

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

J A I P U R.

T.A. No. 199/92

Date of decision: 23.11.93

ASSAN DASS

: Applicant.

VERSUS

UNION OF INDIA

: Respondents:

Mr. D.P. Garg

: Counsel for the applicant.

Mr. V.D. Bhargava

: Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice D.L. Mehta, Vice-Chairman

Hon'ble Mr. P.P. Shrivastava, Administrative Member

PER HONORABLE MR. JUSTICE D.L. MEHTA, VICE-CHAIRMAN:

The applicant was transferred in the 1972 and he was served with a charge-sheet dated 28.6.78 which was also withdrawn vide Annexure A-34 dated 10.9.79. Thereafter, he was again charge-sheeted on 4.10.79. After conducting the disciplinary proceedings on 28.5.81, punishment for removal from service was imposed on him. The Disciplinary Authority found that Shri Assan Dass, Clerk, ASOR's Office, Ratlam has not vacated the quarter allotted to him as railway employee and he has disobeyed the orders of the authorities. It will not be out of place to mention here that the penal rent has been charged from the applicant and proceedings under Public Premises Act were also initiated and the possession of the quarters has been taken by the respondents. Mr. Garg, appearing on behalf of the applicant, has submitted that (i) it is not a mis-conduct / under the law, (ii) that the disciplinary authority was not a competent authority, and (iii) that he preferred the appeal and the same has not been decided so far.

2. Mr. Garg has cited before us the Judgement of the Calcutta High Court, reported in 1976(1) SLR 692 - Rabindra Nath Bose Vs. G.M. Eastern Railway, Calcutta and Others. The Calcutta High held as under:-

" It appears from the relevant Rules quoted here in above, that the Railway authorities have got jurisdiction to impose penal rent only in respect of unauthorised occupation of railway quarters. When rent was recovered from the petitioner from the very

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day of occupation of the quarter, the petitioner cannot be said to be an "unauthorised occupant" of the said quarter, because, on accepting the rent from the petitioner, the petitioner's occupation was legalised. A relationship of landlord and tenant was established as soon as the rent was paid and accepted. Petitioner's tenancy right cannot be abrogated by the rules of allotment of railway quarters. The very foundation of imposing penal rent being unauthorised occupation, obviously, it cannot be imposed upon a tenant so long his tenancy is not determined."

Mr. Garg has also cited the Judgment of the Ahmedabad Bench in the case of Nawal Singh V/S. Union of India and others. reported in AIR 1988(1) CAT 264 and in the case of Abdul

Abdul Mohit Mustaki Khan vs. Union of India & ors. reported in AIR 1987 (1) CAT 567 wherein the Ahmedabad Bench has held that removal from service for failure to vacate Government Quarter after transfer from one station to another. Order of termination is uncalled for and it is not a mis-conduct. The Government servant is liable to pay penal rent only. The Ahmedabad Bench has relied upon the judgment in the case of B.R. Vengappaya Vs. State of Mysore & ors. reported in 1972 SLR 59. Hon'ble the then Chief Justice, Narayana Pal, while speaking for the Bench, held that the Government Employee in occupation of the quarter, upon transfer, is bound by the rule to vacate the same on pain of coercive steps being taken to evict him and rents at penal rate being recovered from his salary. If it is not misconduct it cannot be converted into misconduct by an unnecessary order being made to do some thing which the rules itself requires the person to do. If it is to be regarded as misconduct, the rule itself prescribes the punishment; viz forcible eviction and collection of rents at penal rates. It is therefore held that where the Government servant fails to vacate rent free accommodation on transfer, he is liable to pay the rent provided in the rules and hence disciplinary proceedings are not competent.

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3. Mr. Garg has also cited before us the case of one Jaisi Ram, Fireman, Northern Railway, decided by the Chandigarh Bench of the Tribunal in O.A. No. 449-PB/89. After reviewing the number of judgements of CAT Benches at Ahmedabad, Patna, New Delhi and Allahabad, the Tribunal observed that if it is regarded as misconduct, the rule itself prescribed punishment of forcible eviction and collection of rent at penal rates. Making a separate order to disobey the rule and then to hold a disciplinary enquiry for disobedience thereof in addition to levying penal rent will be either a totally invalid action of trying to punish something which is not misconduct or imposing two punishments in respect of same misconduct. However, we are not deciding this question at this stage as the Government Advocate is not prepared on the point of law.

4. The other question is that the appellate authority has not decided the appeal which is pending before him since 1982. This is a valid ground and once the appellate authority fails to decide the case,

then this court can pass an order according to the law, taking into consideration the facts and circumstances of the case.

It is an admitted position that the applicant was in employment upto September, 81 and he was to retire after the attaining the superannuation age on 30.6.82. In the facts and circumstances, the punishment of removal is very excessive and hard, particularly, to punish a person at the time of retirement for not vacating the quarter cannot said to be reasonable and it is arbitrary in nature.

5. For these reasons, we set aside the order of the Disciplinary Authority dated 23.5.81 and it shall also be deemed that the appeal stands disposed of under this order. We set aside the order of removal and we direct that the applicant should be reinstated in service and he should be

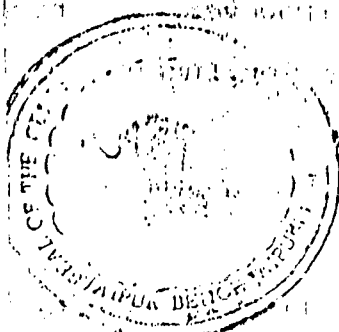
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treated as retired from 30.6.82 after attaining the superannuation age. This order, we are passing, in the light of the fact that the penal rent has already been realised, the quarter has been vacated. It is directed that the respondents will pay salary to the applicant within a period of three months from the date of this order and shall also determine the consequential pensionary benefits and make the payment of pension and other amounts due, if any, within a period of three months from the receipt of this order.

6. The T.A. is disposed of accordingly, with no order as to costs.



(P.P. SHRIVASTAVA)
Administrative Member

(D.L. MEHTA)
Vice-Chairman

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Section Officer (Legal)
Central Administrative Tribunal
JALUR ALLEN, JAIPUR

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R.D.
Adv

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10-12-83

Mr D.P. Gang (Advocate)
8012, Hadli Bazar
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Attested.

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