

Central Administrative Tribunal, Principal Bench

O.A. 81/1999

Now Delhi, this the 5<sup>th</sup> day of November, 2000

(5)

Hon'ble Mr. Kuldip Singh, Member (J)  
Hon'ble Mr. M.P. Singh, Member (A)

Shri S.P. Gupta S/o Shri Ghanshyam Dass Gupta  
Ex. Travelling Ticket Examiner,  
Northern Railway,  
Moradabad  
Presently Resident of 8, Natraj Apartments,  
Patparganj,  
Delhi. .... Applicant

(By Advocate: Shri B.S. Mainoo)

Versus

Union of India

Through:

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

(By Advocate: None)

ORDER

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

The applicant in this OA has challenged the impugned order dated 31.5.1996 whereby he had been removed from service after a departmental enquiry. He has also challenged order dated 3.9.1996, Annexure A-2 whereby his appeal was dismissed. Further he has challenged order dated 19.12.1996, Annexure A-3 whereby his revision petition was partially allowed and the penalty of removal was reduced to the penalty of compulsory retirement.

2. The facts in brief are that the applicant was proceeded departmentally on the allegations that

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while working as Travelling Ticket Examiner, a Memorandum charge-sheet dated 23.1.1995 was served upon the applicant for major penalty, alleging that he was detected carrying one passenger without regularising him in Two-tier ACC with mala fide intention for consideration and also for non-cooperation with the Vigilance staff. It was clarified that he gave a contradictory statement when examined on 21.5.1994 and 30.6.1994. The applicant denied the charges but regular enquiry was held and the Inquiry Officer submitted his report to the disciplinary authority on the basis of which the impugned order was passed.

3. To challenge the same the applicant has alleged that the orders removing the applicant from service had been passed by the Divisional Commercial Manager who was not competent to pass the impugned order because he was not the appointing authority of the applicant and he had no powers to give appointment/promotion to the staff in the grade of Rs.1400-2300(Rs.5000-8000 revised).

4. It is further stated that the Divisional Commercial Manager is only a Senior Scale officer while the appointing authority was the Senior Divisional Commercial Manager who was a Junior Administrative Grade Officer (JAG).

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5. It is further alleged that in accordance with Rule (2)(1)(a) of the Railway Servants (Discipline & Appeal) Rules, 1963 the appointing authority as defined in the Rule 2 says that in the case of the applicant it was the Senior Divisional Manager who was the appointing authority and being an appointing authority, was the disciplinary authority, as such it has been alleged that the initial punishment order being passed by the Divisional Commercial Manager is without jurisdiction and the same is liable to be quashed.

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6. The respondents in their reply have submitted that the application is barred by time as the order in question was passed on 31.5.1996 when the applicant was removed from service and the revision was allowed vide order dated 19.12.1996 when removal from service was converted to that of compulsory retirement and the OA was filed on 6.1.1999, as such the same is barred by limitation and it ought to be rejected on this ground alone.

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7. On merits it was pleaded that the Divisional Commercial Manager is empowered and fully competent to impose the penalty as awarded to the applicant.

8. It was also pleaded in the case of the applicant the appointing authority of the applicant was a Senior Scale Officer and not a JAG grade officer.

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9. We have heard the learned counsel for the applicant since no one turned up on behalf of the respondents to argue the case despite repeated calls and order was reserved.

10. As far as the plea of limitation is concerned, the learned counsel for the applicant submitted that when the OA was admitted vide order dated 11.1.2000 so the plea regarding limitation had already been considered and it should be treated as if the MA filed by the applicant seeking condonation of delay had been allowed and in support of his contention the learned counsel for the applicant has also referred to a judgment entitled as Ramchhwar Prasad Singh Vs. U.O.I. & Others in Civil Appeal No.354 of 1993 wherein the Hon'ble Supreme Court had observed as under:

"4. We have examined the circumstances of the case and find that in view of the appellant's application having been entertained and disposed of later, the view of the Tribunal on the question of limitation is not correct. The claim of the appellant, therefore, should have been considered and decided on merits which has not been done...." (emphasis supplied)

11. On the basis of this judgment, the counsel for the applicant submitted that the case having been admitted by a previous order dated 11.1.2000 and OA having been entertained, so the MA for condonation of delay should be deemed to have been allowed and now the case should be considered on merits.

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12. We have also gone through the order dated 11.1.2000 and we find that while admitting the OA no reservation was made for deciding the point of limitation later on and the OA was admitted unconditional as such we are of the considered opinion that in view of the judgment of the Apex Court in Rameshwar Prasad Singh (Supra) we have to proceed to decide the case on merits.

13. On the point of competence of the disciplinary authority, the learned counsel for the applicant referred to an order vide which he had been promoted to the post of Head TTE which he was holding, Annexure A-7 shows that the promotion order has been issued after the approval of Senior DCS though it has been issued by the Divisional Personnel Officer but the order specifically mentions that the same has the approval of SR.DCS. According to this, the promotion order could be passed by the Sr.DCS. Thus it is only the Sr.DCS who is the appointing authority and being an appointing authority is also competent to take disciplinary proceedings and is disciplinary authority qua the applicant and since in this case the basic order of removal from service had been passed by a Divisional Commercial Manager which is admittedly a lower post officer than that of Sr.DCS, so we are of the considered opinion that the order had been passed by an incompetent authority. On this aspect also the learned counsel for the applicant referred to a judgment of the Hon'ble Supreme Court in Ram Krishan Prajapati Vs. State of U.P.. In that case also the action was taken by the District Magistrate but the

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appointing authority in the case of the applicant in that case was Commissioner, a higher authority than that of the District Magistrate as such the initiation of the action was set aside and the appeal had been allowed, so on the same ground we find since in this case also the appointing authority in the case of the applicant was Sr.DCS so the Divisional Commercial Manager could not have passed the impugned order punishing the applicant vide Annexure A-1. As the order of DCM has to be quashed, so consequently all the further orders are without jurisdiction and are liable to be quashed. Accordingly we do so.

14. In view of the above circumstances we have no option but to remit the case back to the competent authority to take proper action to proceed with the enquiry against the applicant in accordance with law.

15. OA is disposed of as above. No costs.

  
( M.P. Singh )

Member (A)

  
( Kuldip Singh )

Member (J)

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