

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(13)

C.A./T.A. No. 1242/96 /19 Decided on: 1-4-97

B.D. Lamba APPLICANT(S)
(By Shri B.S. Mainee Advocate)

VERSUS
U.O.I.

..... RESPONDENTS
(By Shri R.L. Dhawan Advocate)

DR. RAM

THE HON'BLE SHRI S.R. ADIGE, MEMBER (A)

THE HON'BLE DR. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? Yes
2. Whether to be circulated to other Benches of the Tribunal ? No

Ans:
(S.R. ADIGE)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 1242 of 1996

(A)

New Delhi, dated this the 1st APRIL, 1997

HON'BLE MR. S.R. ADIGE, MEMBER (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri B.D. Lamba,
S/o late Shri M.S. Lamba,
Asst. Station Master,
Northern Railway,
Sahibabad,
Ghaziabad (UP). APPLICANT

By Advocate; Shri B.S. Mainee

VERSUS

1. Union of India through,
the Northern Railway,
Baroda House,
New Delhi.
2. The Divl. Railway Manager,
Northern Railway,
New Delhi.
3. Sr. Divl. Operating Manager,
Northern Railway,
D.R.M. Office,
New Delhi. RESPONDENTS

By Advocate: Shri R.L. Dhawan

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

Applicant has impugned the Divisional Operating Manager, Delhi Division's orders dated 20.10.95 (Ann. A-1); the Sr. DOM's orders dated 24.5.96 (Ann. A-3).

2. Applicant was chargesheeted by O.M. dated 23.6.94 (Ann. A-4) for alleged negligence and changing of the route already set for 2429 DN Gomti Express from line No.4 of Sahibabad and setting the route for 4041 Mussoorie Express from line No.2 Sahibabad through 2nd Main line to Ghaziabad without ensuring that the driver of Gomti Express was made aware of this change resulting in

(A)

(15)

collision of the two trains and derailment of Mussoorie Express on 9.5.94, and thereby violating G.R. 3.36 (2) and S.R. 3.36/3(C) of G&S.R.

3. The E.O. in his findings dated 10.7.95 (Ann. R-2) held the charges proved. A copy of the same was served on applicant vide letter dated 31.7.95 (Ann. R-1) for representation, if any, to which applicant submitted his representation dated 9.10.95 addressed to Divl. Operating Manager, Delhi Division, who by impugned order dated 20.10.95 (Ann. A-1) dismissed applicant from service; against which applicant filed appeal dated Nov., 1995 (Ann. A-8). Appellate authority by impugned order dated 26.4.96 (Ann. A-2) held that applicant was not fully responsible for the accident and reduced the punishment by dismissal to reduction to lowest stage in time scale of present pay for one year with cumulative effect, resulting in issue of impugned order dated 24.5.96 (Annexure A-3) by which he was reinstated and posted against an existing vacancy.

4. The first ground taken during hearing was that the Divl. Operating Manager (M) who passed the impugned dismissal order dated 10.10.95 was not competent to do so, because Sr. Divisional Personnel Officer who appointed applicant as ASM (Rs.1400-2300) is higher in rank than the Divl. Operating Manager

In this connection, Rule 2(a) Railway Servants (Disc. & Appeal) Rules reads as follows:

(b)

"(a) 'appointing authority' in relation to a railway servant means --

(i) the authority empowered to make appointments to the service of which the railway servant is, for the time being, a member or to the grade of the service in which the railway servant is, for the time being, included or

(ii) the authority empowered to make appointments to the post which the Railway servant, for the time being holds, or

(iii) the authority which appointed the Railway servant to such service, grade or post, as the case may be, or

(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."

5. Respondents contend that applicant was appointed as ASM vide order dated 15.2.63 (Ann. R-3) by the Divl. Personnel Officer who is in the senior scale of Rs.3000-4500 and hence the Divl. Operating Manager who issued the impugned dismissal order dated 20.10.95 and is also in the senior scale of Rs.3000-4500 is not inferior in status to the

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appointing authority so as to render the dismissal violative of Art. 311 (1) of the Constitution. This contention is unacceptable because in the background of (i) as well as (iv) of Rule 2(a) extracted above the authority which appointed applicant to the grade in which he is for the time being included, has to be reckoned as the appointing authority and in the instant case, as a result of restructuring, applicant was provisionally promoted to officiate as ASM in the grade of Rs.455-700/1400-2300 by orders dated 16.11.84 passed by Sr. D.P.O. (Ann. A-9) who is in JAG of Rs.3700-5000. Thus there is merit in applicant's contention that there is a fatal infirmity in the dismissal order dated 20.10.95 (Ann. A-1) as the same was passed by the Divl. Operating Manager (Senior scale of Rs.3000-4500), while the applicant stood provisionally promoted as ASM (Rs.455-700/1400-2300) by orders of Sr. DPO (JAG of Rs.3700-5000), and applicant thus stood dismissed by an authority subordinate to that by which he had been appointed. As the dismissal order passed by the disciplinary authority is fatally infirm, the appellate authority's order also cannot be sustained.

6. Other grounds have also been taken but as the O.A. is entitled to succeed on this ground alone, we do not consider it necessary to discuss the other grounds.

7. In the result the O.A. succeeds and is allowed. The impugned orders dated 20.10.95; 26.4.96 and 24.5.96 are quashed and set aside. However, the applicant will not be entitled to automatic reinstatement. In accordance with the Hon'ble Supreme Court's judgment dated 12.4.96 in State of Punjab & Ors. Vs. Dr. H.S. Greasy JT 1996(5) SC 403 the matter is remitted back to respondents for being placed before the competent disciplinary authority to pass fresh orders in accordance with law within two months from the date of receipt of a copy of this judgment. Pending final orders 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.

7. This O.A. is disposed of in terms of paragraph 7 above. No costs.

A. Vedavalli

(DR. A. VEDAVALLI)
Member (J)
/GK/

S.R. Adige

(S.R. ADIGE)
Member (A)