

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Dated : This the 16th day of April 2002

Original Application no. 1447 of 2001.

Hon'ble Mr. Justice R.R.K. Trivedi, V.C.  
Hon'ble Maj Gen K.K. Srivastava, A.M.

Ajai Kumar Mall, S/o Dr. R.C. Mall,  
Chief Catering Inspector, Northern Railway,  
Kanpur, R/o Rail Bazar, Kanpur.

... Applicant

By Adv : Sri B.P. Singh & Sri S.K. Singh

V E R S U S

1. General Manager (Catering)/Chief Commercial Manager,  
Headquarter Northern Railway Office, Baroda House,  
New Delhi.
2. Chief Traffic Manager, Northern Railway,  
Kanpur.
3. Asstt. Commercial Manager, Kanpur.
4. Sri Ram Pyare, Chief Traffic Manager, N. Rly.,  
Kanpur.
5. D.R.M. Allahabad.
6. Union of India through the General Manager,  
Baroda House, New Delhi.

... Respondents

By Adv : Sri A.K. Gaur

O R D E R

Hon'ble Maj Gen K.K. Srivastava, A.M.

In this O.A. filed under section 19 of the A.T.  
Act, 1985, the applicant challenged the order dated 23.11.2001

*In Kanpur*

passed by Assistant Commercial Manager (respondent no. 3) and has prayed that same be quashed and direction be issued to the respondents not to interfere in the peaceful handling of the cash account by him.

2. The fact, in brief, giving rise to this application are that the applicant is working as Chief Catering Inspector in Northern Railway, Kanpur since 24.09.1998. As per applicant, Sri Ram Pyare, Chief Traffic Manager, N. Rly., Kanpur (respdt 4) is personally annoyed with the applicant and nurtures bias against him. Respondent no. 4 out of malice directed his subordinate officer Sri S.N. Mishra, Asstt. Commercial Manager (respdt no. 3) to issue the impugned order dated 23.11.2001 debarring the applicant from cash handling and related matters and directing junior to the applicant i.e. Assistant Catering Inspector to handle cash. Aggrieved by this the applicant has filed this OA which has been contested by the respondents.

3. Heard Sri B.P. Singh, learned counsel for the applicant and Sri A.K. <sup>Gaur</sup> ~~Cupta~~, learned counsel for the respondents and perused records.

4. Sri B.P. Singh learned counsel for the applicant has alleged that respondent no. 4 Sri Ram Pyare Chief Traffic Manager (in short CTM) Kanpur harbours bias <sup>in</sup> <sub>against</sub> the applicant and all the actions against the applicant are at the instance of respondent no. 4. Respondent no. 4 passed an order of suspension against the applicant without jurisdiction which was subsequently withdrawn on 13.7.2001 by Sri S.S. Negi who worked as C.T.M. when respondent no. 4 was away on long leave. On

return from leave when respondent no. 4 saw the applicant working he became furious and ordered for issue of impugned order dated 23.11.2001.

5. Sri B.P. Singh, learned counsel for the applicant submitted that the post of Chief Catering Inspector is controlled by Headquarters New Delhi. and it has not been decentralised. Therefore, C.T.M. Kanpur has no jurisdiction over the applicant and the impugned order is illegal. Appointing authority of the applicant is Chief Commercial Manager (catering). Duty chart is prepared and issued by H. Qrs and C.T.M. (respdt no. 2) has ~~not~~ administrative control over applicant. Any order affecting the service condition by an authority without jurisdiction has to be treated arbitrary and unreasonable which is the position in the instant case. Such action on the part of respondent no. 2 is worst than suspension and has been passed out of malafide to cause humiliation to the applicant before his subordinates.

6. The learned counsel finally submitted that the impugned order has been passed without any inquiry and is based on no material. He has placed reliance on AIR 1988 SC 78 P.K. Chinasamy Vs. Govt. of Tamil Nadu & Ors in which it has been held that continuing an officer against a post but providing him no work is not proper and therefore this should be quashed and applicant should be allowed to discharge his duties in accordance with law.

7. While contesting the claim Sri A.K. Gaur learned counsel for the respondents submitted that the impugned order is innocuous order passed in connection with D & AR action.

There have been serious complaints against the applicant. Once he was removed from service for grave misconduct while working under Lucknow Division as Catering Inspector in August 1992, but the punishment of removal was modified by appellate authority to that of reduction at initial grade of the same pay for 3 years without cumulative effect as would be seen from the entries in service record (Ann CA-II) and he was suspended <sup>from</sup> ~~26.6.2000 w.e.f.~~ order dated ~~09.06.2000~~ because the applicant was sentenced by ACJM, N. Rly., Allahabad vide order dated 9.6.2000 imposing the punishment of fine of Rs. 884/- and 7 days imprisonment under section 137 and 15 days imprisonment under section 145 of the Railway Act, 1989. He was suspended by the order issued by Senior Divisional Commercial Manager, N. Rly., Allahabad which was revoked by Sri S.S. Negi the then C.T.M. Kanpur not because it was earlier done without jurisdiction but because C.T.M. is the senior authority than Sr. D.C.M. and is the appellate authority. The applicant was deemed to have been placed under suspension by C.T.M. because he was imprisoned from 19.7.2000 to 28.7.2000. The allegation of malafide on the part of Sri Ram Pyare C.T.M. Kanpur is not true and misconceived.

8. The learned counsel for the respondents further submitted that the applicant was debarred from cash handling as well as purchase of catering **material** due to recurring irregularities committed by the applicant in the past involving his integrity. The impugned order has been passed on 23.11.2001 in a complaint case resulting into issue of major penalty charge sheet dated 4.12.2001. The learned counsel also submitted that on 15.1.1999 unaccounted money worth Rs. 78682.25 was recovered during the course of taking inventory of the official Almirah of the applicant by a team of G.R.P./R.P.F personnel and Commercial inspection in addition to serious irregularities of tampering of important records and with-holding of payment

to the parties for months together were detected. In this connection another major penalty charge sheet dated 29.8.2001 is pending inquiry against him. Sri Gaur also submitted that the Senior Catering Inspector, who is next to the applicant in seniority is competent to handle cash and purchases because the duties of Chief Catering Inspector and Senior Catering Inspector are the same.

9. The learned counsel for the respondents further submitted that the plea of the applicant that the Chief Catering Inspector is under the administrative Control of Chief Commercial Manager H. Qrs, N. Rly., New Delhi. The working of catering has been decentralised and is under the administrative control of the Divisional Railway Manager ( in short DRM) in whose jurisdiction a particular catering unit exists. The applicant is working under the administrative control of D.R.M. Allahabad. The allotment of Division for the purpose of posting of Chief Catering Inspector is controlled by the H. Qrs. Office of the Zonal Railway but the deployment of Chief Catering Inspector in the Division is done by D.R.M. Foot note to para 2832 of IREM clarifies that in case of catering unit controlled by Division the term Chief Catering Supdt. (Catering) means the Divisional Commercial Supdt. of the Railways.

10. Sri A.K. Gaur, finally submitted that the disciplinary authority in respect of the applicant is Sr. Divisional Commercial Manager (in short Sr. D.C.M.) Allahabad who is a junior administrative Officer and C.T.M. Kanpur, who is in senior administrative grade, is the appellate authority. Since appellate authority in exceptional circumstances is competent to take any disciplinary action against Chief Catering Inspector Kanpur the impugned order does not suffer from any illegality.

11. We have carefully considered the submissions of the parties and have also closely examined the records. In the present case the main point of controversy is whether C.T.M. Kanpur has any authority to take disciplinary or administrative action against the applicant or not. If so, to what extent. Admittedly the applicant has been promoted as Chief Catering Inspector vide order of Chief Commercial Manager (Catering) N. Rly., Baroda House, New Delhi vide order dated 30.3.1998. The applicant joined at Kanpur as Chief Catering Inspector on 24.9.1998. The duties of Chief Catering Inspector/Catering Inspector (unit incharge) and assistant catering Managers have been laid down by General Manager (catering) New Delhi letter dated 19.6.1980 (Ann 4). Therefore, we have no doubt in our mind that the service condition of the catering staff are Controlled by Head Quarter of the Zonal Railway. We now proceed to examine para 2832 of IREM which is as follows:-

"Organisation. - The departmental catering is under the administrative control of the Chief Commercial Superintendent. The executive control, except in the matters specifically notified by the railway administration concerned rests with the Chief Commercial Superintendent (Catering) in the Headquarters Office, who is responsible for the day to day working of the various units on the railway in regard to expenditure, works and other matters relating to their efficient working. On railway, where the control of the catering units is decentralized, the executive control in the matters referred to above rests with the Divisional Commercial Superintendent.

Note - Unless the contrary is evident from the context, the term 'Chief Commercial Superintendent (Catering) wherever used hereinafter, in this chapter, will mean the "Divisional Commercial Superintendent" on railways having decentralized control of the catering units."

12. Perusal of relevant para 2832 of IREM quoted above makes it clear that the executive control over the catering staff rests with respective D.R.M. and in the case of the applicant the D.R.M., N. Rly., Allahabad exercises <sup>in</sup> <sup>in</sup> the control through Senior D.C.M. We have perused entries in service book filed as annexure CA 2. Punishment order dated 3.8.1992 was passed by Sr. D.C.S., Lucknow and the punishment of removal has been modified by ADRM II Lucknow. Thus the appellate authority in the case <sup>in</sup> <sup>of</sup> Catering Inspector etc where the order is passed by Sr. D.C.S. has to be next senior officer in the Division i.e. ADRM. However, we find that in another case the punishment order dated 16.3.2001 has been issued by Sr. D.C.S. Allahabad wherein the appellate authority has been quoted as CTM Kanpur under Rule 18 of Railway Servants (D&A) Rules 1968. There cannot be two yardsticks for exercise of quasi-judicial powers. As per Rule 18 of Railway Servants (D&A) Rules 1968 the appeal against an order lies to the next higher authority, <sup>in</sup> <sup>in</sup> In absence of any specific order delegating the powers to C.T.M. Kanpur the correct appellate authority in the case of the applicant would be ADRM N. Rly., Allahabad and not CTM Kanpur. Sr. DCM, N. Rly., Allahabad does not function under CTM Kanpur and therefore from no stretch of imagination it can be said that CTM would exercise the quasi-judicial powers in respect of orders passed by Sr. D.C.M. Allahabad. It is true that the catering unit is functioning from Kanpur and therefore the CTM Kanpur may be exercising administrative powers in the day to day functioning of the unit but CTM, Kanpur cannot interfere in the laid down policy of GM (Catering) N. Rly., Baroda House as regards duties of the applicant.

13. We do not find substance in the submission made by the learned counsel for the ~~applicant~~ <sup>in respondents to</sup> that since CTM Kanpur is Senior Administrative grade officer, he becomes the appellate authority in case of applicant, because the disciplinary authority of the applicant is a Junior Administrative Grade Officer.

14. Another submission made by the learned counsel for the respondents is that the senior catering inspector who is next to the applicant in seniority is competent to handle cash and purchases because the duties of Chief Catering Inspector and Sr. Catering Inspector are the same. We do not agree with the same. The letter dated 19.6.1980 (Ann 4) issued by General Manager (catering) N. Rly., has laid down the duties of Chief Catering Inspector/Catering Inspector who are the unit incharge. As per this letter the duties consist of the list of 24 items. We would like to quote the most important ones from the point of functioning of the unit:

These are -

"5. He will ensure timely replacement of <sup>proper</sup> <sub>use</sub> of linen, crockery, cutlery and furniture.

12. He will remit correct cash daily after cross checking the various records.

periodical and monthly statements>Returns.

and purchases, he cannot perform the above 3 items of duties

Therefore, if the applicant is debarred from cash handling and purchases, he cannot perform the above 3 items of duties at all. Till the applicant continues to be unit incharge his duties cannot be undertaken by his subordinate Sr. Catering Inspector. The impugned order on the face of it is not in accordance with law and deserves to be struck down.

The Hon'ble Supreme Court in case of P.K. Chinnasamy

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(supra) has held in para 4 as under :

"..... It cannot be lost sight of that every public officer is a trustee and in respect of the office he holds and the salary and other which he draws, he is obliged to render appropriate service to the State. The scheme postulates that every public officer has to be given some posting commensurate to his status and circumstances should be so created that he would be functioning so as to render commensurate service in lieu of the benefits received by him from the State. If an officer does not behave as required of him under the law he is certainly liable to be punished in accordance with law but it would ordinarily not be appropriate to continue an officer against a post and provide no work to him and yet pay him out of the consolidated Fund....."

In view of this action of respondent no. 2 is bad in law.

15. We would like to observe that the impugned order is stigmatisic as it casts aspersion on the moral turpitude of the applicant. Therefore, issuing such an order without giving an opportunity is illegal and is liable to be quashed.

16. Considering the facts and circumstances of the case, the O.A. is allowed. The impugned order dated 23.11.2001 (Ann 1) is quashed. Respondent no. 2 is directed not to interfere in the functioning of the applicant. However, respondent no. 5 is at liberty to examine the entire issued in totality and take appropriate action if warranted. In order to avoid any such controversy in future we would like respondent no. 1 to issue ~~new~~ detailed instructions regarding exercise of disciplinary powers etc in respect of the catering staff working under DRMs.

17. There shall be no order as to costs.



Member (A)



Vice-Chairman

/pc/