

①
**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.2240/2003

New Delhi this the 15th day of October, 2004.

HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)

Sabir Ali,
S/o Shri Ewaj,
Switchman,
Railway Station Mewanivada,
Distt. Najibabad, (UP).

-Applicant

(By Advocate Shri G.D. Bhandari)

-Versus-

Union of India, through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divl. Railway Manager,
Northern Railway,
Moradabad.

-Respondents

(By Advocate Shri Rajinder Khatter)

ORDER

Hon'ble Shri Shanker Raju, Member (J):

Applicant impugns respondents' order dated 24.4.2002, imposing upon him reduction in the time scale for a period of five years with postponement of future increments as well as orders dated 28.10.2002 and 25.1.2003 passed in appeal and revision.

2. Applicant who was working as Switchman on 17.10.1994 was posted at Mewanivada Railway Station. While working as Callman in the office of Controller he was allotted out house of Railway Officers Bungalow on 5.6.89, which was possessed by applicant. His younger brother Sh. Abid Khan working as Khallasi due to some family circumstances applicant has sought

permission to share the accommodation with him, which was permitted by the competent authority.

3. Applicant on promotion was posted outside Moradabad and has applied for retention of accommodation. On promotion to retain the accommodation was accorded vide respondents' letter dated 18.5.95 and deduction was made in the name of brother of applicant. Vide letter dated 6.12.95, recovery was ordered of penal rent at the rate of 15 Sq. Mtr. from the salary of applicant. He was transferred to Harthala Railway Station on 5.4.96. The quarter was cancelled in his name for unauthorized occupation and is request for regularisation on his transfer back was not acceded to. A major penalty chargesheet was issued for misconduct and a punishment of removal was inflicted upon applicant, which was affirmed on appeal and revision.

4. Applicant preferred OA-767/2000, which was disposed of on 29.5.2001, directing respondents that applicant be re-instated and if unauthorized retention of accommodation beyond permissible limit constitutes misconduct it shall be opened to respondents to impose a penalty other than removal or dismissal. Accordingly, vide impugned order a penalty of reduction in the time scale has been imposed, giving rise to the present OA.

5. Learned counsel for applicant Shri G.D. Bhandari, at the outset, stated that unauthorized occupation of government accommodation is not a misconduct, as such the penalty imposed is not sustainable in law.

6. It is further stated that applicant has been deprived of an opportunity and the orders passed are non-speaking.

7. Shri Bhandari contended that applicant who was transferred was permitted to retain the quarter up to 15.9.95 and on his transfer back on 5.4.96 which is the suburban station of Moradabad Station and as per Rules on transfer of applicant to the same station within one year he has a right to regularize the quarter in his name on top priority.

8. It is stated that before canceling the accommodation no show cause notice was issued and once the permission to share has been granted to applicant's younger brother recovery of rent from his salary is not sustainable.

9. It is also stated that the finding of the Enquiry Officer is perverse.

10. On the other hand, respondents' counsel vehemently opposed the contentions and stated that Rule 13 of the Supplementary Rules regarding accommodation clearly provides that in case of unauthorized occupation apart from cancelling the accommodation and recovery of penal rent disciplinary action can also be taken against the railway employee for breach of conduct.

11. Learned counsel stated that after 10.5.95 no direction to share was accorded and applicant was in unauthorized occupation without permission, as such damage rent has been recovered.

12. Learned counsel further stated that applicant was transferred on promotion on and was again transferred on 5.4.96 at his own request. As per the instructions staff posted at same station is to be given the original priority for regularisation. As applicant was transferred from MB to MWE on 17.7.94 and came back to HRH on 5.4.96 after a gap of 22 months, which is more than one year, rule shall not apply.

13. It is also stated that applicant has been afforded reasonable opportunity and the orders have been passed in accordance with Rules and as per the directions of the Tribunal.

14. We have carefully considered the rival contentions of the parties and perused the material on record.


15. In the light of a Full Bench decision of this Tribunal in **Shri Om Prakash v. Union of India & Others**, ATFBJ (2002-03) 126, where the reference 'as to whether unauthorized retention of staff quarter by a railway servant can be the basis of the disciplinary proceedings', was answered in the affirmative. In this view of the matter, it is no more res integra and supported by Rule 13 of the Supplementary Rules that unauthorized occupation of Railway quarter constitutes misconduct.


16. As regards disciplinary proceedings, it was directed by the Tribunal that in the event unauthorized occupation is a misconduct applicant can be proceeded against a punishment of other than removal and dismissal be imposed.

17. We have carefully considered the record of the enquiry and find that beyond 18.5.95 applicant has not sought extension of permission to share the accommodation. On his transfer he is not entitled to retain the accommodation. Accordingly, it was rightly cancelled as per Rule 13 of the Supplementary Rules. In such an event apart from penal rent and eviction a railway servant is liable to face disciplinary proceedings. We do not find any infirmity in the disciplinary proceedings.

18. Moreover, we have perused the findings of the enquiry officer and the orders passed. No procedural illegality or infirmity has been found to vitiate the enquiry. The punishment imposed is proportionate to the charge.

19. As regards regularization of accommodation, as per Rules as there has been a time gap of about 22 months between the two transfers within the same station railway accommodation cannot be regularised. Accordingly, finding no infirmity in the orders passed, which are speaking, we dismiss the OA, however, without any order as to costs.


(Shanker Raju)
Member (J)


(V.K. Majotra)
Vice-Chairman(A)

'San.'