

Central Administrative Tribunal
Principal Bench

O.A. No.1245/2002

New Delhi this the 29th day of January, 2003

Hon'ble Shri V.K. Majotra, Member (A)

Hon'ble Shri Kuldip Singh, Member (J)

Mumtaz Ahmed
son of Shri Shamsuddin
resident of 159/9, Railway Colony,
Delhi Kishan Ganj, Delhi 06

-Applicant

(By Advocate: Shri M.L. Sharma)

Versus

1. Union of India through
The General Manager,
Northern Railway, Baroda House,
New Delhi-01
2. The Divisional Railway Manager,
Northern Railway, State Entry Road,
New Delhi-52
3. Shri Ram Chandra Gulati, Dy. CSTE (CNM)/
Baroda House, New Delhi.


-Respondents

(By Advocate: Shri R.L. Dhawan)

ORDER (Oral)

Hon'ble Shri Kuldip Singh, Member (J)

This OA has been filed by one Mumtaz Ahmed impugning various penalty orders passed by the disciplinary authority against him. He has impugned the appellate order and besides the charge sheet dated 4/8.10.1996 issued to him by one Ram Chander Gulati, DSTE. While impugning the penalty orders though various grounds have been taken up by the applicant, one of the ground is that the charge sheet had not been issued by the competent authority. Learned counsel for the applicant submitted that as per Rule-2 of the Railway Servants (Discipline & Appeal) Rules, 1968 under Rule 2 (c) the competent disciplinary authority can impose any of the major penalties specified, and according to Rule-6 the




competent authority in case of applicant should have been senior JAG grade officer whereas the charge sheet had been issued only by the Senior Scale Officer, viz. DSTE. Learned counsel for applicant has also referred to the appellate order passed by the appellate authority whereby the appellate authority had admitted that the charge sheet has not been issued by the competent authority and it is rectified later on by the competent authority. However, there is no provision of rectification for such type of charge sheet. Shri Dhawan appearing for respondents submitted that there is no rule for rectification. Rules are silent on that subject. However, Shri Dhawan, relied upon a judgment in the case of **State Bank of Patiala & Ors. Vs. S.K. Sharma** JT 1996 (3) SC 722 and according to the law laid down by the Hon'ble Supreme Court if there is a violation of any procedural law on that ground the order passed by the authority should not be set aside unless the procedure of law has caused any prejudice to the delinquent official. But here in this case, we have to see whether the proceedings have been issued by the competent authority or not and if the same has not been issued by the competent authority and the applicant had been proceeded against by an order issued by the authority without having any jurisdiction to issue the same. We may also mention that the issuing of a charge sheet by the competent authority is a part of substantive proceedings because it affects the jurisdiction of the authorities for issuing of the charge sheet itself. Learned counsel for respondents has also made an attempt to seek

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13

shelter under Rule-8(2) and submitted that as per Rule-8(2) the charge sheet could have been issued by a disciplinary authority who is competent to impose minor penalties. However, Shri Sharma appearing for the applicant referred to a Railway Board's letter printed in the book of Railway Servants (Discipline and Appeal) Rules, 1968 by one M.L. Jand issued on 4.2.1971. This specifically mentioned that 'it is clarified that there is no contradiction in the provision of Rule 2 (1) (c)(iii) and that of Rule 8(2). The words 'subject to provision of Clause (c) of sub-rule (1) of Rule 2 used in Rule 8(2) simply means that only an authority competent to impose any of the major penalties can initiate disciplinary proceedings for imposition of a major penalty in relation of Rule 9, in respect to non-gazetted staff'.

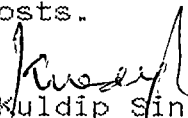
2. In this case, it is admitted that applicant belongs to non-gazetted staff. He was imposed major penalty but the authority is not competent to impose major penalty. Hence we are of the considered opinion that the charge sheet has not been issued by the competent authority and the same is liable to be quashed and the consequential proceedings taken up by the authority are also liable to be quashed. Accordingly, we quash the charge sheet as well as the order of disciplinary and appellate authority's order. However, the department to take fresh proceedings against the applicant if they so desire.




(4)

3.. OA is disposed of in the above terms. No

costs.


(Kuldeep Singh)
Member (J)
cc.


(V.K. Majotra)
Member (A)