

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

O.A. No. 56 of 1986

Mannu Lal ..... Applicant.

Versus

Union of India & Commandant, C.O.D. Kanpur  
..... Respondents

Hon'ble Mr. Justice U.C. Srivastava, V.C.  
Hon'ble Mr. A. B. Gorthi, A.M.

(By Hon'ble Mr. Justice U.C. Srivastava, V.C.)

This case has come back again from the Hon'ble Supreme Court. Earlier this Tribunal had decided this case on 20.8.1988. The applicant filed a review petition against the aforesaid judgment and order which was rejected by this tribunal vide order dated 22.8.1988. Thereafter, the matter was taken before the Hon'ble Supreme Court in special leave petition which was disposed of along with other cases.

2. So far as this particular case is concerned, the Hon'ble Supreme Court has remitted the case to the tribunal with the following observations:-

"The applicant had been appointed by the Director of Ordnance Services in 1964. The power of appointment was delegated to commandants in 1971 and the respondent was penalised by the Commandant, a Subordinate Authority, to whom disciplinary powers were delegated by the President in 1979. Though this point does not appear to have been raised before the Tribunal, it goes to the root of the matter and we, therefore, think that it should be left open to be considered by the Tribunal now."

3. This transferred application arises out of the suit which was filed by the applicant before the Court of Munsif City, Kanpur challenging suspension

order dated 13.4.1983 and the said suit was decreed on 9.5.1985 against which Union of India filed an appeal before the District Judge, Kanpur which was transferred to this Tribunal by operation of law and was dismissed by this tribunal. While dismissing the appeal, this tribunal held that at the time of appointment of the applicant, the appointing authority was the Director General of Ordnance Services, Army Head Quarters, New Delhi and it is the Director General who could have passed the order of suspension and not the Commandant. The delegation which was rendered in the year, 1971, was held to be bad. In the meantime, the applicant was also dismissed from the services and he filed a departmental appeal against the order of dismissal which was dismissed on 23.12.1985 and thereafter he filed a petition before this tribunal which was also dismissed on 20.8.1986 against which the applicant filed a Civil Appeal No. 3044 of 1989 before the Hon'ble Supreme Court which has now been remitted to this tribunal.

4. The main question in the case is as to who was the authority competent to initiate disciplinary proceedings against the applicant?

5. From perusal of record, it appears that the applicant was appointed by the Commandant, COD, Kanpur and for certain misconduct he was placed under suspension on 13.4.1983. A charge-sheet was served on the applicant on 16.4.1984 for misbehaviour with personal Officer. After enquiry, the applicant was found guilty and on 28.6.1986 he was dismissed from the service against the aforesaid dismissal order, the applicant filed departmental appeal which was dismissed.

6. It is to be noted that in the year 1964 when the applicant was appointed, Central Civil

Servi es(Classification, Control And Appeal Rules, 1965 was not in existance and the Central Defence Services Rules,1952 was in existance. Under the provisions of Central Defence Services Rules,1952, the powers to make first intment in respect of Class III and Class IV employees Lower ~~Forman~~ <sup>Forman</sup> under the Directorate of Ordnance Services were delegated to Commandant of respective depots vide Army Head Quarters' letter dated 30.3/11.4.1962( the applicant Class IV employee being Tailor in COD,Kanpur) . Under the said order, the power to appoint Class 'C' and Class 'D' Locally Controlled Civilians was delegated to Commandant vide order dated 13.3./11.4.1962. In the year 1971, the Army Headquarter had issued another letter under the provision of Sub-rule(1) of Rule 9of CCS(CCA)Rules,1965 through which the powers have been delegated and Commandant was delegated the power to appoint Locally Controlled Class III and Class IV Civilian employees. The Ministry of Defence further issued an order dated 13.8.1979 through which it was notified that the President of India has empowered the referred authorities to impose penalties and it was Commandant. Part V of the Schedule to CCS(CCA) Rules,1965 also indicates that for all Grade 'C' posts other than(B) (xi) and Grade 'D' posts in Ordnance Factory Board Head Quarters, including Ordnance Factory Cell Ordnance Equipment Factories Head Quarters, Head Quarters of Addl.DGOF/AV and any other Head Quarters of Addl.DGOF, Deputy Director-General Ordnance Factories is the appointing authority and it is the authority competent to impose penalties .

7. The applicant was declared quasi permanent in pursuance of Rule 3 and Rule 4 of the Central Civil Services(Temporary)Rules,1965 by the Commandant COD,Kanpur vide order dated 18.10.1972.Thus, the

applicant, who was locally controlled employee, and was appointed by the Commandant COD Kanpur, was declared quasi permanent by the Commandant COD Kanpur. On behalf of the applicant, it was contended that under Rule 10(1) of CCS(CCA) Rules, 1965, the disciplinary authority will be the same as defined in Rule 2(g). In this case, by the order of President of India, power of the competent disciplinary Authority has been delegated to the Commandant, COD Kanpur in respect of the Locally Controlled employees in which category the applicant belonged to. On behalf of the applicant, it was specifically contended that in the instant case, Rule 12(2)(b) of CCS (CCA) 1965 applies and not rule 12(2)(a) and as such the delegation which has been made, covers the cases which fall in Clause (b) of Rule 12(2).

8. Rule 12(2)(a) and Rule 12(2)(b) of CCS(CCA) 1965 read as under:-

"12(2) Without prejudice to the provisions of sub-rule (1), but subject to the provisions of sub-rule (4), any of the penalties specified in Rule 11 may be imposed on-

(a) a member of a Central Civil Service other than the General Central Service, 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;

(b) a person appointed to a Central Civil Post included in the General Central Service, by the authority specified in this behalf by a general or special order of the President or, where no such order has been made, by the appointing authority or the authority specified in the Schedule in this behalf."

9. The contention on behalf of the applicant is that the applicant was appointed to a Central Civil Post included in the General Central Service and that

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he was not a member of any Central Civil Services and as such he falls in Clause(b) of Rule 12(2) and not Clause (a) of Rule 12(2) of CCS(CCA),1965 and as such the applicant's disciplinary authority will be the authority specified in the Schedule. Rule 7 of CCS(CCA),1965 provides that.

"Central Civil posts of any class not included in any other Central Civil Service shall be deemed to be included in the General Central Service of the corresponding class and a Government servant appointed to any such post shall be deemed to be a member of that Service unless he is already a member of any other Central Civil Service of the same class."

10. As per Rule 3 of CCS(CCA) Rules, the applicant was a Civilian Government servant in the Defence Services. Even in Part V of the Schedule, the post which was admittedly held by the applicant, is described as Civil Post in Defence Services. Therefore the applicant falls in Clause (a) of Rule 12(2) and not in Clause (b) of Rule 12(2) of CCS(CCA),1965. Further, in view of authorisation, made by the President of India in respect of delegation of disciplinary power to the Commandant, COD, Kanpur, the Commandant, COD, Kanpur is the competent disciplinary authority.

11. The learned counsel for the applicant has made reference to the case of "Krishna Kumar Vs. The Divisional Assistant Electrical Engineer, Central Railway & others"(AIR 1979 Supreme Court 1912) wherein it has been held that

"since the appellant had been removed from service by an order passed by the authority who, at any rate, was subordinate in rank to the Chief Electrical Engineer on the date of appellant's appointment, the order of removal was a patent violation of the provisions of Article 311(1) of the Constitution."

12. Further, reference has been made to the case of 'The Management of D.R.T.U vs. Shri B.B.L.Hajelay & another" (AIR 1972 Supreme Court 2452) wherein it has been held that;

"An employee of the Delhi Road Transport authority carrying a minimum monthly salary of Rs.350/- at the time of his absorption in the Delhi Corporation cannot be dismissed by an authority below the rank of General Manager (Transport). Neither delegation of his functions by the General Manager nor a regulation framed by the Corp. effecting such delegation can nullify this statutory protection under the proviso to Section 95(2)."

The first proviso to Sub-section (1) of Section 95 reads as under:-

"Provided that no such officer or other employee as aforesaid shall be reduced in rank, compulsorily retired, removed or dismissed by any authority subordinate to that by such he was appointed."

13. Here the question for consideration was as to whether the same can be done by the authority to whom a valid delegation was made.

14. On behalf of the respondents, reference was made to the case of 'Ramanand Singh Vs. State of Bihar' (1982(1) SLR 693). In the said case, the appointment was made by the Commandant General whereas the power vests under Rule 5 for appointment to Company Commandant. The Hon'ble Supreme Court held that since the appointment was made actually by the Commandant General and as such the Commandant General has power to dismiss the applicant in that case. The said principle also applies in this case. Reference made to has been the decision of the Hon'ble Supreme Court in the case of 'Scientific Adviser to the Ministry of Defence & others Vs. Daniel & others'. In the said

case, the Hon'ble Supreme Court laid down that the Disciplinary Authority is competent to hold the disciplinary proceedings and to make appointment under Rule 2(a). It was further laid down that the Disciplinary Authority delegated his power with reference to Rule 12(2)(b) and 9(2)(a).

15. Thus, in view of what has been stated above, we are of the opinion that the applicant was appointed by the Commandant, COD, Kanpur to whom disciplinary powers were delegated and the Commandant, COD., Kanpur was the authority competent to take disciplinary action against the applicant. We also find that the applicant was given adequate opportunity during the course of departmental enquiry. The application deserves to be dismissed and the same is accordingly dismissed.

No order as to cost.

*Shanbagh*  
A.M.

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Vice Chairman.

Dated: 18 Feb 1992

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