

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

108

CWP No.5532 of 2021

Date of decision: 09.03.2021

Devta Parsad

.....Petitioner

versus

Central Administrative Tribunal, Chandigarh Bench & Ors.

....Respondents

CORAM: Hon'ble Mr. Justice Jaswant Singh
Hon'ble Mr. Justice Girish Agnihotri

Present: Mr. Deepak Arora, Advocate
for the petitioner.

GIRISH AGNIHOTRI, J.

Petitioner-Devta Parsad, stated to be aged 54 years has filed the present writ petition *inter alia* with a prayer to set aside order dated 19.01.2021 (Annexure P-14) passed in O.A. No.060/00803/2019, by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh.

The petitioner herein, as an applicant in O.A. No.060/00803/2019 had *inter alia* sought relief from the Tribunal to quash/set aside order/letter dated 24.07.2019 (Annexure P-10) in the present writ petition, whereby the petitioner had been directed to hand over the possession of the house to the department within 7 days. This OA was filed on 29.07.2019. On 31.07.2019, as noticed in para 2 of the impugned order of the Tribunal

dated 19.01.2021, the petitioner was granted interim relief and as such continued staying in the said house.

At this stage, it is relevant to further record that Tribunal had vacated interim stay on 05.01.2021 and vide final order dated 19.01.2021, the Tribunal had dismissed the OA.

Learned counsel for the petitioner had inter alia argued that the impugned order dated 24.07.2019, whereby allotment of H.No.1518-B, Ty-II has been cancelled, has fallen to error inasmuch as it amounts to inflicting two different punishments for the same set of allegations.

Brief facts as also noticed in the order passed by the Tribunal are that the petitioner had joined his service on 24.11.1988 as Khalasi, whereafter on promotion to the post of Senior Technician, in July 1993, he was posted at Rail Coach Factory, Kapurthala, Punjab (i.e. under respondent Nos. 3 to 5).

After noticing other submissions on behalf of applicant, it has been brought on record that the plea of the applicant-petitioner before the Tribunal was that the petitioner has been residing in the official accommodation since long time. It has been further notice that the petitioner has been ordered to vacate the government accommodation as a counter blast to petitioner submitting number of complaints against respondent No.6. It was the argument of counsel for the petitioner before the Tribunal that before passing the impugned order no show cause notice or opportunity of hearing was granted to him.

Upon notice, issued by the Tribunal, the written statement was

filed on behalf of official respondents through Sh. Gurvinder Singh, Deputy Chief Engineer, Rail Coach Factory, Kapurthala. It was inter alia stated in the written statement that H. No.1518-B, Type II, West Colony, RCF Kapurthala, was allotted to him and the same has been cancelled in view of the Inquiry Report submitted by AWM/MFG-1. An objection was also taken that cancellation of Government accommodation as defined under Section 3(q) of the Administrative Tribunals Act, 1985 is not a service matter. It was specifically pleaded in the written statement that numerous complaints were received in the department relating to personal conduct and social behavior of the applicant-petitioner from the neighbors/employees working in the Rail Coach Factory, Kapurthala. The Competent Authority in order to examine the veracity of allegations in the complaint nominated Sh. Ram Parkash (SSE/SMS) and Sh. Rajesh Jatana (SSE/Shower Testing) to conduct a fact finding Inquiry. The applicant was afforded adequate opportunity by the Inquiry Officer but the applicant at his own volition did not appear. The said Inquiry report inter alia concluded with conclusion/recommendations:-

“(i) Railway Residence allotted to Shri Devta Prasad should be cancelled;

(ii) Disciplinary action may be initiated against Shri Devta Prasad for his conduct.”

It has further been pleaded that the said inquiry report was supplied to the applicant/petitioner vide letter dated 24.10.2019. It is specifically pleaded that the petitioner/applicant did not raise any objection nor disputed the findings. Thereafter on 16.08.2019, the petitioner was

issued memo/charge sheet under Rule 11 of the Railway Servant (Discipline & Appeal) Rules, 1968. It is stated that the petitioner had submitted reply to the same, however, the said inquiry is still continuing. It is specifically pleaded in the reply that the allegation against the applicant-petitioner are serious in nature. The cancellation of Government Accommodation has been ordered to maintain proper living atmosphere in the vicinity. It was pleaded case of the respondents with specific reference to para 5 of the preliminary objection that the applicant-petitioner does not have substantive rights to retain the government accommodation. The relevant extract of para 5 of the preliminary objection is reproduced hereunder:-

*“5. That the challenge to the impugned order on the ground of violation of Principle of Natural Justice is also misconceived in as much as the conduct of the Applicant which led to cancellation of Govt. Accommodation does not confer any right much less any legal or vested right to retain the accommodation. Hence, the question of issuing notice or affording another opportunity to the applicant in the present set of circumstances does not arise. The applicant is not entitled to the relief as prayed for and affording an opportunity in the absence of any substantive right and entitlement to retain the accommodation in the manner, would be mere formality and in view of the settled law the applicant is not entitled to any opportunity when result is the same as has been held by the Hon'ble Apex Court in the case of **M.C. Mehta V/s Union of India reported as 1999(6) SCC 237**. Hence the Original Application deserves to be dismissed out rightly.”*

At this stage, it is also deemed appropriate to reproduce the statement of imputation of misconduct framed against the petitioner, which

reads as under:-

“Statement of Imputation of misconduct framed against Sh. Devta Parsad, Tech-I/TR, EMP.No.150693 working in Tool Room Shop, Rail Coach Factory, Kapurthala.

Sh. Devta Parsad, Emp. No.150693 while working as Tech-I/TR in Tool Room Shop/RCF/KXH committed the following misconduct:-

Railway accommodations are provided to RCF employees to reside in it in a peaceful manner by maintaining harmonious relation with each other. Sh. Devta Parsad, Tech-I/TR, Emp. No.150693 was allotted Railway Quarter No.2118-B. While residing in that quarter, he created nuisance in the neighbourhood area. Sh. Subash Chander, Tech-I/Shell, Emp. No.527046, alongwith 17 neighbour employees of RCF filed a complaint on 05.11.2018 to the administration against Sh. Devta Parsad which was related with personal and social behaviour of a Railway Servant as laid down in the Railway Service (Conduct) Rules, 1966. Written statements of 17 complainants out of 18 were recorded. It is alleged that Sh. Devta Parsad incites and forces Sh. Subash Chander, Tech-I/Shell, Emp. No.527046, Sh. Arvind Prasad, Emp.526058, Tech.-I/Fur. and Sh. Ram Dass, Emp. No.523030, Tech.-I/Shell to take part in sexual activities with him against their will. He is in habit of sitting outside his railway quarter, in obscene physical appearance by wearing only undergarments. He also makes obscene and porn gestures by sitting outside his residence. He is indulging in doing black magic related things in staircase and courtyards of neighbouring residences. He is in habit of quarrelling with neighbours over trifle issues and making false complaints against neighbours in the name of his wife and others in local police station, railway administration etc. These acts of Sh. Devta Parsad are not up to mark hence his neighbors,

residing with their families, are getting disturbed.

The above said act of omission/commission on the part of the said Sh. Devta Parsad tantamount to action in a manner which is unbecoming of a Railway Servant and thereby violated Rules 3(1) (iii) of the Railway Services (Conduct) Rules, 1966.

*(Beli Ram)
Dy. CME (Mfg.)”*

We have heard learned counsel for the petitioner.

For the facts and reasons as noticed above, this Court is of the considered view that in the peculiar facts and circumstances of the case, this Court is not inclined to exercise its extraordinary writ jurisdiction in favour of petitioner. This Court has also carefully perused the order dated 19.01.2021, passed by the Tribunal. The finding so recorded in the detailed order passed by the Tribunal, does not call for any interference and accordingly, the order dated 19.01.2021 is upheld.

Before concluding, it is also deemed appropriate to deal with the argument raised by counsel for the petitioner regarding alleged inflicting of two different punishments for the same set of allegations. This Court is of the considered view that neither before the Tribunal nor before this Court, the petitioner has been able to show any violation of any statutory rule governing the allotment of government accommodation. The contention of the petitioner that by passing order dated 24.07.2019 (whereby allotment of government accommodation to the petitioner has been cancelled) amounts to double punishment is misconceived because it does not amount to punishment under the Punishment Appeal Rules.

It is not disputed before this Court nor was disputed before the

Tribunal that in pursuance to memo/charge sheet dated 16.08.2019 under Rule 11 of the Railway Servant (Discipline & Appeal) Rules, 1968, petitioner is facing regular inquiry which is still pending.

Accordingly, the writ petition is devoid of merits.

Dismissed.

(JASWANT SINGH)
JUDGE

(GIRISH AGNIHOTRI)
JUDGE

09.03.2021
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Whether speaking/ reasoned:	Yes/No
Whether Reportable:	Yes/No