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**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION NO.210/00800/2016

Dated this Tuesday, the 28th day of January, 2020

**CORAM : R.VIJAYKUMAR, MEMBER (ADMINISTRATIVE)
R.N.SINGH, MEMBER (JUDICIAL)**

Prathiviraj Meena son of Nathu Lal Meena
(Date of Birth : 02.06.1971) age 45 years,
working as : C.T.I. (Chief Ticket Inspector) (Group "C")
under Station Manager, Igatpuri, in Mumbai Division of
Central Railway, and residing at B-705, Barsana Salasar Brij Bhoomi,
Opp. Mavus Mall, Temba Hospital Road, Bhayandar (West),
District Thane, State of Maharashtra, Pin Code 401 101. - **Applicant**
(By Advocate Shri R.G.Walia)

Versus

1. The Union of India, Through General Manager,
Central Railway, Headquarters' Office, Mumbai C.S.T.
Mumbai 400 001.
2. O.S.D. (CSTM)/Additional Divisional Railway Manager,
DRM's Office, Central Railway, CST, Mumbai 400 001.
3. Sr. Divisional Commercial Manager, DRM's Office,
Central Railway, CST, Mumbai 400 001.
4. C.C.M. (Chief Commercial Manager) (PS),
Sr. Administrative Grade, Office of the C.C.M.,
Central Railway, Headquarters Office, CST, Mumbai 400 001.
5. C.C.M. (Chief Commercial Manager), Sr. Administrative Grade,
Principal Head of the Department, Headquarters Office,
Central Railway, CST Mumbai 400 001. - **Respondents**
(By Advocate Shri S.C.Dhawan)

ORAL ORDER
Per : R.Vijaykumar, Member (A)

Shri R.G.Walia, learned counsel for the
applicant.

Shri S.C.Dhawan, learned counsel for the
respondents.

2. This application has been filed on 25.11.2016 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

“8(a). This Hon'ble Tribunal will be graciously pleased to call for the records and proceedings of the case from the Respondents whichled to the issuance and passing of the impugned Orders i.e.

(i) Chargesheet dated 3.1.2014 issued by Sr. DCM, Mumbai division of the Central Railway, Mumbai 400 001, “Annex A1”

(ii) Impugned Order dated 3.2.2016 passed by the Disciplinary Authority i.e. Sr. DCM, CSTM, Mumbai, Ann. “A2”.

(iii) Impugned Order dated 27.5.2016 passed by the Appellate Authority i.e. OSD (S) CST, Mumbai 400 001, Annx “A3”.

(iv) Show Cause Notice dated 22.9.2016 issued by Chief Commercial Manager (PS) for enhancement of punishment alleged to be issued under Rule 25(v) of Railway Servants (Discipline & Appeal) Rules, 1968 (Annex “A4”).

(v). CCS (PS)'s order No.P.CR.HQ 410.DAR.RPM.1, dated 4.11.2016 removing the Applicant from service, issued by the alleged Revisionary Authority, Annx “A5”.

and after examining their propriety, legality, validity and constitutionality be pleased to quash and set aside the same with all consequential benefits.

8(b). This Hon'ble Tribunal will be pleased to the Hon'ble Tribunal will be pleased hold and declare that the Impugned Orders are bad-in-law, unauthorized and illegal and quash and set aside the same with all consequential benefits with a order/direction to pay the back wages, increment, arrears, seniority and promotion due to him with 18% interest on arrears.

8(c). Any other and further orders as this Hon'ble Tribunal may deem fit, proper and necessary in the facts and circumstances of the case.

8(d). Costs of the Original Application is provided for.”

3. The applicant was proceeded against in disciplinary proceedings by way of issue of charge memorandum No.BB.C.CON.48.2013.56 dated 03.01.2014 (Annexure A-1) alleging certain delinquencies and after conduct of inquiry and after examination of the materials before him, orders were passed by the Disciplinary Authority who was the Senior DCM in order dated BB.C.CON.48.2013.56 dated 03.02.2016 imposing the penalty of 'Reduction by one stage in the same time scale of pay for a period of two years with postponement of future increment'. The applicant filed an appeal on 02.05.2016 which was considered by the Appellate Authority who was then OSD(S), Commercial Branch, Divisional Office, who considered that the penalty imposed by the Disciplinary Authority appeared to be harsh and reduced the penalty to 'reduction by one stage in the same time scale of pay for a period of one year with postponement of future increment'. These orders also recorded that the applicant was at liberty to file a Revision Petition to the CCM (PS) who was located at Headquarters. Thereafter, the Senior CCM(PS) of the office of the Chief Commercial Manager, Mumbai exercised suo motu powers of revision and

issued a show cause memorandum No.P.CR.HQ.410.DAR.RPM.1 dated 22.09.2016 (Annexure A-4) conveying to the delinquent officer that he did not agree with certain analysis of the facts and the adequacy of the punishment and had decided to provisionally enhance the penalty. Accordingly, he also provided opportunity to the delinquent to file his reply and after consideration of such reply, passed orders No.45 (Annexure A-5) dated 04.11.2016 holding the facts against the delinquent officer as proved and thereafter, decided to impose the penalty of removal from service with immediate effect.

4. The applicant has challenged the impugned penalty on the basis that the Revisionary Authority did not have the requisite powers in view of the fact that the Appellate Authority, namely, the OSD (S) in the Revisional Office, was also of the same rank at SAG level and therefore, the orders as well the impugned show cause notice passed in revision were not within the said authority's jurisdiction.

5. The learned counsel for the applicant was heard at length on the issue. He has adduced these facts in support of his case.

6. The learned counsel for the respondents was invited to explain the relevant rules, provisions and instructions by which the show cause notice issued and orders passed in revision were justified. For this purpose, he refers to RBE No.10/11 at Schedule II under Row 4 which relates to all Classes of Non-Gazetted Staff such as the applicant and enables a Disciplinary Authority at the level of Senior Scale Officers as in the present case, includes the Senior DCM who had functioned as Disciplinary Authority. Thereafter, appeal lies to Additional DRM in relation to the Department attached to them and OSD (S) of the Commercial Office of the Division had exercised the powers and passed orders on appeal in the present case.

7. The learned counsel for the respondents argues that any authority senior to the Appellate Authority can pass orders in revision. The learned counsel for the respondents further invites attention to a circular issued by the Central Railway Headquarters No.P/HQ Ruling No.802 dated 06.02.2017 which is in response to several judicial orders and seeks to modify the authority at the Headquarters to consider the appeal and revision application against the

orders passed by the DRMs, ADRMs, CWMs under R.S. (D&A) Rules, 1968. The existing authorities are the following:

"Nominated SAG (Senior Administrative Grade) Officer of the concerned Department for) PHOD CHOD of the concerned Department. For Example: CCM (PS) in Commercial Department."

It then suggests the revision as below:

"PHOD CHOD of the concerned Department. For example: Only CCM in Commercial Department or COM for traffic Department."

8. The learned counsel argues that these orders take effect from 06.02.2017 and not for past cases and refers to the last sentence in the above said circular which states that past cases should not be opened.

9. The learned counsel for the parties have been heard and the relevant circular has been carefully perused.

10. The learned counsel for the applicant relies on the previous order passed by this Tribunal in OA No.158/2012 dated 18.03.2016 (Annexure A-10) which relates to Head Travelling Ticket Examiner and the issue relevant in the present case has been discussed elaborately and needs reproduction in the context that the facts of the case are squarely applicable to the present case. The relevant portion of the order reads as follows:

“31. From the Schedule it appears that the next higher authority of the Senior Administrative Grade Officers in the Zonal Railways Headquarters would be the Chief Commercial Manager (HAG). But he has not exercised the revisioning power. The Chief Commercial Manager (PS) is a Senior Administrative Grade Officer. Having equivalent grade as the Appellate Authority, exercised the power of revision. In terms of the relevant provision of Rule 25(4)(ii) if no appeal is preferred, the next higher authority of the appellate authority would be the revisioning authority. Clause (ii) of sub-rule (4) of Rule 25 provides that the revising authority shall be higher than the Appellate Authority even where no appeal has been preferred. Where no appeal has been preferred, like in the instant case, unless the revising authority happens to be the higher authority than the Appellate Authority, he cannot exercise power of revision.

32. Relevant extract of Rule 25(4)(ii) is set out herein below :

“25/(4) No power of revision shall be exercised under this Rule -

(i) xxx xxx xxx

(ii) by a revising authority unless it is higher than the appellate authority where an appeal has been preferred or where no appeal has been preferred an the time limit laid down for revision by the appellate authority has expired.

Provided that nothing contained in Clauses (i) and (ii) above, shall apply to revision by the President.”

33. In the instant case, the grade of CCM (PS) is equivalent to the grade of DRM. As such, he was not the competent Revisionary Authority to issue the impugned show cause notice. As such, the impugned show cause notice cannot be sustained.

34. The respondents, in support of their submission, have produced an order dated 12.10.2015, issued by the Chief Commercial Manager, Central Railway, wherein it has been mentioned that in a case where Sr. D.C.M. Is the disciplinary authority, the appellate authority will be ADRM and the Revisioning Authority will be CCM (PS). Only in case of mercy appeal the said appeal should be considered by the CCM. Learned counsel for the applicant vehemently objects and submits that the letter will not supersede the statute being the Railway Servants (Discipline & Appeal) Rules.

35. The learned counsel for the applicant has relied on a judgment passed by the Hon'ble Supreme Court in *Civil Appeal No.1752/2010 [The Secretary, Railway Board, New Delhi &*

Others Vs. N.N.S. Rana] confirming the judgment of the Hon'ble High Court. The Hon'ble Supreme Court as well as the Hon'ble High Court were considering the appellate order where by issuing a show cause notice conveying the decision of the President of India enhancing the punishment of Disciplinary Authority. The Hon'ble Supreme Court, relying on various provisions of appeal held that before an action for imposition of any punishment, which would include enhancement of the penalty, a reasonable opportunity of making representation against such proposal has to be afforded to him after putting forward all imputation of misconduct or misbehaviour to him. The relevant provision envisage the statutory requirement of communication of imputations in order to provide an opportunity to the concerned employee to prove his innocence and not the final conclusions of his alleged misconduct itself, as is done in the instant case. The Hon'ble Supreme Court held that although a show cause notice was issued, it was on a limited issue, namely – requiring him to show cause against the proposed punishment of removal from service. Rule 22 of 1968 rules was not complied with. It was evident from the show cause notice that the President had already formed the opinion. The Hon'ble Supreme Court further held that the show cause notice was in the nature of a post decisional opportunity of hearing, which was inconsistent with the scheme of Rule 22 read with Rule 11 of the 1968 rules.

36. We have perused the judgment passed by the Central Administrative Tribunal, Hyderabad Bench on 10.08.2001 in the case of *[P. Narayana Vs. The Additional Divisional Railway]*. This judgment is very relevant for discussion and reliance. In this judgment the Tribunal held that clause (ii) of sub-rule (4) provided an exception to the exercise of power under Sub-rule (1) that the revising authority shall be higher than the appellate authority, even where no appeal has been preferred. When an appeal has been preferred to the appellate authority, only its higher authority would have to necessarily exercise revisional jurisdiction. Even where no appeal has been preferred, unless revising authority happens to be higher authority than the appellate authority, it cannot exercise power of revision. Relevant para 10 is set out herein below :

“10. But Clause (ii) of Sub-rule (4) provides, an exception to the exercise of power under Sub-rule (1), that the revising authority shall be higher than the appellate authority, even where no appeal has been preferred, when an appeal has been preferred to the appellate authority, only its higher authority would have to necessarily exercise revisional jurisdiction. Even where no appeal has been preferred, unless revising authority happens to be higher authority than the appellate authority, it cannot exercise power of revision. The proviso to Sub-rule 4, however, exempts from such

restriction to the exercise of power in respect of the President. In respect of other authorities mentioned in Sub-rule (1), this restriction applies. Hence, ADRM being the appellate authority in the above cases, he cannot exercise power of revision even under Clause (iv) of Sub-rule (1). His higher authority alone should exercise such power. In this view, the show cause notices issued and the revisional orders passed by the ADRM in the above OAs as well as the appellate orders confirming the enhancement, are without jurisdiction and they are accordingly quashed. The above OAs are accordingly allowed but without costs."

37. Although we are now concerned about revision under Rule 25 of the Railway Servants (D & A) Rules, 1968, and the said rules only provides that a show cause notice has to be given to the employee to provide him reasonable opportunity of making representation against the penalty proposed. But in the facts and circumstances of the case, where an employee has been completely exonerated on the basis of the specific finding of the Disciplinary Authority after discussing the evidence of the Pws, the word 'reasonable opportunity' has to be given a liberal construction and should not confine only to the proposed punishment. That apart, from the order also it was clear that the revisioning authority already made up his mind to impose the said punishment, which exposes a closed, prejudged and bias mind of the authority.

38. Having regard to the facts and position of law, as discussed herein above, we find that the impugned show cause notice is without jurisdiction apart from being bad in law. The impugned show cause notice cannot be sustained.

39. Accordingly, the O.A. is allowed. The impugned show cause notice is set aside. There will be no order as to costs."

11. In the present case, the OSD (S) of the Commercial Department and the CCM (PS) are admittedly of the same rank in the SAG level although there may be some differences in terms of their individual seniority. Therefore, the interpretation of the fact and rules suggest that this citation is squarely applicable in the present case and on that basis, the OA deserves

to be partly allowed. The impugned show cause notice dated 22.09.2016 and the impugned revisionary order dated 04.11.2016 are quashed and set aside. The applicant shall be entitled for the consequences that shall follow in accordance with the relevant rules, instructions and to be given effect within eight weeks.

12. In the facts and circumstances, no costs.

(R.N.Singh)
Member (Judicial)

(R.Vijaykumar)
Member (Administrative)

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