(2007) 07 CAL CK 0012

Calcutta High Court

Case No: W.P.C.T. 192 of 2005

Jay Ram Sharma		APPELLANT
	Vs	
Union of India and Others		RESPONDENT

Date of Decision: July 9, 2007

Citation: 112 CWN 521

Hon'ble Judges: Manik Mohan Sarkar, J; Kalyan Jyoti Sengupta, J

Bench: Division Bench

Advocate: Paresh Chandra Maity, for the Appellant; Sanghamitra Nandy, for the Respondent

Judgement

Kalyan Jyoti Sengupta, J.

This was an appeal against a judgment and order passed by the learned Tribunal dated 4th February, 2005. By the judgment and order impugned the application of the petitioner was dismissed. The fact leading to filing of the application before the learned Tribunal is as follows:

2. On or about 24th September, 1994 the petitioner, being a railway employee, was charge-sheeted on the alleged misconduct of sub-letting of the quarters allotted to him in course of employment to a third party.

3. It appears from the records that before issuance of charge-sheet an enquiry was conducted as to the possession or occupation of the quarters in question and it was found that the quarter was allegedly occupied by a third party. Basing on this report the said charge-sheet was issued. The petitioner, of course, did not reply to the charges. The railway authorities thought it best to hold an enquiry and an Enquiry Officer was appointed. The petitioner participated in the domestic enquiry. In course of enquiry proceedings, upon the petitioner being examined, the petitioner admitted that one lady was occupying the quarter.

4. The Enquiry Officer after conducting the enquiry, found the petitioner having faulted in sub-letting the quarter and at the same time misconducted himself and

this has been found by the Enquiry Officer. The disciplinary authority, namely, punishing authority, on receipt of the report of Enquiry Officer, having inflicted punishments of reducing his pay to one stage lower in the same scale for a period of one year and with cumulative effect and which will have effect of postponement of his future increment of his pay. As such, his pay was reduced from Rs. 1350/- to Rs. 1320/- for a period of one year with cumulative effect which will have effect of postponing the future increment of his pay.

5. Against this order the petitioner preferred appeal to the departmental appellate authority and departmental appellate authority thought it best that punishment inflicted by the punishing authority is not proportionate to the alleged misconduct. So, he enhanced the punishment of reversion from Electric Welder Grade-I to Electric Welder Grade- II which carries the pay of Rs. 1200/-- 1800/- for a period of three years with cumulative effect which will have effect on the seniority in employment and restoration to the original Grade I.

6. Thereafter, the petitioner challenged the aforesaid order before the learned Tribunal. In the meantime, the petitioner made an application before the learned Tribunal for passing appropriate order for taking over possession of quarter by the railway authorities as the railway authorities were recovering the occupation charges at a penal rate. The learned Tribunal did not pass any order and left the matter with the railway authorities. Ultimately, the petitioner vacated the quarters on November 30, 2003 and railway authorities had taken possession on December 3, 2003. Meanwhile, the petitioner retired from services and consequent upon the dismissal of the application by the learned Tribunal, his retiral benefits have been calculated and fixed. Following the order of the appellate authority, all his retiral dues have almost been eaten up with the adjustment of the recovery amount of the occupation charges at a penal rate in respect of the quarter.

7. It appears further from records that petitioner on or about 19th December, 1995 wanted to hand over vacant possession of the quarter but we do not find any receipt of this letter but another letter was issued on 21st December, 2001 (at page 103 of the petition) which was received by the department concerned undoubtedly.

8. This itself makes it clear that the petitioner has been in possession or occupation of the railway quarter till 2001 and he was asked to vacate the quarters by the railway authorities on or about 19th August, 1994.

9. In this matter there are two issues. One is regarding the disciplinary proceedings. Secondly, the order of punishment and order of recovery of the rent for the quarter and adjustment of the same from the retiral dues of the petitioner.

10. Learned counsel for the petitioner submits that the basis of the finding of the learned Tribunal regarding unauthorised sub-letting is the enquiry report furnished by two officials whereas in the departmental circular the methodology is that a committee should have been formed with four persons. Therefore, this report is null

and void and that apart, there has been no evidence to prove that there has been sub-letting of the quarter.

11. Both the Enquiry Officer and all authorities have ignored the aforesaid point. We have carefully considered the submissions and gone through the records. The charge-sheet was not replied to. So, allegations of misconduct remain un-rebutted but when enquiry was held the respondent authorities obviously has accepted as if the charges have not been admitted. So, two witnesses were brought and evidence was adduced.

12. It appears to us that report was not furnished by the appropriate officials under the departmental guidelines. Reports were not before the Enquiry Officer.

13. In our view, it is true that the reports were not there but that does not mean that the case could not be proved otherwise. It was possible for the railway authorities to prepare report in accordance with the guidelines of the railway authorities. Moreover, it appears from the records that the applicant himself has admitted that third party had been in possession. So, it was for the applicant to bring the third party to say what was her status, when she was found in possession. She could have been brought as witness to say that she was mere a guest for temporary period and she was found at the time of inspection as such but this was not done.

14. In such circumstances, in view of non-reply to the charge-sheet and not disproving the case of sub-letting, we think that the Enquiry Officer has found correctly. Therefore, the report has rightly been accepted.

15. Now coming to the question of quantum of punishment, we find that the disciplinary authority has recorded the punishment. He has not expressed his mind as to why this punishment for stoppage of increment with cumulative effect is required. In this case we think that the order of punishment is too harsh and disproportionate to the alleged misconduct of the petitioner on the ground of sub-letting his quarter. He was losing benefit of allotment of quarter on the one hand and on the other, he would be suffering of punishment of stoppage of increment with cumulative effect. This cannot be supported. Simultaneously, we think that the order of punishment of the disciplinary authority stopping increment with cumulative effect is not sustainable. However, the payment of his salary is upheld by this Court. As far as the order of punishment of the appellate authority is concerned, we feel that this order is not only disproportionate to the alleged misconduct but the same also offending principles of natural justice. When the appellate authority decides to enhance punishment already inflicted, a notice should have been given inviting a representation and further giving an opportunity of being heard as to why punishment should not be enhanced. This was not done in this case. So, order of punishment by the appellate authority is violative of principles of natural justice. Such punishment order cannot be upheld and the same is hereby set aside. The learned Tribunal, in our view, has totally overlooked the aforesaid

aspect and these issues were not at all raised by the parties. The learned Tribunal failed to discharge its duty by not adjudicating the appropriate issues involved.

16. Now the question of the recovery of rent from the petitioner. Petitioner has retired in the meantime. Therefore, question of payment of other benefits cannot and did not arise except his retiral benefits. We find, the petitioner has expressed his willingness to vacate the quarter in December, 2001. Railway authorities did not accept the same on the plea that the matter was pending before the learned Tribunal. We find that issue of possession of the quarter was not the subject matter before the learned Tribunal, moreover, there was no restraint order from taking possession at that point of time. We find that the railway authorities are entitled to recover the rent at the penal rate from the date of passing the order for vacating of the quarter and upto 21st December, 2001. But on and from 22nd December, 2001 till the date of actual and physical handing over of possession the railway authorities shall be entitled to recover at the normal rate. Therefore, amount of recovery shall be re-calculated taking note of the aforesaid findings and observations and after re-calculation and without adding any interest whatsoever those amounts shall be recovered from the retiral dues of the petitioner. In view of the aforesaid order passed by us slightly reducing the quantum of punishment of the petitioner, all retiral benefits and pension be re-fixed and shall be paid, if not paid already. Thus, we dispose of this application and set aside the order passed by the learned Tribunal, however, without any order as to costs.
Manik Mohan Sarkar, J.

I agree.