

(2024) 03 CAT CK 0034

In the Central Administrative Tribunal

Case No : Original Application No. 260, 00449 Of 2016

Purna Chandra Patra

APPELLANT

Vs

Union Of India, Represented Through The General Manager,
E.Co.Rly, Rail Sadan, Chandrasekharpur, Bhubaneswar, Dist.-
Khurda, Odisha 751017 & Others

RESPONDENT

Date of Decision : 18-03-2024

Acts Referred:

Administrative Tribunals Act, 1985 — Section 21
Railway Servants (Discipline & Appeal) Rules, 1968 — Rule 6, 6(vi), 9
Railway Services (Conduct) Rules, 1966 — Rule 3(I)(i), 3(I)(ii), 3(I)(iii), 26

Citation : (2024) 03 CAT CK 0034

Hon'ble Judges : Sudhi Ranjan Mishra, Member (J); Pramod Kumar Das, Member (A)

Bench : Division Bench

Advocate : N.R. Routray, J.K. Nayak

Final Decision : Disposed Of

Judgement

Pramod Kumar Das, Member (A)

1. The facts of the matter are that while the applicant was working as Station Superintendent, Kandel Road, a departmental proceedings under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 was initiated against him vide memorandum dated 23.08.2013 (A/1) containing the allegations as under:

"Article-1

That Sri P.C.Patra, the then SS/BGBR and presently SS/KDLR enjoyed drawal of house rent allowance of Rs. 64,192/- in favour of him for his ulterior intention, released during the period from June-2007 till Aug, 2010 despite its inadmissibility as he had occupied a Railway quarters during the above period at BGBR. He even failed to ensure recovery of house rent from his salary until it was detected by vigilance during April, 2013. Thus by his above acts he has violated Para 1706 of Establishment Code, Vol. II, 1987 and Para 1714 of IREM,

Vol.-II, 1990.

Article-II

He has failed to seek permission from the competent authority, regarding retention of Railway accommodation at BGBR beyond the permissible period, in the event of his transfer from BGBR to KDLR on 12.05.11. Thus he violated RBE circular No. No.60/2004 {Board's Ir. No. E(G)99QR1-16, dt. 16.03.2004}.

By the aforesaid acts Sri P.C.Patra, SS/KDLR has committed grave misconduct; as he has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway servant, in contravention of Rule Nos.3(I)(i), (ii) & (iii) as well as Rule No.26 of RSCR, 1966. Thereby, he has rendered himself liable for disciplinary action under RS (D&A) Rules, 1968 as amended from time to time."

1.1 On 09.09.2013 (A/2) the applicant submitted his written statement of defence denying the allegations. Thereafter, the matter was inquired into. The IO, after inquiry, submitted its report, copy of which was supplied to the applicant vide letter dated 07.05.2014 (A/3) and the applicant also submitted his reply on 03.06.2014 (A/4). The DA imposed the punishment vide order dtd. 09.06.2014 (A/5). The applicant preferred appeal on 15.07.2014 (A/6). The Appellate Authority considered and rejected the appeal vide order dated 18.11.2014 (A/7). Being aggrieved by the said order, the applicant filed this OA on 30.06.2016 inter alia praying to quash the Charge Memorandum dtd. 23.08.2013 (A/1), punishment notice dtd. 09.06.2014 (A/5) and the Appellate Order dtd. 18.11.2014 (A/7) and to direct the respondents to restore him to his higher grade pay of Rs. 4600/- and pay all the consequential benefits. Thereafter, the applicant filed MA seeking to condone the delay in filing the OA.

2. Respondents filed counter in which by invoking Section 21 of the AT Act, 1985, objected the very maintainability of this OA on the ground of delay and laches and in so far as merit is concerned, it has been stated that since the proceedings were initiated and concluded strictly by following the rules and complying with the principles of natural justice, no interference is warranted.

3. Since very maintainability of this OA was questioned, this Tribunal, at the first instance, called upon to hear on MA 51/2024. Hence, while giving consideration to the MA filed by the applicant seeking condonation of delay, we have also heard Ld. Counsel for both the parties on the merit of the matter.

4. According to the respondents' counsel since the applicant did not file this OA within the stipulated period provided under the Act after rejection of his appeal on 18.11.2014 and also did not avail the opportunity available to him by way of submitting revision within the stipulated period against the order of the Appellate Authority, this OA is liable to be dismissed on the ground of delay.

5. Ld. Counsel for the applicant submits that on receipt of the order of the DA dated 09.06.2014, applicant preferred appeal on 15.07.2014, which was rejected

on 18.11.2014. Applicant retired from service on 28.02.2015 and waited for disbursal of his retirement dues. On receipt of the retirement dues, he submitted application under RTI seeking certain information relating to the disciplinary proceedings, which were supplied to him in March, 2016 and, thereafter, he filed this OA on 30.06.2016. It is submitted that respondents never issued any order of punishment but implemented the "punishment notice" against which applicant had preferred appeal. It is submitted by Ld. Counsel for the applicant that since the matter pertains to financial benefits, delay, if any, in approaching this Tribunal being not intentional or deliberate, may be condoned.

6. We have given our thoughtful consideration to the case, in hand. Applicant upon receipt of the order of the Disciplinary Authority dated 09.06.2014, preferred appeal on 15.07.2014, which was rejected on 18.11.2014. He retired from service on 28.02.2015. After receipt of his retirement dues, he sought some information under RTI Act relating to the disciplinary proceedings and after receipt of information in March, 2016 filed this OA on 30.06.2016 and in the process there was delay of about six months in approaching this Tribunal. Since the applicant is a retired employee and has been imposed with the penalty of downgrading to lower Grade Pay Rs. 4200/- with cumulative effect till his retirement, which is financial matter and that may cause hardship to him, in the peculiar facts and circumstances of the case, the delay in preferring this OA is condoned.

7. Insofar as merit of the matter is concerned, it is submitted by Ld. Counsel for the applicant that while the applicant was working as Station Superintendent in the scale of Rs. 9300-34,800/- GP 4600/-, on his transfer to Bagbahara (BGBR) in the year 2007, he was allotted with the railway quarters No. T/5/1 on 31.05.2007. On 12.05.2011, he was transferred to Kandel Road. However, since there was no suitable accommodation/quarter at Kandel Road, he kept his belonging in quarters at Bagbahara. On 18.03.2013, a preventive joint check was conducted by the Vigilance Branch at Bagbahara. On 06.06.2013, applicant received order of recovery of Rs. 1,81,685/- towards HRA, Qr. Rent and Damage Rent from his salary for occupation of quarters at Bagbahara vide letter dtd. 24.05.2013 and despite his representations for waiving penal charges, respondents kept recovering the entire amount. Thereafter, departmental proceedings under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 was initiated against him vide memorandum dated 23.08.2013 (A/1).

7.1 Denying the allegations, he submitted his written statement of defence on 09.09.2013 (A/2). Being not satisfied, Disciplinary Authority appointed Inquiry Officer to inquire into the charges. The IO found the charges proved (A/3). Applicant submitted his final defence dated 03.06.2014 (A/4). The DA after going through the final defense issued punishment notice dtd. 09.06.2014 (A/5) as under:

"At the same time it cannot be completely ruled out that billing drawing unit was completely in dark regarding occupation of the instant quarter by C.O. as the

user charges were being recovered from his salary. The cross examination of the Sr. Clerk/Optns/Billing also leaves room for doubt and a lapse at the end of Billing section cannot be completely ruled out.

On considering all the facts it can be clearly drawn that:-

(i) C.O has not made adequate efforts for bring to notice of concerned authority that he has been wrongly disbursed HRA even after occupation of Railway quarters for about 3 years in violation of guidelines in Para01714 of IREM Vol-II 1990.

(ii) He has not taken any permission for retention of quarters after his transfer to KDLR by competent authority. As such, mere recovery of wrongfully disbursed HRA and unpaid damage rent can not absolve him of the misconduct which was evidently personal responsibility of C.O.

I therefore, hold C.O. partially guilty of 1st charge and fully guilty of the second charge and impose a penalty of downgrading him to lower Grade Pay Rs. 4200/- with cumulative effect till his retirement. Penalty to be imposed with immediate effect."

7.2 Appeal preferred by the applicant on 15.07.2014 (A/6) has been rejected by the Appellate Authority vide order dated 18.11.2014 (A/7) upholding the punishment imposed by the DA. Being aggrieved, applicant has filed this OA seeking to quash the Charge Memorandum dtd. 23.08.2013 (A/1), punishment notice dtd. 09.06.2014 (A/5) and the Appellate Order dtd. 18.11.2014 (A/7) and to direct the respondents to restore him to his higher grade pay of Rs. 4600/- and pay all the consequential benefits.

7.3 It is submitted by Ld. Counsel for the applicant that once the respondents have recovered the entire amount, including the payments made towards HRA and Qr. Rent as also the damage rent, initiation of disciplinary proceedings against the applicant was not warranted and, accordingly, the imposition of punishment is illegal and that the punishment imposed on him is against the rules.

8. The contention of the Ld. Counsel for the respondents is that on his transfer to Bagbahara (BGBR), the applicant was allotted with the railway quarters No. T/5/1 on 31.05.2007, which he did not vacate on his transfer to Kandel Road on 12.05.2011 and kept it under his possession unauthorizedly till 28.05.2013. He neither took prior permission of the competent authority nor ever intimated the authority about such occupation, as such, he received HRA also. The said fact came to fore during preventive joint vigilance check at BGBR. Since the negligence/misconduct of the applicant was palpable, respondents prayed for dismissal of this OA.

9. We have given our thoughtful consideration to the arguments of the respective parties.

10. According to the Ld. Counsel for the applicant, the punishment imposed is not provided under the rules. We have examined this point with reference to the rules. The punishment imposed on the applicant vide order dated 09.06.2014 is downgrading him to lower Grade Pay Rs. 4200/- with cumulative effect till his retirement. Both major and minor punishments are provided under Rule-6 of the Railway Servants (D&A) Rules, 1968. Rule 6(vi) is the major penalty wherein it has been provided that "reduction to a lower time scale, pay, grade, post or service with or without further directions regarding conditions of restoration to the grade or post or service from which the Railway servant was reduced and his seniority and pay on such restoration to the grade, post or service". The cumulative effect means postponement of the future scale, pay, grade, post or service. Therefore, the stand of the applicant that the punishment imposed does not come within the purview of any of the penalties, does not sound to appeal and, hence, is overruled.

10.1 Next contention of Ld. Counsel for the applicant is that the second charge relates to occupying the quarters beyond the permissible period, for which without any proceeding under Public Premises (Eviction of Unauthorized Occupants) Act 1971, the department declared retention of quarters as unauthorized and imposed damage rent amounting to Rs. 1,17,437/- and the same has also been recovered from him, which is bad in law. In this regard, it may be recorded that we have across with the RBE No.8/90 dated 15.09.1990 relating to retention of railway accommodation by railway employees wherein it is made clear that on expiry of the permissible/permitted period, the allotment of quarter in the name of employee at the old station will be deemed to have been terminated automatically. Retention of quarter by the employee after expiry of the permissible period will be treated as unauthorised and during the period of unauthorised occupation the employee should be required to pay damages rate of rent in respect of the railway quarter. This Bench has also come across the Full Bench decision of CAT, Allahabad dated 22.02.1996 in the case of Ram Poojan vs. Union of India and ors., wherein it was held that a railway servant on transfer, retirement or otherwise, if does not vacate the railway accommodation even after the expiry of permissible period, retention of the accommodation by the railway servant would be unauthorized and penal/damage rent can be levied. Further, the CAT-Allahabad Bench in OA No.127/2008 in the case of Kamla Prasad Pandey vs. Union of India and Ors. relying on the decision of the Calcutta Bench of the Tribunal rendered in 1993(2) ATJ 553, Shanker and Ors., and Sudha Iswar Rao vs. Union of India, 1994(2) ATJ 553, held that it has been clearly been laid down in these two decisions that Section 7 of the PP Act is nothing but an alternative procedure for recovery of rent dues from Government employee and cannot be treated as the only mode of recovery. In view of the above, the stand of the applicant that recovery of the damage rent without following the P.P.Act is bad in law is not acceptable.

10.2 Further contention of the Ld. Counsel for the applicant is that the allegation in Article II is that the applicant retained the railway quarter without prior

permission of the competent authority thereby violated the conditions stipulated in RBE Circular No. 60/2004 {Board's Ir. No. E(G)99QR1-16, dt. 16.03.2004}. According to the Ld. Counsel for the applicant for retention of the said quarters beyond the permissible period without taking prior permission was treated as unauthorized and an amount of Rs. 1,17,437/- was imposed and recovered from him towards damage rent of the said quarters. Therefore, initiation of disciplinary proceedings and subsequent imposition of punishment for the selfsame allegation amounts to double jeopardy, which is bad in law. We may remind ourselves that doctrine of double jeopardy is a protection against prosecution twice for the same offence. The interest of the citizen is protected by the provision of Article 20-22 of the Constitution relating to personal liberty and protection for imposition of punishment twice for the same offence. Admittedly, for retention of quarters beyond permissible period without prior permission, damage rent was imposed and recovered from the applicant. The applicant challenged such recovery in OA No. 520/2016 but he withdrew the same thereby setting the matter at rest. It is seen that the allegation made in Article II was held proved by the IO and weighed in the mind of the DA for imposing punishment. Therefore, according to this Tribunal, punishment imposed by taking the allegation made in Article II amounts to double jeopardy.

10.3 The next submission of the Ld Counsel for the applicant is that with regard to allegation leveled in Article I, the DA after making detailed discussions held that it leaves no room of doubt that lapse at the end of Billing section cannot be completely ruled out and thus, the allegation under Article I was held partially proved. According to him, no whisper has been made relating to the action, if any, taken against the erring official, who is also responsible for drawal of HRA. Therefore, if the allegation in Article II goes, imposition of such punishment for partial prove of the allegation made in Article I is highly illegal and arbitrary. This Tribunal is not the Appellate Authority over the decision taken by the competent authority in departmental proceedings. The Tribunal can interfere in the matters of disciplinary proceedings where the proceedings were drawn up and concluded in gross infraction of rules or violation of principle of natural justice. It is not the case of the applicant that there was any such proved infraction or violation of rules/principles of natural justice in conducting and concluding the proceedings. As already noted above, damage rent having been already recovered for the retention of quarters, in question, beyond the permissible limit without prior permission, again initiation of proceedings and imposition of punishment for such allegation in Article II amounts to double jeopardy. Therefore, the only left over charge is the allegation made in Article I. Admittedly, the IO held the allegation made in Article I as proved but the DA did not agree to the same and held the allegation in Article I, as partially proved, which was also upheld by the AA. The order of punishment establishes that the DA after taking into consideration the allegation leveled in Article II as proved and Article I as partially proved, imposed the punishment of downgrading the applicant to lower Grade Pay Rs. 4200/- with cumulative effect till his retirement vide order dated 09.06.2014 (A/5). In view of

the discussions made above since imposition of punishment taking into consideration the allegation made in Article II amounts to double jeopardy, imposition of such punishment based on a partially proved allegation made in Article I needs reconsideration by the DA afresh.

11. Hence, the impugned orders dated 09.06.2014 and 18.11.2014 of DA and AA respectively are hereby quashed and the matter is remitted back to the DA to reconsider the matter after allowing due opportunity of being heard to the applicant and issue the consequential orders at an early date preferably within a period of 60 days from the date of receipt of a copy of this order. It is made clear that the entitlement of the applicant of the benefits consequent upon quashing of the order of the DA and AA shall abide the final outcome of the reconsideration of the matter as directed above.

12. In the result, this OA stands disposed of with the observation and direction made above. There shall be no order as to costs.