

O.A. 350/1434/2019
M.A. 350/112/2020

An application under Section 19 of the Administration Tribunal's Act, 1985

BETWEEN

Mrityunjoy Gouda, son of Harsha Kumar
Gouda, residing at Flat No. D/2,
Dinabandhu Apartment, 2nd Floor,
Gopalpur, Sarkarpara Road, Maheshtala,
South 24-Parganas, Kolkata-700143.

.... Applicant.

AND

1. Union of India service through
the General Manager, South Eastern
Railway, Garden Reach, Kolkata - 700
043.

2. The FAA & Executive Director
Establishment (N), Railway Board,
Ministry of Railways, Room No. 433, New
Delhi-110001.

3. The Chief Public Information
Officer-38 and DE(N)-II, Railway
Board, Railway Bhawan, Ministry of
Railways, Room No. 433, New Delhi-
110001.

4. The Dy. Chief Personnel Officer
(Gaz), Office of the Principal CPO,
South Eastern Railway, Garden Reach,
Kolkata - 700 043.

5. The Principal Chief Commercial
Manager, South Eastern Railway, Garden
Reach, Kolkata - 700 043.

6. The Deputy Chief Commercial
Manager (Claims), South Eastern
Railway, 14, Strand Road, 10th Floor,
Kolkata-700001.

7. The Assistant Commercial
Manager (Refunds)-Cum-disciplinary
Authority, South Eastern Railway, 9th
Floor, 14, Strand Road, Kolkata-700001.

.... Respondents.

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.350/1434/2019
M.A.350/112/2020

Date of order : 4.5.2020

**Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member**

**MRITYUNJOY GOUDA
VS.
UNION OF INDIA & OTHERS
(South Eastern Railway)**

For the applicant : Mr. A. Chakraborty, counsel

For the respondents : Mr. K. Sarkar, counsel

ORDER

Bidisha Banerjee, Judicial Member

The applicant a discharged Bungalow Peon, has preferred this

O.A. to seek the following reliefs:-

- "i) Charge-sheet vide Charge Memorandum being No.E2/12/MG/RB/2019 dated 02.07.2019 issued by the respondent No.7, Office letter being No.E(NG)II/2019/MISC./5 dated 23.05.2019 issued by the respondent No.2, Office Letter being no.SER/P-HQ/E-GAZ/740/RTI-IX/2019/MG/705 dated 27.05.2019 issued by the respondent No.5, Show-cause Notice dated 04.06.2019 issued by the respondent No.6 are not tenable in the eye of law and as such the same should be quashed;*
- ii) Grant all consequential benefits after quashing the impugned Charge-sheet vide Charge Memorandum being No.E2/12/MG/RB/2019 dated 02.07.2019 issued by the respondent No.7;*
- iii) Costs of and incidental to this application;*
- iv) Pass such further or other order or orders."*



The applicant has also filed an M.A.No.350/112/2020 seeking the following reliefs:-

"In view of the above, it is most humbly prayed that your lordships would be graciously be pleased to issue an appropriate order directing the respondents not to give any effect and/or further effect to the charge memorandum being no.E-2/12/MG/RB/2019 issued by the Respondent No.7 and also to the impugned Enquiry report dated 27.01.2020 prepared in connection with the said charge-sheet and to pass such further Order/Orders and/or Direction or Directions be given as Your Lordships may deem fit and proper."

2. The gravamen of indictments against the applicant are as under:-



Article of Charge – I

Shri Mrityunjy Gouda, Bungalow Peon (TADK) attached to Shri Saibal Kumar Bose, Dy. CCM/Claims, South Eastern Railway, Kolkata has used ~~the~~ unsavory and intemperate language while preferring RTI First Appeal dt ~~15/10/2019~~ to the Executive Director, Estt (N), Railway Board, New Delhi and ~~the~~ Appellate Authority.

Shri Gouda was aware that CPIO who is a Director level Officer in the ~~Railway~~ Board but without considering the same he has uttered disparaging ~~remarks~~ like "negligent" "irresponsible attitude" against him. Shri Gouda in the ~~above~~ First Appeal has alleged that the CPIO had provided some misleading and irrelevant information under item – I and item – II which is completely ~~baseless~~ and far away from the truth.

Being a substitute Railway Employee Shri Gouda has dictated Executive Director Estt (N), Railway Board, New Delhi to take disciplinary action against that CPIO which reflects audacious and insubordinate attitude for his part.

It is, therefore, evident that Shri Mrityunjy Gouda, Bungalow Peon (TADK) attached to Shri Saibal Kumar Bose, Dy. CCM/Claims, South Eastern Railway, Kolkata deliberately violated the Service Conducts Rules in vogue.

Article of Charge-II

As per the directives of the Executive Director, Estt (N) , Railway Board, New Delhi and Dy. CPO (Gaz), South Eastern Railway, Kolkata vide letter Nos E(NG)II/2019/Misc/15 dt 23/05/2019 and SER/P-HQ/E/GAZ/740/RTI-IX/2019/MG/705 dt 27/05/2019 respectively, Shri Mrityunjy Gouda, Bungalow Peon (TADK) attached to Shri Saibal Kumar Bose, Dy. CCM/Claims, South Eastern Railway, Kolkata was asked to submit his explanation vide letter no E2/12/MG(RB)/2019 dt 04/06/2019 by Dy. CCM/Claims, S.E. Railway for using some unsavory and intemperate language while preferring RTI First Appeal dt 17/05/2019 to the First Appellate Authority.

The explanation was submitted by Shri Gouda on 06/06/2019 wherein he has tried to establish his innocence in a very audacious and unapologetic manner, without maintaining due courtesy and obedience.

Shri Gouda has claimed that the CPIO (Director/Rly Board) is to be his subordinate. Moreover, he stated that the First Appellate Authority (ED/E/N, Railway Board) has failed to apply his mind and also advised to consult the law dictionary.

Furthermore, Shri Gouda stated that First Appellate Authority (ED/E/N, Railway Board) has roamed beyond his jurisdiction and FAA should withdraw his order immediately.

Such language used by a subordinate employee in railway services against his superiors is simply not acceptable and contrary to the Service Conduct Rules.

By the above acts of omission and commission Shri Mrityunjy Gouda, Bungalow Peon (TADK) attached to Shri Saibal Kumar Bose, Dy. CCM/Claims, Kolkata has committed grave misconduct and acted in a manner unbecoming of a Railway Servant by contravening Rule 3 (ii), (iii), (XI) and (XXI) of the Railway Service Conduct Rule 1966 and thereby rendered himself liable for Disciplinary action under Railway Servants (Discipline & Appeal) Rules 1968 as amended from time to time.



3. The applicant has contended that he was engaged as Telephone Attendant cum Dak Khalasi (in short TADK)/ Bungalow Peon vide order dated 27.09.2016 and has been discharging his duties honestly and efficiently and to the utmost satisfaction of his superior and that upon completion of 120 days of continuous service he has acquired temporary status with effect from 25.01.2017. He preferred an application dated 28.01.2019 seeking information under RTI Act

regarding duties and responsibilities of TADK. He alleged that neither any information was provided nor his application was disposed of by the respondents within the prescribed one month's period. He preferred an appeal before the First Appellate Authority being the Respondent No.2 vide his letter dated 17.05.2019 and urged before the said authority to invoke penal provisions under right to information statute against the Respondent No.3. On 21.05.2019 he received a reply dated 15.05.2019 where the delay in issuing the reply was admitted. The information as was sought for by the applicant was not provided to him for which he preferred appeal before the CIC on 25.06.2019. He was supplied with another letter dated 23.05.2019 alleging that he has used disparaging remarks against the CPIO. He was served with a show cause notice dated 04.06.2019. He replied to the same on 06.06.2019 stating that he had sought for information not as an employee but as a citizen of India. He was chargesheeted vide memo dated 02.07.2019. He preferred representations denying the charges and requested for withdrawal of the charge memo.



The applicant has alleged that the impugned charge memo is not tenable in the eye of law since the charges leveled against him is a subject matter of an appeal preferred under the provisions of RTI Act. He has also alleged that the author of the relied upon documents as well as the complainant on whose recommendation such action was initiated were not named in the list of witnesses.

4. At hearing it transpired that the proceeding is yet to be concluded with a final order. The respondents have alleged that while discharging responsibilities as TADK Bungalow Peon he remained absent unauthorisedly from 07.08.2017 to 04.12.2017 which however is not the subject matter of the charge sheet under challenge.

6. We note that the power or scope to interfere with a pending proceeding which is yet to be concluded with a final order is very limited. We are fortified in our views by the following judgments:-

(I) Hon'ble Delhi High Court, in **Than Singh – Vs – UOI[(2003) 3 ATJ 42]** has summed up the following grounds upon which the conjectures of a chargesheet can be questioned,

“(i) If it does not disclose any misconduct;

(ii) If it discloses bias or prejudices the guilt of charged employee;

(iii) There is non application of mind in issuing the chargesheet;

(iv) If it is vague;

(v) If it is based on state allegations;

(vi) If it issued malafide”

We do not feel that the chargesheet is vague and does not disclose any specific misconduct.

(II) In **Secretary to State Govt. Prohibition & Excise Department v. L. Srinivasan (1998)3 SCC 157**, the Tamil Nadu Administrative Tribunal, Madras had quashed a suspension order as well as the charge sheet containing imputations of grave



misconduct. Disapproving the action of the Tribunal Hon'ble

Apex Court held :-

"....we desist from expressing any opinion on merit or recording any of the contentions raised by the counsel on either side. Suffice it to state that the Administrative Tribunal had committed grossest error in its exercise of the judicial review. The member of the Administrative Tribunal appears to have no knowledge of the jurisprudence of the service law and exercised power as if he is an appellate forum de hors the limitation of judicial review. This is one such instance where a member had exceeded his power of judicial review in quashing the suspension order and charges even at the threshold. We are coming across such orders frequently putting heavy pressure on this Court to examine each case in detail. It is high time that it is reminded."



(iii) The Hon'ble Apex Court has repeatedly cautioned in **Union of India vs. Upendra Singh [(1994)3 SCC 357]**, **Union of India vs. Ashok Kacker[1995 Supp.(1) SCC 180]**, **Secretary to State Govt. Prohibition & Excise Department v. L. Srinivasan(supra)** that Court or Tribunal has to be circumspect and should refrain themselves from quashing charge sheet at the threshold;

(iv) In **State of Punjab vs. Ajit Singh [1998 SCC (L&S) 154]**, the High Court dismissed the chargesheet as meritless, though charges were supported with documentary evidence. Hon'ble Supreme Court disapproved the decision of the High Court and held that unless the charges officer had replied to the charges, interference by Courts in the administrative function was premature.

In view of the aforesaid proposition of law, we refrain from interfering with the chargesheet at the threshold.

5. In the rejoinder the applicant has taken a new plea that the General Manager(G.M. in short) being the Appointing Authority, chargesheet ought to have been issued by an authority equivalent to the rank of Appointing Authority i.e. the G.M. and a charge sheet issued by an authority lower in form deserves to be quashed. On an earlier occasion, this Tribunal tried to ascertain whether the General Manager was in fact the Appointing Authority of the applicant, as it was evident from the engagement letter dated 27.09.2016 that the applicant was appointed with the "approval" of the General Manager.



The respondents have amply clarified that the Assistant Commercial Manager (Refunds), South Eastern Railway was competent to issue the charge sheet against a Group 'D' staff in the Grade Pay of Rs.1800/- as per Establishment Serial No.1/2012 and 16/2011 and as the applicant was in the Grade Pay of Rs. 1800/- a junior scale Group 'B' officer was competent to act as his Appointing Authority. Therefore, the charge sheet was perfectly in order.

The respondents further clarified that all the panels for recruitment of Group 'C' and Group 'D' are approved by the General Manager of a Zonal Railway, while panel of Group 'A' recruited through UPSC are approved by the President of India but that does not made the G.M. the appointing authority for the Group 'C' and 'D'. That, the appointing authority and disciplinary authority are clearly defined in the

circulars/Establishment serials. In support, the respondents would produce the following :-

(1) Estt.Srl.No. 016 /2011
No.P/D&A/Rules/Pt.I

RBE No.10/2011
Dated: 10.02.2011

Sub: Notification.

Railway Board's letter No. E(D&A)2009/RG6-1 dated 19.01.2011 (RBE No. 10 /2011) is as under :-

G.S.R. - In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules

further to amend the Railway Servants (Discipline and Appeal) Rules, 1968 namely:-

Short title and Commencement -

- (1) These rules may be called the Railway Servants (Discipline and Appeal) First Amendment Rules, 2011
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Railway Servants (Discipline and Appeal) Rules, 1968, for Schedule I and Schedule II, the following Schedules shall be substituted, namely

-SCHEDULE - I-

[See rule 4 and sub-rule (2) of rule 7]

Sl. No.	Authority empowered to place a Railway servant under suspension or to impose penalties	Class of Railway Servants over whom disciplinary powers can be exercised	Nature of penalties mentioned in rule 6 which the authorities specified in Column 2 are empowered to impose on Railway Servants mentioned in corresponding entries in Column 3 and powers of that authority to place them under suspension	Appellate Authority
1	2	3	4	5

RAILWAY BOARD'S OFFICE

1	2	3	4	5
1	Secretary, Railway Board	All classes of non-gazetted Railway servants including Group 'B' non-gazetted Ministerial staff	All penalties and suspension	Railway Board



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	Director), Junior Administrative Grade Officers		Appointing Authority or above will impose penalties under clauses (vii), (viii) and (ix)	subordinate.
2.	Senior Scale Officers	All classes of non-gazetted Railway Servants (a) with Grade Pay of up to and including Rs.2400 /- (b) for whom the officer concerned is the appointing authority.	(a) Penalties specified in clauses (i) to (iv) and suspension (b) Penalties specified in clauses (vii) to (ix)	Next higher authority to whom the authority in column 2 is immediately subordinate.
3.	Officer in Junior Scale or in Group 'B' (Gazetted)	All classes of non-gazetted Railway Servants (a) with Grade Pay of up to and including Rs.2000/- (b) for whom the officer concerned is the appointing authority.	(a) Penalties specified in clauses (i) to (iv) and suspension (b) Penalties specified in clauses (vii) to (ix)	Next higher authority to whom the authority in column 2 is immediately subordinate.

RAILWAY RECRUITMENT BOARDS

1	2	3	4	5
1.	Chairman	All classes of non-gazetted Railway Servants.	All penalties and suspension	Railway Board



RAILWAY RATES TRIBUNAL

1	2	3	4	5
1.	Chairman	All classes of non-gazetted Railway Servants	All penalties and suspension	Railway Board
2.	Secretary	All classes of non-gazetted Railway Servants	Penalties specified in clauses (i) to (iv) and suspension	Chairman, Railway Board

RAILWAY LIAISON OFFICE

1	2	3	4	5
1.	Joint Secretary, Railway Board	All classes of non-gazetted Railway Servants	All penalties and suspension	Railway Board

ALL OTHER OFFICES (NOT SHOWN ABOVE)

1	2	3	4	5
1.	Head of Office	All classes of non-gazetted Railway Servants	All penalties and suspension	Railway Board

Note:

(1) The Railway Board may impose any of the penalties specified in on all non-gazetted Railway Servants employed in offices mentioned Schedule and place them under suspension.

(2) The penalty of compulsory retirement or removal or dismissal from vice shall be imposed only by the Appointing Authority or an authority of equivalent rank or a higher authority.

SCHEDULE - II

[See rule 4 and sub-rule (2) of rule 7]

Schedule of Disciplinary powers and powers of suspension of different of Railway Officers and Senior Supervisors in respect of non-gazetted s Zonal Railways, Chittaranjan Locomotive Works, Diesel Locomotive Integral Coach Factory, Rail Wheel Factory, Metro Railway (Kolkata), Loco Modernisation Works (Patiala), Rail Coach Factory (Kapurthala) way Electrification Projects and Metropolitan Transport Projects (Rail





No.	Authority empowered to place a Railway servant under suspension or to impose penalties under rule 6	Class of Railway Servants over whom disciplinary powers can be exercised	Nature of penalties mentioned in rule 6 which the authority in column 2 is empowered to impose on Railway Servants mentioned in corresponding entries in column 3 and powers of that authority to place them under suspension	Appellate Authority
1.	2.	3.	4.	5.
1.	Senior Supervisors incharge with Grade Pay of Rs.4200/- and above. (Described as Supervisors In-charge by the Railway Administration for this purpose)	All staff who are three grades (Grade Pay) below and lower than the Disciplinary Authority.	Penalties specified in clauses (i) to (iv) (no such power can be exercised where inquiry under sub-rule (2) of rule 11 is required) and suspension subject to report to Divisional Officer or Assistant Officer Incharge	Assistant Officers (Junior Scale and Group 'B') (Gazetted)

			within twenty four hours in the case of Group 'C' staff.	
2.	Assistant Officers (Junior Scale and Group 'B') (Gazetted)	All staff with Grade Pay of up to and including Rs.2400/-	Penalties specified in clauses (i) to (v) and suspension. Also Penalty specified in clause (vi) on staff with Grade Pay of up to and including Rs.1650/- only.	Senior Scale Officers and Assistant Officers (Junior Scale and Group 'B' (Gazetted) holding independent Charge)
3.	Senior Scale Officers and Assistant Officers (Junior Scale and Group 'B' (Gazetted) holding independent charge)	All staff with Grade Pay of up to and including Rs.2800/-	Penalties specified in clauses (i) to (vi) and suspension	Junior Administrative Grade Officers and Senior Scale Officers holding independent charge or In-charge of a Department the Division
4.	Junior Administrative Grade Officers and Senior Scale Officers holding independent charge or In-charge of a	All classes of non-gazetted staff.	Penalties Specified in clauses (i) to (vi) and suspension	Additional Divisional Railway Managers in relation to the Department attached Divisional



	Department in the Division			Railway Managers.
5.	Additional Divisional Railway Managers in relation to the Departments attached to them or Divisional Railway Managers	All classes of non-gazetted staff	Penalties specified in clauses (i) to (vi) and suspension	Senior Administrative Grade Officers in the Zonal Railways' Head Quarters in Pay Band-4 with Grade Pay Rs.10000/- including Principal Heads of Departments in Pay Band-4 with Grade Pay Rs.12000/-.
6.	Senior Administrative Grade Officers in the Zonal Railways' Head Quarters in Pay Band-4 with Grade Pay Rs.10000/- including Principal Heads of Departments in Pay Band-4 with Grade Pay Rs.12000/-	All classes of non-gazetted staff	Penalties specified in clauses (i) to (vi) and suspension	Additional General Managers in relation to Departments attached to them or Chief Administrative Officers or General Managers
7.	Additional General Managers in relation to Departments	All classes of non-gazetted staff.	Penalties specified in clauses (i) to (vi) and suspension	Railway Board



	attached to them or Chief Administrative Officers or General Managers			
8.	Railway Board	All classes of non-gazetted staff	Penalties specified in clauses (i) to (vi) and suspension	President

Note:

- (1) An Appointing authority or an authority of equivalent rank or a higher authority shall be competent to impose penalties specified in clauses (vii), (viii) and (ix) of rule 6.
- (2) Where the post of appellate authority as shown in column 5 is vacant, then, in that case, the next higher authority shown in row just below that authority shall be the appellate authority.
- (3) The appointing authority or an authority of equivalent rank or a higher authority who is competent to impose the penalty of dismissal or removal or compulsory retirement from service, may also impose any lower penalty.

Note: Principal rules were published vide notification number S.O. 31 dated the 14th September, 1968 and subsequently amended by the following numbers:-

1. S.O.No. 1531 dt. the 26th April, 1969
2. S.O.No. 1925 dt. the 8th May, 1971
3. S.O.No. 2501 dt. the 3rd July, 1971
4. S.O.No. 5078 dt. the 6th November, 1971
5. S.O.No. 4050 dt. the 30th October, 1971
6. S.O.No. 5264 dt. the 4th December, 1971
7. S.O.No. 9467 dt. the 8th April, 1972
8. S.O.No. 3918 dt. the 25th November, 1972
9. Notification No. E(D&A)69RG6-9 dt. the 5th February, 1973
10. S.O.No. 2897 dt. the 6th October, 1973
11. S.O.No. 1413 dt. the 14th May, 1977
12. S.O.No. 2193 dt. the 29th July, 1978
13. S.O.No. 364 dt. the 23rd December, 1978
14. Notification No. E(D&A)77RG6-30 dt. the 7th April, 1978



(11)

SOUTH EASTERN RAILWAY

Estt. Srl. No. 1/2012

RBE No. Nil

No. P.D&A/Rules/Pt. I

Dated : 16.01.2012


Imposition of penalties of dismissal, removal or compulsory retirement of non-gazetted staff – Notification of Appointing Authority

Ref : Estt. Srl. No. 105/2006

In terms of Railway Board's letter No.E(D&A)2002/RG 6-36 dated 02.09.2003, circulated under Estt. Srl. No. 162/03, Zonal Railways may notify 'Schedule of Powers' which should notify the 'Authorities' authorized to make appointments in respect of each grade/category of staff. Accordingly, 'Appointing Authority' was defined under Estt. Srl. No. 105/2006.

Railway Board have revised the schedule of disciplinary powers and powers of suspension in different grades of Railway Officers and Sr. Supervisors in respect of non-gazetted staff of Zonal Railways, a copy of which was circulated under Estt. Srl. No. 16/2011.

Consequent on revision of pay scales under 6th Pay Commission and merger of various categories in various Departments, it has been decided to define 'Appointing Authorities' in respect of present scale/corresponding Grade Pay after introduction of 6th Pay Commission in connection with imposition of penalties of dismissal, removal or compulsory retirement of non-gazetted staff as under:-



Srl. No.	Pay structure			Authority who may appoint
	Name of pay band (Rs.)	Corresponding Pay scale	Corresponding Grade Pay (Rs.)	
1.	-1S	4440-7440	1300	Jr. Scale/Gr. B/Sr. Scale
2.	-1S	4440-7440	1400	Jr. Scale/Gr. B/Sr. Scale
3.	-1S	4440-7440	1600	Jr. Scale/Gr. B/Sr. Scale
4.	-1S	4440-7440	1650	Jr. Scale/Gr. B/Sr. Scale
5.	PB-1	5200-20200	1800	Jr. Scale/Gr. B/Sr. Scale
6.	PB-1	5200-20200	1900	Jr. Scale/Gr. B/Sr. Scale

6. We note that the power or scope to interfere with a pending proceeding which is yet to be concluded with a final order is very limited. We are fortified in our views by the following judgments:-

(I) Hon'ble Delhi High Court, in **Than Singh – Vs – UOI** [(2003) 3 ATJ 42] has summed up the following grounds upon which the conjectures of a chargesheet can be questioned,

"(i) If it does not disclose any misconduct;

(ii) If it discloses bias or prejudices the guilt of charged employee;

(iii) There is non application of mind in issuing the chargesheet;

(iv) If it is vague;

(v) If it is based on state allegations;

(vi) If it issued malafide"

We do not feel that the chargesheet is vague and does not disclose any specific misconduct.

(II) In **Secretary to State Govt. Prohibition & Excise Department v. L. Srinivasan (1998)3 SCC 157**, the Tamil Nadu



Administrative Tribunal, Madras had quashed a suspension order as well as the charge sheet containing imputations of grave misconduct. Disapproving the action of the Tribunal Hon'ble Apex Court held :-

"....we desist from expressing any opinion on merit or recording any of the contentions raised by the counsel on either side. Suffice it to state that the Administrative Tribunal had committed grossest error in its exercise of the judicial review... The member of the Administrative Tribunal appears to have no knowledge of the jurisprudence of the service law and exercised power as if he is an appellate forum de hors the limitation of judicial review. This is one such instance where a member had exceeded his power of judicial review in quashing the suspension order and charges even at the threshold. We are coming across such orders frequently putting heavy pressure on this Court to examine each case in detail. It is high time that it is reminded."

(iii) The Hon'ble Apex Court has repeatedly cautioned in **Union of India vs. Upendra Singh [(1994)3 SCC 357]**, **Union of India vs.**

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(iii) The Hon'ble Apex Court has repeatedly cautioned in **Union of India vs. Upendra Singh [(1994)3 SCC 357]**, **Union of India vs.**



(iv) where the Railway servant having been a permanent member of any other Service or having substantively held any other permanent post, has been in continuous employment under the Ministry of Railways, the authority which appointed him to that Service or to any grade in that Service or to that post; whichever authority is the highest authority.

(b) 'Commission' means the Union Public Service Commission.

(c) 'Disciplinary authority' means –

(i) in relation to the imposition of a penalty on a Railway servant, the authority competent, under these rules, to impose on him that penalty;

(ii) in relation to Rule 9 and clauses (a) and (b) of sub-rule (1) of Rule 11 in the case of any Gazetted Railway servant, an authority competent to impose any of the penalties specified in Rule 6;

(iii) in relation to Rule 9 in the case of any non-gazetted Railway servant, an authority competent to impose any of the major penalties specified in Rule 6;

(iv) in relation to clauses (a) and (b) of sub-rule (1) of Rule 11, in the case of a non-gazetted Railway servant, an authority competent to impose any of the penalties specified in Rule 6.

(d) 'Head of the department' for the purpose of exercising the powers as appointing, disciplinary, appellate or revising authority, means the authority declared to be head of the department in terms of clause (9) of Rule 2202 of Volume II of the Indian Railway Establishment Code; [Rule 103 (21) of 1985 ed].

(e) 'Railway servant' means a Railway servant as defined in clause (13) of Rule 102 of Volume I of the Indian Railway Establishment Code [Rule 103(43) of 1985 ed] and includes any such Railway servant on foreign service or whose services are temporarily placed at the disposal of any other department of the Central Government or a State Government or a local or other authority;

(f) 'Service' means a service under the Ministry of Railways;

(g) 'Schedule' means a schedule appended to these rules.

(2) All other words and expressions used but not defined in these rules and defined in the Indian Railways Act, 1890 (9 of 1890) shall have the meanings respectively assigned to them under that Act."

8. Having considered the matter in entirety and having delved into the claims, counter claims, rival contentions and Railway rules and



Schedule of powers enumerated supra, we are of the considered opinion that the applicant has failed to establish that the General Manager is only empowered to act as his Disciplinary Authority. The applicant has also failed to make out a case meriting interference with the charge memo.

9. Hence, we dispose of the O.A. with a liberty to the applicant to participate at the enquiry proceedings and to cooperate with the authorities in concluding the proceedings within the statutory time frame.

10. In the event the applicant finds that he needs to cite witness in defence, he may request the Enquiry Officer for the same which request, if made, shall be duly considered with an appropriate order. Consequently the M.A. stands disposed of. No costs.



(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

sb