CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH

(9)

OA No.2658/90

New Delhi this the 5th Day of May, 1995.

Hon'ble Sh. N.V. Krishnan, Vice-Chairman (A)
Hon'ble Dr. A. Vedavalli, Member (J)

D.C. Tripathi,
S/o Sh. Nandan Lal Tripathi,
R/o Veterinary Hospital
Staff Quarters, Tis Hazari,
Delhi. ...Applicant

(By Advocate Sh. P.P. Khurana)

Versus

1. Union of India through
the Secretary,
Ministry of Defence,
South Block,
New Delhi.

2. Deputy Director-General,
Ordnance Factories,
O.E.F. Group Headquarters,
ESIC Bhawan,
Sarvodaya Nagar,
Kanpur.

3. Additional Director General,
O.E.F. Group Headquarters,
ESIC Bhawan,
Sarvodaya Nagar,
Kanpur. ...Respondents

(By Advocate Sh. V.S.R. Krishna)

1. To be referred to the Reporter or not? ✓

2. Whether it needs to be circulated to other Benches of the Tribunal?

(N.V. Krishnan)
Vice-Chairman(A)

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ORDER
(Mr. N.V. Krishnan)

The applicant was a Chargeman Grade-I in the Ordnance Equipment Factory under the respondents in the Ministry of Defence. In disciplinary proceedings initiated against him, a final order was passed on 3.9.90 (Annexure 'A') by the Deputy Director General, Ordnance Factory, (Respondent No.2), imposing the penalty of compulsory retirement with immediate effect. The period of his suspension ending with the compulsory retirement has been directed to be treated

as dies-non for various purposes. The appeal filed by him has also been dismissed by the impugned Annexure 'B' order dated 29.10.90 of the Additional Director General, Ordnance Equipment Factory, Kanpur, the third respondent. Hence, this OA, seeking to quash these impugned orders on various grounds and to grant consequential reliefs, including pay and allowances.

2. When the matter came up for final hearing Sh. P.P. Khurana the learned counsel for the applicant indicated the various grounds on which the orders are impugned. There was one ground which went to the root of the matter because it alleged that the second respondent was not the disciplinary authority competent to impose the punishment of compulsory retirement on the applicant and that, likewise, the third respondent was not competent to dispose of the appeal filed by the applicant. He pointed out that the applicant was promoted by an order of the Director General, Ordnance Factory w.e.f. 23.6.86 as Chargeman Grade-I which was communicated by the Annexure 'C' memorandum dated 19.6.86. This is in accordance with the Indian Ordnance Factory (Recruitment and Conditions of Service of Class-III Personnel) Rules, 1956 (Anneuxre 'D'). Rule-4 specifies that all appointments to the Class-III posts shall be made by the Director General. Rule-3 (1) makes it clear that Chargeman Grade-I is one of the class-III posts.

3. It is pointed out that, nevertheless, the memorandum of charges dated 8.2.89 (Annexure 'F') was issued to the applicant by the Deputy Director General

is contended that he could not have initiated these proceedings. What is more important is that the penalty of compulsory retirement has also been imposed by the same authority,as is evident from the Annexure 'A' order. Likewise, it is contended that when the applicant was appointed by the Director General of Ordnance Factory, the appellate authority ought to be some one higher in rank to that authority and, cannot, in any case, be the Additional Director General - the third respondent. This, in brief, was the main contention and the learned counsel took us through the relevant rules to contend that in the circumstances the impugned orders are ab initio void. He also derived support for his contention from the judgement of the Supreme Court in Scientific Adviser to the Ministry of Defence and Ors. vs. S. Daniel and Ors. etc. (Annexure CA-9 to the reply). (JT 1990(2)SC 544)

4. On the contrary, the respondents have contended in their reply to para-4.2 of the OA that the Deputy Director General, Ordnance Factory, the second respondent, has been made the appointing authority in respect of Chargeman Grade-I by the gazette notification dated 26.11.86 (Annexure CA-8) and the same authority has also been made competent to impose all the penalties under Rule-11. Hence, the authority who imposed the penalty was not lower in rank to the authority prescribed in the gazette notification. In regard to the judgement of the Supreme Court the respondents state as follows:-

"The Hon'ble Supreme Court of India in Civil Appeal Nos.1210 to 1217 of 1980 (Annexure-CA 9) have also opined that any disciplinary proceedings initiated by such Authorities from the date when such notification came into effect will be perfectly valid."

5. We, therefore, proceed to consider this issue which goes to the root of the matter after first setting out the relevant rules which have a bearing on this issue.

5.1 Appointments to the posts and services belonging to class-II, class-III and class-IV can be made in terms of Rule-9 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 - Rules for short. Rule 9 (2) reads as follows:-

"(2) All appointments to Central Civil Posts, Class II, Class III and Class IV, included in the General Central Service shall be made by the authorities specified in that behalf by a general or special order of the President, or where no such order has been made, by the authorities, specified in this behalf in the Schedule."

5.2 Part-V of the Schedule deals with civil posts in Defence Services. Serial No.2 is the entry concerned with Group C and Group D posts and is divided into two broad heads. The 'A' division deals with posts in the Headquarters. The 'B' division deals with posts in lower formation. One such formation is the Ordnance Factories which is dealt with in entry (xi) which itself has three further sub-divisions. We are concerned with sub-division (a) i.e. entry 2 (B) (xi) (a) of the schedule. This entry shows that in respect of all Group 'C' posts of Chargeman Grade-I and certain other posts, the appointing authority is the Deputy Director General, Ordnance Factories. He is also the

authority competent to impose all the penalties mentioned in Rule-11. This entry was incorporated in the schedule by way of a substitution by the notification dated 26.11.86. A copy of that notification, containing these amendments, has been filed as Annexure CA-8 by the respondents.

5.3 We have not been shown what entry existed before this amendment was made. Apparently, the appointing authority before this date, i.e., before the notification dated 26.11.86 was published, was the Director General Ordnance Factory in terms of Rule-4 of the Indian Ordnance Factory (Recruitment and Conditions of Service of Class-III Personnel) Recruitment Rules, referred to in para-2 above.

5.4 Rule-11 specifies the various kinds of penalties which can be imposed on a Government servant. They are classified into minor and major penalties. The penalty of compulsory retirement is a major penalty.

5.5 The expression 'disciplinary authority' has been defined in Rule 2 (g) to mean the authority competent to impose all the penalties specified in Rule-11. Particulars of discuiplkinary authorities are mentioned in Rule-12. The President may impose any of the penalties on any Governemnt servant. But the general rule in respect of a member of a Central Civil Service - other than the General Central Service - is that any of the penalties specified in Rule-11 may be imposed "by the appointing authority or the authority

specified in the schedule in this behalf or by any other authority empowered in this behalf by a general or special order of the President (Rule 12 (2) (a)). Sub Rule (2) of Rule 12 is expressly made subject to sub rule (4). Clause (a) of sub rule (4) provides - subject to an exception relating to the powers of the Comptroller and Auditor General with which we are not concerned - that no major penalty mentioned in Rule-11 shall be imposed "by any authority subordiante to the appointing authority".

5.6 The expression 'appointing authority' is defined in clause (a) of Rule 2 and reads as follows:-

> "(a) "Appointing authority", in relation to a Government servant means--
>
> (i) the authority empowered to make appointments to the Service of which the Government servant is for the time being a member or to the grade of the Service in which the Government servant is for the time being included, or
>
> (ii) the authority empowered to make appointments to the post which the Government servant for the time being holds, or
>
> (iii) the authority which appointed the Government servant to such Service, grade or post, as the case may be, or
>
> (iv) where the Government servant having been a permanent member of any other Service or having substantively held any other permanent post, has been in continuous employement in the Government, 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;"

6. The applicant was, admittedly, promoted by the Director General, Ordnance Factory as Chargeman Grade-I on 23.6.86 (Annexure 'C'), i.e., some time

before the issue of the notification dated 26.11.86 amending provisions of Part-V of the Schedule. Subsequently by the aforesaid notification the Deputy Director General Ordnance Factory, admittedly an authority subordinate to the Director General, has been specified as the appointing authority to the grade 'C' posts of Chargeman Grade-I and likewise, he has also been made competent to impose all penalties under Rule-11 in respect of holders of such posts. The question is whether because of this notification, the Deputy Director General, Ordnance Factory could have passed the impugned Annexure 'A' order dated 3.9.90 imposing the major penalty of compulsory retirement on the applicant.

7. The answer is provided in Rule 12 (4) (a), according to which notwithstanding anything contained in that Rule, no major penalty can be imposed - subject to one exception with which we are not concerned - by any authority subordinate to the appointing authority. The applicant was actually appointed as Chargeman Grade-I by the Director General (Annexure C). The order imposing the penalty (Annexure A) has been passed by the Deputy Director general, a subordinate authority. Therefore, the order of the second respondent is plainly contrary to these provisions and, therefore, void.

8. The only other question is whether there is any substance in the averments made in para 4.2 of the reply extracted in para-4 above.

9. We have seen the judgement of the Supreme Court, referred to by the respondents. The main issue therein was as to how Rule 2 (a) and rules similar thereto applicable to the Railways should be interpreted. We have already extracted clause (a) of rule 2 in para-5.6 above. In one set of cases before the Supreme Court which concerned the Ministry of Defence, the position was that the Scientific Adviser to the Government was shown in the Schedule to the rules as the appointing authority of class-III employees and also the authority competent to impose on such employees all the penalties mentioned in Rule-11. However, the Scientific Adviser had delegated his power of appointment to the Director under the proviso to sub rule (1) of rule-9. In disciplinary proceedings against class-III employees, major penalties had been imposed on such employees by the Director. The contention of the employees was that though the Director did appoint them to the Group-III posts, yet he was not the competent appointing authority in terms of clause (a) of the definition in Rule-2, because, according to that clause, the highest among the four authorities specified in to that clause is the appointing authority. The four authorities referred to in clause (a) can be grouped into two categories viz. (i) the authority empowered to make appointment and (ii) the authority which made the actual appointment.

10. The dispute before the Supreme Court was whether, on the above facts, the authority empowered was the Scientific Adviser whose name alone is

mentioned in the Schedule or the Director to whom the power of appointment was delegated by the Scientific Advisers. The Supreme Court concluded as follows:-

> "15. Still the basic question that remains is, whether, in the context of the rule 2 (a) read with rule 9 (1), the reference to the authority empowered to make the appointments is to the authority mentioned in the proviso to rule 9 or to both the authorities falling under the main part of rule 9 (1) as well as the proviso. The sheet anchor of the respondents case is that the expression 'appointing authority' is used in very few of the rules. One of them is rule 12 and there can, therefore, be no valid reason to refuse to apply the definition clause in the context of those rules. It is urged that, by holding the person specified in the schedule also to be the 'appointing authority' as defined in rule 2 (a), none of the other rules relating to appeal revision etc. become redundant as urged on behalf of the appellants. We agree with the respondents that the expression 'appointing authority' in rule 12 should have the meaning attributed to it in rule 2 (a). But what is the real and true interpretation of rule 2 (a)? What does that sub-rule talk of when it refers to a 'person empowered to make the appointment' in question? These words really constitute a reference to rule 9. Does rule 2 (a) refer then to the authority empowered by the schedule to make the appointments or the authority to whom he has delegated that power or both? We think, on a proper harmonious reading of rule 2(a) and rule 9, that sub rule (a) of rule 2 only envisages the authority to whom the power of appointment has been delegated under rule 9 and not both the delegator and the delegate." (emphasis supplied)

A further observation made by the Supreme Court, which is also relevant, is as follows:-

> "Thirdly, the whole purpose and intent of rule 2 (a) is to provide that appointing authority means either the de facto or the de jure appointing authority. It will be appreciated that, generally speaking, only the de jure authority can make the appointment, but, occasionally, a superior authority or even a subordinate authority (with his consent) could have made the appointment. Again, it is possible that the authority empowered to make appointment at the time when relevant

proceedings (sic) in contemplation may be higher or lower in rank to the authority which was empowered to make appointment or which made the appointment at a different point of time. The whole intent or purpose of the definition (sic) to safeguard against an infringement of Art. 311 (1) and ensure that a person can be dealt with only by either a person competent to appoint persons of his class or the person who appointed him, whoever happens to the higher in rank. That rule is not infringed by the interpretation placed by the appellants." (emphasis added)

From the above conclusion and observation of the Supreme Court, it is quite clear that, in the present case, the only authority who could have imposed a major penalty on the applicant was the Director General Ordnance Factory, the authority who actually appointed him.

11. The observation of the Supreme Court to which a reference has been made by the respondents (para 4 supra) is contained in para-17 of the judgement, which reads as follows:-

"17. It has been brought to our notice that notifications have since been issued (for example on 29th August 1979 in the case of the DERL and 2.1.87 in the case of Ordnance factories) by the President under rule 12 empowering certain authorities to exercise disciplinary powers. We need hardly say that any disciplinary proceeding initiated by such authorities from the date when such notification came into effect will be perfectly valid." (emphasis added)

As a matter of fact, in so far as the Ordnance Factories are concerned, the notification was issued on 26.11.86. It was to come into force on the date of its publication in the gazette, which particular has not been indicated by the parties. A copy of this notification was sent by the Ministry of Defence U.O. No.5(3)/86/D(LAB) dated 2.1.87 to the

Ordnance Factory Board, Calcutta and others, as is evident from the Annexure CA-8 filed by the respondents. The mention of the date 2.1.87 in the extract of the judgmenet of the Supreme Court above, would appear to refer to this U.O. letter enclosing the notification dated 26.11.86. As mentioned above, by this amendment, the Deputy Director General Ordnance Factory has been notified as the appointing authority of the Grade-III Chargeman Grade-I and has been authorised to impose all penalties referred to under Rule-11. The observation of the Supreme Court merely makes it clear that disciplinary proceedings initiated by the authorities so notified would be valid. It does not state that any order imposing a penalty by these authorities would be valid, even though it is contrary to the provisions of Rule 12 (4) (a).

12. It is only necessary to add that the interpretation of expression 'appointing authority' in rule 2 (a) will also apply to the interpretation of that expression in rule 12. This is clear from the emphasized portion of the observation of the Supreme Court in para-15 of the judgement, extracted above. Therefore, for the purpose of Rule 12 also, the Director General, who actually appointed the applicant, alone could have imposed a major penalty on the applicant, because, in terms of clause (a) of sub rule (4) of rule 12 such a penalty cannot be imposed by any authority subordinate to the appointing

authority, even if such authority has subsequently been notified as the appointing authority for the holders of the same posts.

13. Therefore, we do not find any merit in the contetions of the respondents in para 4.2 of the reply.

14. The learned counsel for the respondents could not furnish any argument to meet the contentions advanced by the learned counsel for the applicant. Therefore, we hold that the second respondent was not competent to impose a major penalty on the applicant which could have been done only by the Director General Ordnance Factory. That being the case, we also hold that the third respondent, who is also another subordinate of the Director General, Ordnance Factory, could not have functioned as the appellate authority.

15. In the circumstances, we are of the view that this OA has to be allowed on this preliminary ground and that it is not necessary for us to go into the merits of the other grounds raised in the OA.

16. Only one more point has to be mentioned. The learned counsel for the applicant contended that the charge framed by the second respondent is also invalid, as he is not the competent authority. That contention has no force. The observations made by the Supreme Court in para-17 of the above judgement make it clear that this authority

was competent to initiate the disciplinary proceedings, though not to pass a final order imposing a major penalty. That apart, Rule 13 (2) authorises a disciplinary authority competent to impose any other minor penalty specified in Rule 11, to institute a disciplinary proceeding for the imposition of any major penalty, notwithstanding that such disciplinary authority is not competent to impose any major penalty. The applicant has not shown that, even in terms of this rule, the second respondent was not competent to institute the disciplinary proceedings. In the circumstances, we do not see any merit in the contention that the memorandum of charge itself has to be quashed. That apart, there is no such prayer in the OA.

17. For the aforesaid reasons, this OA is allowed and the impugned Annexure 'A' order dated 3.9.90 of the second respondent and the impugned Annexure 'B' appellate order dated 29.10.90 of the third respondent are quashed. The respondents are directed to reinstate the applicant, if he has not already superannuated, within a period of one month from the date of receipt of this order and they are also directed to pass an appropriate order, in accordance with law, in respect of the period of suspension as well as the period from the date of compulsory retirement till the date he is reinstated, or till he superannuated, as the case may be, in accordance with this order, within a period of four months from the date of receipt of this order. We make it clear that this order will not stand in the way of the competent authority from continuing with

the disciplinary proceedings, in accordance with law, provided that such a decision shall be taken within four months from the date of receipt of this order. No costs.

A Vedavalli 5/5/95

(Dr. A. Vedavalli)
Member(J)

8/5/95

(N.V. Krishnan)
Vice-Chairman(A)

'Sanju'