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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

O.A. 768/95 Date of decision: 17-6-97

Between:

G. Abraham ... Applicant

And

1. Sr. Divisional Mechanical Engineer,
C&W, South Central Railway,
Vijayawada.

2. Divisional Railway Manager,
South Central Railway,
Vijayawada.

3. General Manager,
South Central Railway,
Rail Nilayam,
Secunderabad. ... Respondents

Shri G.V.Subba Rao .. Counsel for the applican

Shri NR Devaraj, SCGSC .. Counsel for the respon-
dents.

CORAM

HON'BLE SHRI H. RAJENDRA PRASAD, MEMBER (ADMINISTRATIVE)

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J U D G E M E N T

The applicant was suspended from duty on 16.11.92 in connection with his alleged involvement in a criminal case relating to theft of railway property. The suspension was revoked on 6.9.93 but he was suspended once again on 7.10.93. Departmental proceedings were initiated on 1.6.94 charging him with unauthorised subletting of allotted quarters to an outsider. The disciplinary case on this score has not apparently made any progress. Approximately two months after the issue of charge-sheet the authorities passed an order imposing damage rent and recovery of penal rent from 21.2.94 in respect of the said quarter. The arrears on this score amounted to Rs, 1,926.50, besides damage rent of Rs. 449.55 per mensem from 1.7.94 onwards.

2. The main grievance of the applicant in this O.A. is that suspension has been ordered and disciplinary proceedings initiated by an officer who is not competent to do so. It is his claim that he belongs to the General Branch of the Division and it is, ipso facto, the Senior DPO/DRM and not Sr. DME who can be the disciplinary authority. In support of his contention he cites the examples of Clerks of Personnel Branch and Commercial Branch who are routinely allotted temporarily to various Branches, to work under different officers/offices depending on the need and their work requirements. Such personnel nevertheless belong to Personnel/Commercial Branches even though they may be working under different Station Supdts. or other officers. Likewise, he argues that he is borne on the cadre strength of Drivers which is a general pool under the direct control of the Personnel Branch, even though for current administrative control he may be working in some other branch.

3. The next argument of the applicant is that the charge of unauthorised subletting is contrary to facts and based

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merely on a report of a Welfare Inspector without a copy of such report being supplied to him.

4. The applicant also complains that without even finalising the disciplinary case the authorities commenced the process of recovery of damage/penal rent. He complains further that the allotmentof quarters originally made to him has not been cancelled so far or at any time prior to the commencement of the recovery of penal/damage rent.

5. The applicant finally submits that he has been almost continuously under suspension from November 1992 onwards, whereas his subsistence allowance has remained static at 50% of his pay, the recovery of a huge amount from even his meagre subsistence allowance is placing an undue burden on his finances.

6. Based on the above pleas, the applicant prays for a declaration that the charge memo is without jurisdiction, inasmuch as it has been issued by an officer not competent to do so, and that the recovery of the damage rent without (a) finalising the disciplinary proceedings and (b) cancellation of allotment of quarters is arbitrary and illegal.

7. The respondents in their counter affidavit explain the reasons for the revocation of the applicant's suspension on 6.9.93 and the subsequent suspension from 6.10.93. It is stated that the suspension was revoked for a brief period of one month to facilitate service on him of a punishment memo in a different (earlier) disciplinary case. Once this purpose was achieved he was placed again under suspension.

8. As regards the disciplinary control of drivers, to which category the applicant belongs, it is explained by the respondents that drivers, like the typists, constitute a small cadre 'for better prospects', whatever that might mean. They assert the Branch Officer under whom the drivers

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are deputed to work is the controlling officer and he alone is the disciplinary authority. They cite and agree with an earlier finding of this Tribunal that "two officers belonging to two different wings, for example, DSO & DOS, cannot exercise concurrent disciplinary powers over an employee". However, in the instant case it is only the Sr. DME who is the competent authority and none else. In support of this they cite the case of typists, Stenos and peons, whose seniority will be maintained on a centralised basis 'for better prospects' in view of the smallness of the size of their respective cadres.

9. As regards the delay in finalising the disciplinary case the respondents submit that it has been owing entirely to the applicant himself who is alleged to have returned the charge-sheet questioning the competence of Sr. DME to issue the memo. For this reason, it is stated by the respondents that it has not been possible for them to agree to an enhancement of the applicant's subsistence allowance which continues to be at 50% of the pay drawn by him.

10. In a rejoinder to the counter-affidavit the applicant complains that he has not been supplied with copy of the document in support of imputation and charges although a reference to the document was duly incorporated in the memo of charges. That the clarification sought by him regarding the competence, or otherwise, of Sr. DME to initiate disciplinary proceedings has not been supplied; that the decision to impose penal rent was implemented from 21.2.94 whereas the decision to levy such penal rent was communicated only on 22.7.1994.

11. The applicant also produced at the time of final hearing a copy of the DRM, Vijayawada letter No. B/P.555/P Dated 22nd September 1980 communicating a copy of letter No. P(QRS)55/Policy/Vol.II dated 23.6.1980 regarding unauthorised occupation/subletting of quarters by railway

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employees. The contents of the circular letter, in so far relevant to the facts of the present case, will be discussed later.

12. The questions which need to be addressed in the instant OA are as under:-

(1) Who is the competent authority to initiate disciplinary proceedings against drivers - who are admittely from the General Pool controlled by the Personnel Department - if they were deployed to work under administrative control of officers other than those belonging to Personnel Branch?

(2) Was the joint report of the Welfare Inspector and others required to be supplied to an unauthorised occupant prior to the launching of disciplinary proceedings based on the same report? Or was the same required to be so supplied along with or after the issue of memo of charges?

(3) Are the reasons advanced for non-finalisation of the disciplinary cases adequate or satisfactory?

(4) Are the reasons for not enhancing the subsistence allowance satisfactorily explained?

(5) Were any steps required to be initiated prior to the commencement of recovery of penal rent/ imposition of damage rent against the occupant of departmental quarters? If so, were such steps taken?

13. The answers to the above questions would determine the outcome of the case.

14. I now propose to examine the facts of the case on the basis of the above questions:

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(i) The applicant claims that he is borne on the strength of the General Branch and that he has been merely deployed on allotment to work in the Engineering Branch for convenience of the authorities. This fact is not denied or disputed by the respondent. They too state that certain categories of staff, like drivers, stenos and peons are deployed to different Branches upto the extent of their respective sanctioned strength. It is also mentioned that they are maintained on a common seniority list and that their deployment and promotions are controlled by the General Branch. The applicant insists that his disciplinary authority shall therefore have to be an officer of a suitable rank/status from the General/ Personnel Department and not from the Engineering Department where he is merely deployed. This contention has not been effectively rebutted by the respondents who vaguely state that the branch officer under whom an employee works is the controlling officer and also the disciplinary authority. No authority is quoted in support of this tepid rebuttal of the applicant's contention. The schedule of powers to be exercised by various authorities in respect of staff working under each of them is clearly laid down in the relevant regulations. It is not known as to why the correct position in this regard—if the applicant's contention is factually incorrect—could not be cited by the respondents.

The applicant cites the examples of Operating and Commercial Clerks to support his contention in this regard. The respondents only say that the contention has no relevance in this case, without actually establishing as to why it is not relevant. As against this the counter-affidavit itself states that all drivers are held on a common seniority list without specifying, at the same time, the exact authority/ authorities who exercise(s) disciplinary powers over this cadre. Nothing is cited by way of any authority or regulation or rule to prove that the Sr. DME is the competent authority. For

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some unknown reason, the respondents are not specific or forthcoming on this aspect and content themselves by merely making some cryptic generalisation instead of rebutting the applicant's contentions, if they are factually at variance with rules. Under the circumstances it is to be held that the assertion of the respondents regarding the Sr.DME being the competent disciplinary authority has not been adequately established. The argument of the applicant is accepted if only because it has not been effectively rebutted.

(ii) It was not necessary for the disciplinary authority to supply a copy of the joint report of the Welfare Inspector to the applicant prior to the issue of the memo of charges. Such a step is not envisaged in any rule in the DAR. Nor, for the same reason, was it incumbent on them to annex a copy thereof to the memo of charges. It is, however, seen that the joint report was specifically quoted in the statement of imputations of misconduct on which action was proposed to be taken against the applicant. Now, this is admittedly the case for the imposition of one of the minor penalties and no elaborate enquiries are prescribed in such cases. It was indeed open to the disciplinary authority to take a suitable decision in the case on the basis of the explanation submitted by the charged official. But it is seen that the charged official, while responding to the memo of charges, had specifically asked to be supplied a copy of the document cited in the memo of imputations.

The procedure prescribed for imposition of minor penalties does not make it incumbent or obligatory, as already stated, to hold an elaborate enquiry as a precondition of proposed action, nor to supply of copies of documents. The rules do not also, at the same time, prevent the disciplinary authorities from supplying copies of documents which may be vital for the defence, and which, moreover, are manifestly

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relied and specifically cited in the memo of charges. To do so would in fact seem to be the minimum requirement in terms of natural justice. Where rules are silent and do not prescribe the performance of a certain acts reflective of natural justice, such actions shall have to be viewed as due, prudent and advisable in a case of this nature. It was expected that the joint report filed by the Welfare Inspector would have been supplied to the charged official. This was not done despite his request. It is to be held, therefore, that the principles of natural justice have not been adhered to in this case.

(iii) The memorandum of charges for imposing a penalty under Rule 11 of the D&A Rules was initiated on 1.6.94. It is alleged by the respondents that the applicant refused to receive this communication, while on the other hand the applicant denies that he ever declined to so. Even if the applicant had indeed evaded receiving the said communication, it was open to the disciplinary authority to either proceed further, or to adopt any other accepted method to serve the charge memo. Neither was done. It is not known why the disciplinary case for the imposition of a minor penalty was allowed to pend for more than 3 years without being finalised merely on the ground that the charged official had failed to receive or respond to the memo of charges. There is no satisfactory reply from the respondents for this unconscionable delay in finalising the case.

(iv) As regards the aspect of suspension of the applicant from 16.11.92, and review of subsistence allowance, it is seen that the suspension was ordered not in connection with the present case, which is basically related to alleged subletting of quarters to an unauthorised outsider. It is admitted by the applicant as well as the respondents that the

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suspension was ordered in connection with an altogether different case relating to the involvement of the applicant in an alleged case of theft of railway property which resulted in the filing of a criminal case in the concerned Magisterial court. For this reason it is not necessary to discuss the question of suspension, or the related grievance of non-review of subsistence allowance, in disposing of the present O.A. These aspects are dealt with in OA 767/95 filed and being disposed of separately.

(v) As regards the steps required to be initiated preceding the order of recovery of penal rent or imposition of damage rent, certain instructions have been issued by the General Manager vide his letter No. P(Qrs)55/Policy/Vol.II dated 23.6.93. This letter was produced by Shri G.V.Subba Rao, learned counsel for the applicant, during the course of hearing. It has not been submitted by the respondents that this letter has been superseded or amended by any other instruction, which leads to the assumption that the instructions contained in the said circular continue to hold the field. The CPO's letter conveys substitution of Note below rule 1915(B)(4) by another Note which, inter alia, lays down that the General Manager would cancel the allotment of residence of the original resident whenever the latter is irregularly sub-let to unauthorised persons. Para 3 of the amended Note also lays down that, after the cancellation of allotment on account of unauthorised sub-letting, a minimum period is thereafter to be allowed to the allottee, and any other person residing with him, to vacate the premises. The cancellation is to take effect from the date of vacation of the premises, or expiry of the period of sixty days from the date of the orders for the cancellation of the allotment, whichever is earlier. Thus the prime requisite in such cases

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seems to be the formal cancellation of allotted accommodation. The applicant in this case makes a specific grievance of non-cancellation of allotment made in his favour. The counter-affidavit is totally silent on this point. It would seem that the allotment of quarters already made was not cancelled prior to the decision to impose damage/penal rent. This is a serious procedural flaw.

It has therefore to be held that while imposition of penal/damage rent itself may not have been incorrect in case the fact of sub-letting was established, and that it was well within the competence of the authorities to do so, the cardinal defect in this case is that none of the essential steps which were to precede, or at least to accompany, the impugned action, were taken. Thus, while the competence of the authorities to initiate action of recovery/levying of damage/penal rent is beyond question, the procedure adopted for the same is vitiated by non-observance of essential formalities and actions required prior to such action.

15. In the light of the discussion in the preceding paragraphs it has to be held that the action on the part of the respondents in this case suffers from serious procedural defects. Under the circumstances it is difficult to see how the relief claimed by the applicant can be denied or resisted. Consequently Memo No. B/P.Con.227/II/94/29 dated 1.6.94 issued by the Sr. DME (C&W)/BZA and letter No. B/P.483/III/Mech.Loco/Vol.II dated 22.7.94 issued bt APO(M), Vijayawada Railway Division are quashed for the reasons explained in the body of the judgement.

16. The amount recovered so far by way of penal/damage rent from the pay/subsistence allowance of the applicant shall be refunded to him within 30 days of the receipt of a copy of these orders.

The impugned orders are set aside owing to procedural deficiencies which have come to light in this case and not on grounds of competence of the appropriate authority ~~respondents~~ in this regard. This

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would not bar or prevent the respondents from initiating further action in conformity with rules and law, if they choose to do so.

Thus the OA is disposed of.

(H. Rajendra Prasad)
Member (Administrative)

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Deputy Registrar (J) CC

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To

1. The Sr.Divisional Mechanical Engineer,
   C&W, S.C.Rly, Vijayawada.

2. The Divisional Railway Manager,
   SC Rly, Vijayawada.

3. The General Manager,
   SC Rly, Railnilayam, Secunderabad.

4. One copy to Mr.G.V.Subba Rao, Advocate, CAT.Hyd.

5. One copy to Mr.N.R.Devraj, SC.for Rlys, CAT.Hyd.

6. One copy to HHRP.M(A),CAT.Hyd.

7. One copy to D.R.(A) CAT.Hyd.

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COMPARED BY APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE
VICE-CHAIRMAN

and

THE HON'BLE MR.H.RAJENDRA PRASAD:M(A)

Dated: 11-6-1997

ORDER/JUDGMENT

M.A./R.A./C.A.No.

in

O.A.No. 768/95.

T.A.No. (w.p.)

Admitted and Interim directions
Issued.

Allowed

Disposed of with directions

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Ordered/Rejected.

No order as to costs.

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