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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA.No.2747/90

Dated this the 24th Day of February, 1995.

Shri N.V. Krishnan, Hon. Vice Chairman(A)
Dr. A. Vedavalli, Hon. Member(J)

Shri Harish Chandra,
Senior Clerk 'P' Branch,
D.R.M. Office,
Northern Railway,
Moradabad.

...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, New Delhi. ...Respondents

By Advocate: Shri Rajesh.

O R D E R (Oral)
(By Shri N.V. Krishnan)

The applicant is aggrieved by the Annexure A-1 order dated 17.1.89 by which the Additional Divisional Railway Manager,, Northern Railway, Moradabad has, in disciplinary proceedings initiated against the applicant, retired him compulsorily w.e.f. 17.1.89. In appeal, the appellate authority has, by the Annexure A-2 order dated 13.6.89, modified the punishment to one of reduction to the lower post of Senior Clerk for a period of 3 years with cumulative effect and loss of seniority. These orders have been impugned on a number of grounds. However, when the matter was taken up today for final hearing, the learned counsel drew our attention to the basic deficiency which goes to the root of the matter. He states that, as can be seen from the Annexure A-4 Memorandum of Charges issued on 23.11.84, the

memorandum was issued by the Additional Divisional Railway Manager, Northern Railway, Moradabad. Likewise, the final order in the disciplinary proceedings has also been issued by the same authority, namely, the Additional Divisional Railway Manager, Moradabad. He contends in para 5.10 of the OA as follows:-

"That the Addl.D.R.M. has no powers to impose the penalty upon the applicant. The competent authority in case of the applicant was the General Manager who had not delegated the power to the Addl. D.R.M. while General Manager's letter dated 22.1.85, as pointed out in the appeal of the applicant at page 1.i." (sic)

2. As this goes to the root of the matter, we have heard the parties at length on this issue.

3. It is pointed out that the expression 'disciplinary authority' is defined in Rule-2(1)(c) of the Railway Servants (Disciplinary & Appeal) Rules, 1968. Para-(iii) of Clause (c) is relevant. It states that the disciplinary authority in the case of Non-gazetted Railway Servants, in relation to Rule-9, is an authority competent to impose any of the major penalties specified in Rule-6. Rule-9 deals with the procedure for imposing major penalties. Subrule-2 empowers the disciplinary authority to enquire into the imputation of misconduct or misbehaviour of a Railway servant by either enquiring into it or directing an enquiry under Public Servants Enquiry Act. Sub Rule-6 states that when it is proposed to hold an enquiry, the disciplinary authority shall "draw up" or "cause to be drawn up" the memorandum of charges containing substance of imputations and the basis for such imputations. In this regard he points



out that the General Manager, Northern Railway has issued a letter No.52E/0/26-VIIE(D&A) dated 22.1.85, which reads as follows:--

"It has been noticed that in a few cases ADRMs have exercised disciplinary powers independently. In this connection attention is invited to this office letter of even no. dated 14.3.83 (P.S.No.8254) in which it has been clarified that ADRMs cannot validly exercise the power of DRM in disciplinary cases. However, if DRM desires, ADRM can assist him in processing the disciplinary cases as an intermediary authority but final orders must be passed by DRM where he is Disciplinary/Appellate/Revisional Authority." (sic)

That letter has been reproduced by the applicant in para 1.1 of the Annexure A-8 appeal submitted by him to the appellate authority on 24.2.89 in support of the contention that the ADRM had no right to initial the proceedings to pass the order imposing penalty. He, therefore, contends that, on the basis of this letter, it has to be held that the Additional Divisional Railway Manager was neither competent to issue the memorandum of charges (Annexure A-4) nor was he competent to pass the final order imposing the penalty by the Annexure A-1 order. He pointed out that though this fundamental issue was squarely raised by him in his appeal, the appellate authority has not even bothered to refer to it in his appellate order at Annexure A2.

4. The learned counsel for the respondents submitted that no ground has been raised by the applicant in the OA regarding competence of the ADRM to issue the memo of charges. In so far as the letter dated 22.1.85 reproduced above is concerned, he states that it is not as if the Additional Divisional Railway

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Manager cannot exercise any powers at all, even according to this circular. It is no doubt clear from that circular that final orders must be passed by the DRM only. He is unable to point out to any other authority which would justify the Annexure A-1 order of the Additional Divisional Railway Manager imposing penalty and disposing of the disciplinary proceedings.

5. We have considered the matter. The applicant has, no doubt, restricted the challenge in para 5.10 of the grounds to the penalty imposed upon him by the Additional Divisional Railway Manager. The learned counsel for the respondents is, no doubt, correct in contending that the applicant has not challenged the jurisdiction of the Additional Divisional Railway Manager to issue the charge sheet. However, we find that this issue has been squarely raised in the appeal. The appellate authority has failed to look into this legal issue in the appellate order. We are, therefore, of the view that the challenge, should be treated to be on both grounds.

6. It is quite clear from the memorandum dated 22.1.85 of the General Manager that a very limited authority has been given to the Additional Divisional Railway Manager and that too, only if the DRM desires him to assist him in this regard.

7. The question is whether, if authorised by the DRM, the Additional Divisional Railway Manager is competent to draft the memo of charges and issue it under his own signature.

8. The learned counsel for the applicant is of the view that, in that case, the Additional Divisional Railway Manager can only prepare the charge memorandum for approval of the DRM, but he cannot issue it under his own signature. It has necessarily to be signed by the DRM himself.

9. We are unable to agree. Subrule-6 of Rule-9 authorises the disciplinary authority to either draft the charges or cause it be drawn up, obviously by the authority authorised by him. Therefore, if authorised, the ^{ADR}DRM can draw the memo of charges. This seems to be the position under the Rules. But, for the ~~respective~~ ^{restrictive} provisions of the Rules and the letter of the General Manager dated 22.1.85, the authority under whom an official is working, can initiate a D.E. by framing charges, ^{without authorisation,} even if it is not the disciplinary authority.

10. In the present OA, the respondents do not have a case that the DRM authorised the Additional Divisional Railway Manager to draft the memo of charges and for that reason, the Annexure A-4 charge memorandum is ab initio invalid.

11. In so far as the Annexure A-1 is concerned, the learned counsel for the respondents also agrees that in terms of the letter dated 22.1.85, a final order has necessarily to be passed only by the DRM, irrespective of whoever initiated the proceedings thereafter.

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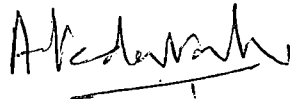
12. In this view of the matter, the Annexure A-1 order passed by the Additional Divisional Railway Manager dated 17.1.89 is totally incompetent and without jurisdiction. That being the case, the penalty imposed on the applicant by that incompetent order will not get any validity even if, subsequently, the appellate authority reduces the penalty on the assumption that the order of penalty is a valid one. In the circumstances,, the Annexure A-1 order and the Annexure A-2 order are quashed. The respondents are directed to reinstate the applicant with all consequential benefits as if no penalty has been imposed either by the Annexure A-1 order dated 17.1.89 or by the Annexure A-2 order dated 13.6.89. The dues payable to him shall be paid within three months from the date of receipt of this order. As we have granted relief on the legal issue raised by the applicant about the competence of the ADRM, we have not considered any of the other grounds raised by the applicant in this OA and he is at liberty to raise them later on in any proceedings. We also make it clear that, it is open to the disciplinary authority whether it be the General Manager as contended by the applicant or the DRM as contended by the respondents to initiate fresh disciplinary proceedings against the applicant in accordance with law.

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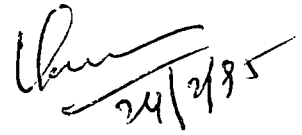
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13. The OA is disposed of with the above directions. No costs.



(Dr. A. Vedavalli)
Member(J)
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(N.V. Krishnan)
Vice Chairman(A)