

(9)

RESERVED:

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

THE 23RD DAY OF ~~July~~^{August}, 2007

Original Application No. 1190 of 2005

CORAM:

HON.MR.JUSTICE KHEM KARAN,V.C
HON.MR.P.K.CHATTERJI, MEMBER (A)

Prem Shanker Singh, S/o Late Vishwanath Singh
aged about 50 years, present address for all
communications, C/o Shri O.P. Dubey, Mohalla
Natwa (Ahiran Basti), Mirzapur (U.P.)

.. Applicant

(By Adv: Shri V.R.Dwivedi)

VERSUS

1. The Union of India, through the General Manager, East Central Railway, Hajipur (Bihar)
2. The Addl. Divisional Railway Manager, *Danapur Division of East Central Railway* Danapur.
3. Shri D.K. Garg, Addl. Divisional Railway Manager, *Danapur Division of East Central Railway*, Danapur.
4. Shri Om Prakash, Senior Divisional Operating Manager, *Danapur Division of East Central Railway*, Danapur. .. Respondents.

(By Adv: Shri ~~X~~ AVINISH TRIPATHI)

ORDER

By Hon. Justice Khem Karan, V.C.

Applicant has prayed for quashing Memorandum of charge sheet dated 10.11.2003 (A-3), Inquiry report dated 12.1.2005 (A-4), impugned orders dated 7.3.2005 (A-2), and order dated 23.6.2005 (A-1), with all consequential benefits together with interest @ 18% per annum on payment of arrears of wages.

✓

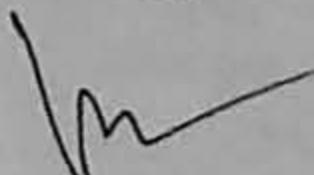
2. There is no dispute that the applicant was appointed on 10.2.1980 as Asstt. Station Master (in Group C), under dying in harness Rules. According to the applicant this appointment was made by and with the approval of General manager, Eastern Railway. It is his specific plea in para 4 (III) that Divisional Railway Manager, Addl. Divisional Railway manager, Senior Divisional Officers like respondent No.4, have no powers to make appointment in class III/Group C, as well as in the grade of Rs. 5500-9000. While the applicant was working in grade of Rs.5500-9000 (RSRP), he was served charge memo dated 14.11.03, issued by respondent No.4. A perusal of this memo would reveal that the charges against him were that:

- (a) he secured appointment by producing fake and forged school certificate
- (b) that he suppressed the fact that he was arrested on 23.8.92 and remained in jail till 29.8.92, while submitting application for leave from 2.8.92, 20.8.92 or 21.8.92 to 3.9.92 and;
- © that he tried to mislead the Railway administration for personal gain. He denied the charges.

3. Shri N.K.Singh, Asstt. Operating Manager, Danapur was appointed as Inquiry Officer. After holding the enquiry, he submitted his report dated 12.1.2005 (A-IV), and the respondent No.4, acting as Disciplinary Authority, issued show cause notice to the applicant and thereafter passed the impugned order dated 7.3.2005, removing the applicant from service. Appeal dated 28.3.2005 (A-5) was also dismissed by the respondent No.3, vide order dated 23.6.2005 (A-1).

4. The applicant is challenging all this, mainly on the ground, the General Manager Eastern Railway, being the appointing authority in his case, the proceedings right from issuance of charge sheet to the rejection of appeal, are null and void and without jurisdiction. The second main ground is that after his posting as Area Officer Patna in June, 2004, Shri N.K. Singh could not have continued to be Inquiry officer. One more ground taken is that Disciplinary Authority as well as Appellate Authority did not apply their mind and acted mechanically and capriciously.

5. The respondents, have filed reply, depending the actions and saying that the orders are perfectly legal and have been passed with full application of mind.



6. We may observe in the very outset, that reply filed by the respondents, renders no help to us, in deciding the central issue. Had the appointment letter of 1980, been placed on record or had the order granting a grade of Rs.5500-10,500 had been placed on record, or had the relevant Rules, investing the respondent No.4, with a power to make such appointment in Group C grade 5500-10,500, been referred to in the reply or placed during the course of arguments, much could have been resolved. Taking the benefit of absence of appointment letter or order giving grade of Rs.5500-10,500, the learned counsel has argued that in cases where such orders are not there, the General Manager concerned, should be treated to be the appointing authority and with a view to support this contention, he has referred to Northern Railway letter No.52-E/0/31 E (D&A) dated 21.8.1964 and E (D&A) 63 RG 6-23 dated 21.2.1964 NF/DAC 321, (see on page 6 of Bahri's 'The Railway Servants (Discipline & Appeal) Rules, 1968, 10th Edition, by M.L. Jand). The learned counsel, has also referred to Gafoor Mia Vs. Director DMRL decided by Full Bench of Hyderabad, of this Tribunal, reported in (1988) 6 Administrative Tribunals cases 675, where, after referring to Rule 215 of Railway Establishment Code, Vol-1, the Bench said that General manager was the highest authority to make appointments to class III and IV posts, and so in view of Rule 2(g) & 12 of the Rules of 1968, officers, to whom power of appointment were delegated, could not impose major punishment nor could initiate proceedings under Rule 9 of the Rules of 1968.

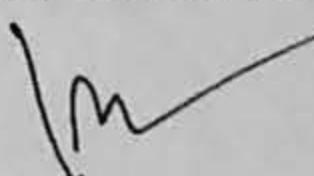
6. Shri Dwivedi was fair enough in placing before us a judicial pronouncement of the Apex court, in Scientific Adviser to the Ministry of Defence and Others 1991 SCC (L&S) page 355, where after considering the Full bench decision of Hyderabad Bench in Gafoor Mia's case (Supra), the court summed up as under in para 15 and 16:

"15. Still the basic question that remains is whether, in the context of Rule 2(a) read with Rule 9(1), the reference to the authority empowered to make the appointment 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 she (anchor of the respondent's 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

M

(b)

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 applicants. 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 when it refers to a person empowered to make the appointment in question? These words clearly constitute a reference to 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 and 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. We have come to this conclusion for a number of reasons. In the first place, it is clear, on the plain language of Rule 2(a), that it directs the ascertainment of the authorities specified. In such of clauses (i) to (iv) of the rules as may be applicable to a particular case and designates the highest of them as the 'appointing authority'. It only envisages only one authority falling under each of these clauses and not more. The respondents contention which involves interpretation of clause (i) or (ii) as contemplating more than one authority runs counter to the tenor of the rule. Secondly, the strictly literal meaning of Rule 2(a) insisted upon by the respondents would render the rules unreasonable. For instance, under clause (i), one of the authorities to be empowered is the 'authority empowered to make appointments to the service of which the government is for the time being a member'. The respondents belong to of the Central Civil services. Though they belong to Class III or Class IV, there are Class I and Class II officers as swell therein. Rule 8 declares that only the President can make appointments to Class I in the service. If each of the clauses is read as envisaging a plurality authorities as contended for and if clause (i) literally interpreted, it will also include the President who is one of the authorities empowered to make appointments to the service of which the concerned employee is member. This will render the entire gamut of the rules unworkable. On this interpretation, the President will be the only appointing authority under Rule 2(a) in all cases, being clearly be correct. Rule 2(a) does not contemplate any authority other than the empowered to appoint a person belonging to the post or grade which the concerned government employee holds. In that sense the two parts of clause (i) and clause (ii) are not to be read distributively to ascertain the authority empowered to make appointments (a) to the service (b) to the grade and (c) to the post and consider the highest of them. One has to restrict oneself to the or grade of the government servant concerned and invoke clause (i) or (ii) as the case may be. 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

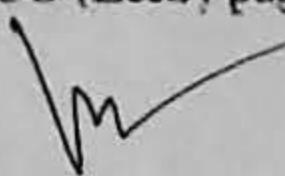


(13)

authority (with his consent) could have made the appointment. Again it is possible that the authority empowered to make the appointment or which made the appointment at a different point of time. The whole intent or purpose of the definition to safeguard against an infringement of Article 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 be higher in rank. That rule is not infringed by the interpretation placed by the appellants. The provisions of schedule II in the case of the railways which specify the appointing authority or an authority of equivalent rank or any higher authority as the disciplinary authority are also consistent with this interpretation. Fourthly, the interpretation sought to be placed by the respondents. On Rule 2(a) is artificial and strained. It amounts to saying that a person who is empowered to appoint a government servant (as the Director, DERL, for example, undoubtedly is) and who has also appointed him will not be the appointing authority, because theoretically, even a more superior authority could have appointed him despite having delegated his authority in this regard to a subordinate. On the contrary, the interpretation urged by the Union will not adversely affect the few employees, if any, who may be appointed by a superior scheduled authority despite delegation of such power to a subordinate authority. For, in such a case, the superior authority would be the person who has factually appointed such an employee and he will clearly be the 'appointing authority' by virtue of Rule 2(a). Lastly, the interpretation sought for by the Union is consistent with practical consideration. The appointing authority under the Schedule is a high-ranking authority and, in an organization like the railways for instance, it will be virtually impossible for him to consider each and every case of appointment of, or disciplinary action against all the Class III or Class IV employees in the Organisation. It is indeed this realization that has rendered necessary delegation of the power of appointment and cannot be ignored, in the absence of compelling reasons, in the matter of disciplinary powers.

16. On behalf of the respondents, it is contended that the intention of the rules is to restrict powers of discipline from being exercised by all appointing authorities. Centralisation, it is urged, is the object. This contention is not borne out by the table of innumerable disciplinary authorities set out in the schedule, not to speak of those on whom factual or special powers have been conferred by the by the President (as was indeed done in many of these very cases later). As against this, Sri Pai, for the appellants pointed out that if one has regard to the strength of the railway staff or the other class III or IV staff employed in various civil services, the interpretation urged on behalf of the respondents would cast an impossible burden of work on the authorities specified in the schedule to whom alone the respondents seek to confine the power to take disciplinary proceedings. There is force in this contention."

7. Following the same removal order passed by D.R.M., was upheld in Union of India and Others Vs. N.V. Phaneendran 1995 SCC (L&S) page 1351.



8. So, the crux of the matter is who actually appointed the applicant in group C and in grade 5500-10,500. If under the powers so delegated or under the relevant service Rules, respondent No.4, was appointing authority of Asstt. Station Master in group 'C', but the applicant was appointed by the general Manager, as he asserts, latter alone will be the appointing authority, for purposes of imposing major penalty. If he was appointed by respondent No.4, and was given grade of Rs. 5500-10,500, then in view what has been said by the Apex court, respondent No.4, being appointing authority will be competent to serve charge sheet, appoint Inquiry officer and impose penalty of removal.

9. As observed earlier, appointment letter is not on record, to make the point clear, as to who actually appointed the applicant. In view of the instructions dated 21.8.1964 and 21.2.1964, as referred and relied on by Shri Dwivedi, the General manager is to treat as appointing authority of the applicant.

10. So, in the result, the entire proceedings right from issuance of charge sheet to dismissal of appeal, became null and void, being without jurisdiction, and deserve to be quashed.

11. In such a case proper course seems to be to leave it to the Competent Appointing Authority, to proceed afresh, in accordance with Rules and take final decision in the matter. In the facts and circumstances of the case and considering the nature of charges, we would like to provide that wages for the period from removal dated 7.3.05, to this date, shall abide the outcome of fresh proceedings.

12. So, the charge sheet dated 10.11.2003, enquiry report dated 12.1.2005 (A-3 and A-4), impugned orders dated 23.6.2005 and 7.3.2005 (A-1 and A-2) are quashed, but with a direction to the appointing authority of the applicant namely the General manager (respondent No.1) initiate disciplinary proceedings afresh, in accordance with Rules of 1968, and pass suitable orders. So far as the Back wages from date of removal i.e. 7.3.2005 to this date are concerned, we direct the same shall abide the outcome of fresh proceedings. The appropriate authority shall be free to pass appropriate orders as per Rules as are found just and proper. No order as to costs.

.....
MEMBER (A)

.....
VICE CHAIRMAN

Dated: *Aug*, 2007

Uv/