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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

10.01.2012

OA No. 181/2009

Mr. C.B. Sharma, Counsel for applicant.

Mr. Anupam Agarwal, Counsel for respondents.

Heard. The OA is disposed of by a separate order.

Anil Kumar
(Anil Kumar)
Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

Jaipur, the 10th day of January, 2012

ORIGINAL APPLICATION No. 181/2009

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Padam Chand son of Shri Gopi Lal ji, aged about 52 years, resident of Opposite Murga Farm, House No. 472, Dadawara Kota Jn. Kota (Rajasthan) at present working as Gangman, under Section Engineer (P.Way), Maheedpur Road, Western Railway, Kota.

... Applicant

(By Advocate : Mr. C.B. Sharma)

Versus

1. Union of India through General Manager, West Central Zone, West Central Railway, Jabalpur.
2. Senior Divisional Personnel Officer, West Central Railway, Kota Division, Kota.
3. Senior Divisional Mechanical Engineer (s), West Central Railway, Kota Division, Kota.
4. Assistant Mechanical Engineer, West Central Railway, Kota Division, Kota.

... Respondents

(By Advocate: Mr. Anupam Agarwal)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- “(i) That entire record relating to the case recalled for and after perusing the same Railway Board letter dated 22.1.2009 (Annexure A/1) with the punishment order dated 21.2.2001 and appellate order dated 15.1.2003 (Annexure A/2 and A/3) with proceedings be quashed and set aside with all consequential benefits.
- (ii) That charge memo dated 26.9.2000 (Annexure A/9) be quashed and set aside, as the same is not justified.
- (iii) Any other relief which is just and reasonable may also be given to the applicant.
- (iv) Cost of the application may be awarded to the applicant.”

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2. Heard learned counsel for the parties and perused the documents on record. Learned counsel for the applicant argued that disciplinary proceedings could not have been initiated against the applicant on the ground of unauthorized occupation of government accommodation because he was casual worker and the applicant till regularisation was not entitled for allotment of quarter. He further argued that father of the applicant was an employee of the respondent railways and was allotted rent free accommodation. He retired from service in 1979. That the applicant before retirement of his father appointed as Khallasi and in the year 1983, the applicant applied for allotment of that quarter in his name, which was in possession of his father. The applicant continued in possession of the quarter. The respondents never informed the applicant that his application has not been duly considered. The father of the applicant expired in the year 1984. That the respondents did not allow admissible HRA to the applicant since 1983 which shows that the application of the applicant has been duly considered and the applicant and his mother continued in possession of quarter No. 62-LA and respondents never objected regarding possession of the quarter. However, suddenly applicant was served with a charge memo dated 11.11.1999 for imposing major penalty on the allegation of unauthorized occupation and thereafter Inquiry Officer was also appointed. The applicant denied the charges. Thereafter, respondent no. 4 after considering the matter dropped the proceedings under Rule 9 of Railway Servants (Discipline &

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Appeal) Rules, 1968 and simultaneously, decided to initiate proceedings under Rule 11 for minor penalty vide Memo dated 26.09.2000 with the same allegation as mentioned in the charge memo for major penalty. The applicant submitted effective representation against the charge memo dated 26.09.2000 for minor penalty narrating all facts in connection with possession of quarter. Without considering the representation of the applicant, respondent no. 4 imposed the penalty of stoppage of one increment from the due date without cumulative effect vide order dated 21.02.2001 (Annexure A/2). The applicant filed an appeal dated 14.03.2001 (Annexure A/11) against the punishment order. During the pendency of the appeal, respondent no. 2 issued a recovery of Rs.1,40,072/- on account of penal rent from the period from 01.07.1979. The appeal of the applicant was rejected vide order dated 15.01.2003 (Annexure A/3). He further argued that the applicant was residing in the said premises from 1979 and the respondents never objected to it till 1999 for long 20 years. Therefore, imposition of punishment on the allegation of unauthorized occupation of the quarter is against the rules and principles of natural justice especially when the applicant is not at all at fault. That after rejection of appeal, the applicant filed OA No. 238/2004 against the punishment/ appellate order. That the applicant has been punished without any base. That this Tribunal after considering all the facts and circumstances of the case disposed of the OA vide order dated 07.03.2008 with the direction to the Railway Board to consider the matter as per direction of this Hon'ble

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Tribunal. This Hon'ble Tribunal was of the view that disciplinary proceedings cannot be initiated against the applicant. The Railway Board also clarified vide letter dated 11.04.1983 (Annexure A/22) that a railway employee is entitled for allotment of railway quarter only after he is absorbed in regular service. He further argued that Railway Board did not consider the matter as per observations of this Tribunal and dispose of the same vide order dated 22.01.2009 (Annexure A/1) He further argued that charge memo dated 26.09.2000 is not complete and therefore, it is liable to be quashed and set aside. That the applicant requested for allotment of the quarter in the year 1983 vide application dated 11.08.1983 and the respondents never rejected the request of the applicant. Thus treating the applicant as unauthorized occupant is not justified. That the appeal of the applicant has been rejected without application of mind and the points raised by the applicant in the appeal has not been duly considered by the respondents. Therefore, the appellate order is liable to quashed and set aside. Hence the charge memo, penalty order and the appellate order may be quashed and set aside.

3. On the contrary, learned counsel for the respondents argued that the applicant was found to be unauthorized occupant of the quarter during the drive undertaken by the administration to verify the occupation of railway quarters at Kota. Despite receipt of the letter dated 02.09.1999, the applicant failed to vacate the same premises or explain his possession. It being an act of an employee holding temporary

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status, he was rightly issued the charge sheet for the alleged misconduct besides direction to pay penal rent since retirement of the duly authorised occupant, Shri Gopi Lal, Fitter. The applicant himself admitted that he was staying in the said premises without any formal allotment. Prior to his regularisation in 2001, the applicant was not entitled for allotment of said quarter. Hence his stay in the said premises is without any authority and, therefore, he was treated as unauthorized occupant of the said premises. The applicant being temporary status holder was amenable to disciplinary proceedings and thus rightly charged for the misconduct. Learned counsel for the respondents agreed that initially the applicant was issued charge memo under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968. However, the same was dropped vide Annexure A/9 and fresh proceedings were initiated under Rule 11 of the said Rules. That the respondents were well within their prerogative to issue the fresh charge sheet under Rule 11 of the Railway Servants (Discipline & Appeal) Rules, 1968. He further argued that as per rules, there is no procedure prescribed to allow the applicant to inspect the documents during minor penalty proceedings. However, so far as his representation is concerned, it was duly considered by the competent authority and the same is also evident from the order of penalty. He further argued that a drive was undertaken to know position of unauthorized occupants of the quarters, which resulted confidential note dated 01.09.1999 (Annexure R/1) and the applicant was found to be unauthorized occupant of the said premises. That the action of

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the answering respondents is per rules and there is no illegality in issuance either the charge memo or the penalty order or the appellate order. Therefore, the applicant is not entitled for any relief and the OA being devoid of merit needs to be dismissed.

4. Having heard the rival submissions of the parties and having gone through the documents on record, it is clear that the applicant was having temporary status at the time of issuance of the charge sheet for minor penalty. This Tribunal while deciding the OA Nos. 238/2004 and 316/2006 vide order dated 07.03.2008 (Annexure A/4) in para nos. 6 to 8 observed as under:-

"6. I have heard the learned counsel for the parties and has gone through the material placed on record. As can be seen from the material placed on record and more particularly the decision arrived by the Railway Board. It is clear that the applicant was working as Casual Khallasi and his services were regularized on 06.06.2001. As per the decision taken by the Railway Board, the applicant was not eligible for allotment of the Railway Quarter from 1979 to 2001 as his services were regularized in the year 2001. As such, he became eligible for allotment of Railway quarter when his services were regularized. On the contrary, the applicant has been treated as a Railway servant for the purpose for initiation of disciplinary proceedings against him whereby he was imposed the punishment of stoppage of one increment from due date without cumulative effect vide order dated 21.12.2001 (Annexure A/2 in OA No. 238/2004) when admittedly the applicant was working as a Casual Khallasi and was not a Railway servant. At this stage, it may be relevant to notice some of the provisions of the Railway Servant (Discipline & Appeal) Rules, 1968. As can be seen from Rule 1, these rules came into force on 01.10.1968. Rule 2(e) defines 'Railway servant' means a railway servant as defined in clause (13) of Rule 102 of Volume I of the Indian Railway Establishment Code [Rule 103(43) of 1983 ed] and includes any such railway servant on foreign services or whose services are temporary placed at the disposal of any other department of the Central Government or a State Government or a local or other authority. Rule 103 (43) of IREC specifically excludes Casual Labours from the definition of Railway servants. Further Rule 3(1)(c) of the Railway Servants (Discipline &

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Appeal) Rules, 1968 also specifically provides that these rules shall not apply to the persons in casual employment. Further as per Rule 6 of the Railway Servants (Discipline & Appeal) Rules, penalty mentioned therein can be imposed only on the Railway Servants. Scheduled I, II and III which have been issued under the aforesaid rules also speaks about the authority who can impose penalty or place a Railway Servant under suspension in respect of class of employees belonging to Group 'A', 'B', 'C' and 'D' staff. Rule 29 deals with the repeal and saving clause which specifically provides that any orders issued which are inconsistent with these are hereby repealed. Thus from the provisions as contained above, it is evident that the provisions of the Railway Servants (Discipline & Appeal) Rules, 1968 has been made applicable to the persons who are Railway Servant and not to the casual labourer. Further, any order issued by the Railway authorities either before coming into force the Railway Servants Disciplinary Rules or after that date which are inconsistent with these rules shall stand repealed. In other words, making the provision of Disciplinary Rules applicable to Casual labour or Casual labour with temporary status are bad being inconsistent with the provisions of the Rules, as the Rules are applicable only to Railway Servants. Admittedly, when the punishment order was imposed on the applicant, his services were not regularized and as such, he was not a Railway Servant. If so, the entire proceedings initiated by the respondents under Railway Servants (Disciplinary and Appeal) Rules, 1968 was without jurisdiction and void abinitio. It may be stated that the question whether the casual labour who was granted temporary status can be said to be railway servant so that the widow of such Railway Servants may be entitled for pensionary benefits was also considered by the Apex Court. The Apex Court in the case of GM, North West Railways vs. Chanda Devi, 2007 (1) SCC (L&S) 394 after noticing the provisions of Rule 1501 (i) of Indian Railway Establishment Manual and also noticing the provisions of Pension Scheme has held that even a person with temporary status cannot entitled the widow for pensionary benefits. So long as the casual labour is not regularized and absorbed in Railway service, they cannot be said to be temporary railway servant.

7. Thus in view of what has been stated above, it is clear that the respondents are taking contradictory plea whereby treating the applicant as Railway Servant for the purpose of initiating disciplinary proceedings and awarding punishment of stoppage of one increment whereas when it comes to the awarding of penal rent and recovery on account of unauthorized occupation w.e.f. 1979 to 2001, the plea which has been taken by the respondents is that the applicant was Casual Khallasi as his services were regularized in the year 2001, as such he became entitled for allotment of Railway quarter only

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thereafter. Further it may be noticed that in case the applicant was not a Railway Servant, whether the proceedings for initiation & imposition of penal rent without resorting to proceedings under the Public Premies (Eviction of unauthorized occupants) Act, 1971 could have been resorted to, more particularly, in view of the observations made by this Tribunal in Para 7 of the judgment dated 08.10.2004 in OA No. 94/2003, the relevant portion has been reproduced above, is a question which is required to be considered in the facts and circumstances of this case.

8. Accordingly, without going into merit of the case, I am of the view that it will be appropriate if the entire issue is decided by the Railway Board at the first instance and re-consider the mater again in view of the observations made above. Accordingly, the Railway Board is directed to re-consider the mater again and decide the issue afresh within a period of three months from the date of receipt of a copy of this order. Till the issue is not decided and communicated to the applicant, the respondents are restrained from making any recovery of penal rent from the applicant for a further period of one month thereafter so that he can challenge the same before the appropriate forum. It is made clear that in case the applicant is still aggrieved, it will be open for him to file substantive OA thereby challenging the action of the respondents."

5. The Railway Board was directed to re-consider the mater again in view of the observations made in Para nos. 6 & 7 of said order. A bare perusal of order dated 22.01.2009 (Annexure A/1) shows that the Railway Board has not considered the observations made by the Tribunal in Para nos. 6 & 7 with regard to the disciplinary proceedings. The Railway Board while issuing the letter dated 22.01.2009 (Annexure A/1) has not clarified whether a casual employee with temporary status is covered under the provisions of Railway Servants (Discipline & Appeal, Rules 1968 and if so under what provisions or the circular of the Railway Board, such casual labours with temporary status has been included as Railway servants for the purpose of said Railway Servants (Discipline &

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Appeal, Rules 1968. On the contrary, this Tribunal while passing the order dated 07.03.2008 (Annexure A/4) in OA nos. 238/2004 and 316/2006 has extensively dealt with this aspect that whether a casual labour with temporary status can be termed as a railway servant under the Railway Servants (Discipline & Appeal, Rules 1968. Rule 2(1)(e) of the Railway Servants (Discipline & Appeal, Rules read 1968 as follows:-

"(e) 'Railway servant' means a railway servant defined in clause 13 of Rule 102 of Volume I of the Indian Railway Establishment Code [Rule 103 (43) of 1985 ed] and includes any such railway servant on foreign service or whose services are temporarily placed at the disposal of any other department of the Central Government or a State Government or a local or other authority."

Clause 13 of Rule 102 of Volume I of the Indian Railway Establishment Code [Rule 103 (43) of 1985 ed] defines railway servant as follows:-

"(43) **Railway servant** means a person who is a member of a service or holds a post under the administrative control of the Railway Board. It also includes a person who is holding the post of Chairman, Finance Commissioner or a Member of the Railway Board. Person lent from a service or post which is not under the administrative control of the Railway Board to a service or post which is under such administrative control do not come within the scope of this definition. The term excludes casual labour."

Rule 3 of Railway Servants (Discipline & Appeal) Rules 1968 states as under:-

"3 **Application**

(1) These rules shall apply to every Railway servant but shall not apply to -

- (a)
- (b)
- (c) any person in casual employment; and
- (d)"

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6. Thus it is clear from the provisions of the Railway Servants (Discipline & Appeal) Rules, 1968 that a casual worker has been excluded from the applicability of these rules. It is nowhere stated that casual worker with temporary status are on a different footing and they are covered under the provisions of these rules. The Railway Board was given an opportunity to clear this point by this Tribunal but Railway Board has not given its finding on this point. Therefore, it can be concluded that at the time of issuance of the charge sheet and punishment order, the applicant was having temporary status, therefore, he cannot be said to be a Railway Servant in terms of Railway Servants (Discipline & Appeal) Rules, 1968 and since he is not a Railway servant in terms of Railway Servants (Discipline & Appeal) Rules, 1968, no disciplinary proceedings could have been initiated against him under the said Rules. Therefore the issuance of charge memo, passing of the penalty order and appellate order are void abinitio. Hence they are quashed and set aside.

7. Thus the OA is allowed with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

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