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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 2035 of 1999

New Delhi, this the 14th day of March, 2001

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)
HON'BLE MR. M.P. SINGH, MEMBER (A)

Shri Mahabir Prasad
S/o Shri Manjeet Singh
Ex. Switchman, Allahabad Division,
Makhampur. ..Applicant

(By Advocate: Shri B.S. Mainee)

Versus

Union of India : Through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Allahabad. ...Respondents

(By Advocate: Mrs. Meera Chhibber)

ORDER (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (Judl)

The applicant in this OA has assailed an order of punishment, which is Annexure A-I whereby the applicant has been dismissed from service as a consequence of the departmental enquiry held against him.

2. While challenging the impugned order besides other grounds, the applicant has taken up a ground that the order of dismissal has not been passed by the competent authority. The applicant alleges that he was initially appointed as Gateman and then promoted as Switchman in the grade of Rs. 1200-2040 under the orders of the Sr. Divisional Operating Manager and his promotion order is At Annexure A-4.

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11

3. The applicant further alleges that this dismissal order has been passed by the Divisional Traffic Manager, though he is a senior scale officer but is subordinate to Sr. Divisional Operating Manager, who is the competent authority to pass the order of removal from service. So on this ground alone we find that the applicant can succeed because the respondents particularly in their reply to para 4.11 where the applicant has alleged that he has been removed by an authority lower than the authority by the appointing authority. That allegation has not been specifically answered or denied in implied manner even.

4. We have heard the learned counsel for the parties on this aspect.

5. The learned counsel for the applicant has also referred to a judgment reported in 1997(2) ATJ page 33 entitled as Shri B.D. Lamba Vs. U.O.I. & Others decided by the Principal Bench (OA No.1242/96). In that case it was found that the order of punishment was not passed by the appointing authority. In that case the applicant was provisionally promoted to officiate as ASM in the grade of Rs.455-700/1400-2300 by orders dated 16.11.1984 passed by SR.DPO who is in JAG grade of Rs.3700-5000 and the impugned order was passed by the DPO by the senior scale officer in the grade of Rs.3000-4500 and the court came to the conclusion that the applicant thus stood dismissed by an authority subordinate to that by which he had been appointed so on that ground the order of punishment was set aside.


6. Shri Mainee also referred to a judgment passed by this very Bench in OA No. 81/99 - Shri S.P. Gupta

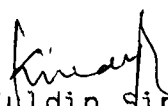
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Vs. U.O.I. & Another on the same point. In this case also since the applicant was promoted as Switchman by the order of the Sr. Divisional Operating Manager and the impugned order of dismissal had been passed by the Divisional Traffic Manager, who is a senior scale officer and is subordinate to the Senior Divisional Operating Manager so the impugned order cannot be sustained as the same has been passed by an authority lower than the authority appointing the applicant as Switchman, so the same is liable to be quashed.

7. In the light of the above, OA succeeds and is allowed. The impugned orders dated 10/17.2.98, 30.6.98 and 16.10.98 are quashed and set aside. However, the applicant will not be entitled to automatic reinstatement and the matter is being remitted back to the respondents for placing it before the competent disciplinary authority to pass fresh orders in accordance with law within 2 months from the date of receipt of a copy of this order. Pending final orders passed by the competent authority, applicant shall be deemed to be under suspension and while passing final orders in accordance with law, the competent disciplinary authority will also determine how the suspension period is to be treated. No costs.


(M.P. Singh)
Member (A)


(Kuldip Singh)
Member (J)

Rakesh