate at Moulali under his occupation. The amount shall be refunded to the applicant within a period of two months from the date of this order. With this direction, the application is disposed of. There will be no order as to costs.

Dictated in the open court.

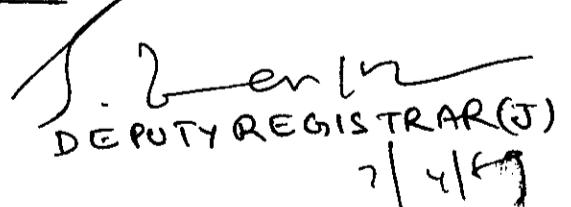


(D. Surya Rao)
Member (J)



(D. K. Chakravorty)
Member (A)

Dated 27th day of March 1989


T. Venkateswaran
DEPUTY REGISTRAR (J)
7/4/89

MDJ*