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Reserved.

Central Administrative Tribunal
Allahabad.

Registration O.A.No. 117 of 1986

K.G.Sharma ... Applicant.

Vs.

Ministry of Railways
and four others ... Respondents.

Hon.D.S.Misra, AM
Hon.G.S.Sharma, JM

(By Hon.G.S.Sharma, JM)

This petition under Section 19 of the Administrative Tribunals Act XIII of 1985 has been filed for setting aside the order dated 29.11.1985 passed by the Senior D.S.T.E. Jhansi respondent no.5 removing the applicant from service and the order dated 11.2.1986 passed by the Divisional Railway Manager Jhansi respondent no.4 dismissing his appeal therefrom. The applicant has also prayed for his reinstatement in service with consequential benefits.

2. In short, on 13.6.1985 the applicant was posted as Sr. Signal Inspector Grade I in the scale of Rs.700-900 at Agra Cantt. There was a collision between 138 UP Chattirgarh Express and DN Special Goods Train at 10.25 A.M. at the Rajamandi station of the Central Railway Agra on that date. On preliminary enquiry, the applicant was found negligent in that connection and he was served with a charge sheet dated 22.10.1985 for major punishment by the Sr. DSTE (M) Jhansi- respondent no.5. The applicant submitted his statement of defence and denied his responsibility in the matter. The disciplinary inquiry in connection with the said charge sheet was conducted by CSI Jhansi who in his report dated 26.11.1985 found the applicant guilty of the charge against him. After considering the report of inquiry, the respondent no.5 awarded the punishment of removal from service and the appeal preferred by him against that punishment was rejected by respondent no.4.

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3. The validity of the impugned orders has been challenged by the applicant on various grounds. One of the grounds taken by him in sub-paras (v) and (xxvii) of para 6 of the petition is that the appointing and disciplinary authority of the applicant is Chief Signal and Tele Communication Engineer (for short CSTE) Central Railway Bombay but the charge sheet was issued to him by the respondent no.5 who was neither the appointing authority nor disciplinary authority and as such, the same was without jurisdiction. The order of his removal passed by respondent no.5 is, therefore, without jurisdiction and illegal. It does not seem necessary at this stage to give the other details or reasons on which the validity of the impugned orders has been challenged by the applicant in the petition.

4. The petition has been contested on behalf of the respondents and in the reply filed on their behalf by the Office Superintendent of Central Railway Jhansi, it has been stated in para 10 that as per Schedule of Powers under the Discipline and Appeal Rules the respondent no.5 is vested with appointing and disciplinary powers in respect of the applicant and the impugned order of respondent no.5 is perfectly valid and unchallengeable and legal. It is apparent from this reply that the respondents did not controvert the fact that CSTE is the appointing authority of the applicant. Sub-para xxvii was added to para 6 of the petition by way of an amendment stating that it has not been denied that the CSTE is the appointing authority of the applicant as Signal Inspector Grade I. He cited his appointment order dated 14.1.1985 in support of his contention. In support of this contention, he filed annexure 1, the copy of the order dated 7.5.1985 issued by the DRM(P) promoting the applicant as Sr. Signal Inspector Grade I on the basis of the order dated 14.1.1985 issued by the Chief Personnel Officer

(for short CPO) Central Railway, Bombay. The respondents were required to produce the copy of the said order dated 14.1.1985 of the CPO and were afforded an opportunity to file a supplementary reply.

5. In compliance the respondents filed the supplementary reply along with annexure 1 being the copy of the order dated 14.1.1985 issued by the Head Office, Personnel Branch of the Central Railway, Bombay V.T. signed by someone for CPO (S&T) stating that 52 Signal Inspectors Grade II were promoted and appointed as Signal Grade Inspector Grade I at the places mentioned in the order. The name of the applicant appears at sl.no.28. In the end of this order, it is mentioned that all these appointments have the approval of Additional CSTE, Bombay. It was stated in the supplementary reply that the CSTE is not the appointing authority of the applicant and the list of promotion received from CPO Bombay was conveyed to the applicant by the DRM(P) Jhansi. No other appointing authority of the applicant has been suggested by the respondents in their reply or supplementary reply. In the supplementary rejoinder filed by the applicant, it has been stated that CSTE is his appointing authority and DSTE Jhansi is not his appointing authority.

6. We have heard the arguments of the parties in detail on merits but it appears to us that this case can be disposed of on a short point as to who is the appointing authority of the applicant and if he has been removed from service by an authority lower in rank than his appointing authority, what should be the consequence? The case of the applicant consistently is that his appointing authority is CSTE Central Railway-respondent no.3 while according to the respondents, the Sr.DSTE respondent no.5 is his appointing authority. Annexure 1 to the amendment application of the applicant is the copy of order dated 7.2.1985 issued by DRM(P) Jhansi-respondent no.4 promoting

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the applicant and 7 others as Signal Inspectors Grade I on the basis of copy of letter dated 14.1.1985 of the CPO (S&T) issuing orders of promotion and posting of 52 Signal Inspectors of grade II as Signal Inspectors Grade I with the approval of the Addl.CSTE. In our opinion, the list of 52 Signal Inspectors mentioned in this letter is the list covering the entire Central Railway and merely because the appointments were approved by the Addl.CSTE, the latter cannot be said to be the appointing authority of the applicant. The actual appointment order of the applicant as Signal Inspector Grade I was issued on behalf of the CPO (S&T) and as such, the CPO Central Railway should be deemed to be the appointing authority of the applicant for the post on which he was working at the time he was charge sheeted and removed from service. He was served with the charge sheet by the Sr. DSTE, who is undisputedly lower in rank than CPO of the Central Railway and after the inquiry he was also removed from service by the Sr. DSTE. The removal of the applicant from service ~~thus~~ by an officer of lower rank than his appointing authority is, therefore, hit by provisions of Art.311 of the Constitution and is void and cannot be sustained.

7. The disciplinary authority has been defined by clause (c) of rule 2 of the Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter referred to as the DA Rules) and it runs as follows:-

"2 (c). 'disciplinary authority' means

(i) in relation to the imposition of a penalty on a Railway servant, the authority competent, under these rules, to impose on him that penalty ;

(ii) in relation to rule 9 and clauses (a) and (b) of sub-rule (1) of Rule 11 in the case of any Gazetted Railway servant, an authority competent to impose any of the penalties specified in rule 6.

(iii) in relation to rule 9 in the case of any non-gazetted Railway servant, an authority competent to impose any of the major penalties specified in rule 6;

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(iv) in relation to clauses (a) and (b) of sub-rule (1) of rule 11, in the case of a non-gazetted Railway servant, an authority competent to impose any of the penalties specified in rule 6."

8. The applicant was a non-gazetted railway servant and his case will fall under sub-clause (iii) of this definition. Rule 9 of the D.A. Rules prescribes the procedure for imposing major penalties and under sub-clause (iii) an authority competent to impose any of the major penalties on the applicant should be deemed to be his disciplinary authority. According to revised DAR Schedule II to the DA Rules, JA Grade/Sr. Scale Officers in charge of Department in a Division have been authorised to impose the penalty of reduction in scale or stage or post on all group 'C' and 'D' railway servants. Reductions in scale, stage or post are major punishments prescribed by rule 6 of the DA Rules. Sr. DEST being a Sr. Scale Officer Incharge of the Department of Signal and Telecommunication in his Division, can, therefore, be the disciplinary authority of the applicant. He was thus fully competent to initiate disciplinary proceedings against the applicant, serve the charge sheet for major punishment on him and to appoint an inquiry officer for conducting the inquiry. Thus all the proceedings taken in the inquiry against the applicant upto the stage the report was prepared by the inquiry officer did not suffer from lack of jurisdiction on the part of the disciplinary authority but as the punishment of removal from service could be passed according to this Schedule only by the appointing authority or an authority ^{equal or} higher in rank than the appointing authority, only the punishment order passed against the applicant has been vitiated for lack of jurisdiction on the part of the respondent no.5 and it is not necessary to quash the entire disciplinary proceedings in the instant case. The competent authority, who in the present case appears to be the CPO Central Railway, Bombay can proceed further in the matter from the stage of the submission of the report of inquiry and after considering the case of the applicant may pass suitable orders in his capacity as the appointing authority

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of the applicant. In view of this position, it is not necessary to enter into the merits of the case of the applicant as the appointing authority or the applicant may be prejudiced by any comment made by this Tribunal on the merits of this case.

9. The petition is accordingly allowed in part. The impugned orders dated 29.11.1985 and 11.2.1986 passed by respondent nos. 5 and 4 respectively are hereby set aside. As the CPO Central Railway is not a party to this petition, we direct the respondents to place the report of inquiry against the applicant before the CPO Bombay or any other competent authority equal or higher in rank to pass the final orders on the said report under rule 10 of the DA Rules within a period of 3 months from the date of this order. It shall take into consideration the various technical and factual objections raised by the applicant in the present petition. There will be no order as to costs.

[Signature]
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MEMBER (A)

[Signature]
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MEMBER (J)

Dated March 10, 1988
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