

(15)

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD.

Registration O.A.No.317 of 1987

Chetan Prakash ..... Applicant

Vs.

Union of India & 4 others ... Respondents.

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

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

In this petition under Section 19 of the Administrative Tribunals Act XIII of 1985, the applicant has challenged the validity of his suspension order dated 25.2.1987 issued by the Senior Divisional Commercial Superintendent, N.E.Railway, Izatnagar- respondent no.4 and the notice dated 20.3.1987 issued by the Divisional Railway Manager, N.E.Railway Izatnagar- respondent no.2 to show cause as to why the proposed penalty of reduction in rank and recovery of half of the loss sustained by the Railway be not imposed.

2. It is alleged that the applicant had joined N.E. Railway on 21.8.1951 as Commercial Clerk and at the time of the impugned action, he was working as Coaching Superintendent in the pay scale of Rs.1600-2640. On 22.8.1985, the respondent no.4 Sr.Divisional Commercial Superintendent (for short Sr.DCS) had served the applicant with a charge sheet, copy annexure 2, in respect of certain charges of misconduct. The said charge sheet was revoked by the respondent no.4 on 31.10.1985 vide order annexure 4. He was however again served with another charge sheet dated 8.11.1985, annexure 5, by the respondent no.4 in respect of the same charges and in contemplation of the

AP  
6

.2.

disciplinary proceedings, the applicant was suspended by the respondent no.4 vide order dated 19.12.1984, annexure 6 but his suspension was revoked on 5.1.1985, copy annexure 7. The respondent no.5- the Assistant Commercial Superintendent (for short ACS) was appointed ~~the~~ inquiry officer and after an inquiry against the applicant, he submitted his charge sheet, copy annexure 9 to the respondent no.4 finding the applicant guilty of all the six charges framed against him. The respondent no.4 after considering the report of the inquiry officer in his capacity as disciplinary authority passed an order on 14.10.1986 removing the applicant from service and to recover Rs.8142.50P from him as the loss sustained by the Railway on account of his fraud and negligence vide copy annexure 11. The appeal preferred by the applicant, copy annexure 12, to the Additional Divisional Railway Manager (for short ADRM) respondent no.3 was allowed to the extent that the order of removal of the applicant was cancelled without prejudice to any action that could be taken in the matter against the applicant vide DRM(C)'s letter dated 31.10.1986, copy annexure 13. The applicant was again suspended on 25.2.1987 by the respondent no.4 vide annexure 14 and the DRM- respondent no.2 exercising his powers of revision under Rule 25 of the Railway Servants (Discipline and Appeal) Rules, 1968 on 20.3.1987, copy annexure 1, issued a notice to the applicant to show cause why the penalty of reduction to the rank of Chief Booking Clerk in the scale of pay of Rs.1400-2300 permanently on pay of Rs.1400 and recovery of Rs.8142.50P being the half of the total amount of the claim paid by the Railway for the misconduct of the applicant be not imposed upon

(A.B.) (7)

.3.

him.

3. The applicant has challenged his suspension order dated 25.2.1987 and the show cause notice dated 20.3.1987, annexures 14 and 1, on the ground that the General Manager was his appointing authority and the Sr.DCS <sup>could not</sup> suspended him while acting as his disciplinary authority and the ADRM being an officer of equal rank, his order could not be revised/reviewed by the DRM under rule 25 of the Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter referred to as the DA Rules). It was also alleged that after cancelling the first charge sheet, annexure 3, dated 22.8.1985, the respondent no.4 could not issue a fresh charge sheet against the applicant in respect of the same charges and he also pointed out certain other irregularities in conducting the disciplinary proceedings against him. The application was, however, admitted by this Tribunal on the limited points whether the impugned order of suspension of the applicant was passed by an incompetent authority and whether the respondent no.2 is not competent to review the case of the applicant under rule 25 of the DA Rules.

4. The petition has been contested on behalf of the respondents and in the reply filed on their behalf by respondent no.3, it has been stated that the applicant was not appointed by the General Manager, N.E.Railway. He was promoted to the post of Coaching Superintendent by the Sr.DCS and as such the Sr.DCS is his appointing authority and could suspend the applicant. The charge sheet dated 22.8.1985 was withdrawn by the respondent no.4 as a confidential letter was cited as evidence in the memorandum of charges by mistake and the second charge sheet, annexure A-5, was issued on 8.11.1985 in respect of the same charges and there was no bar to do so under

the law. The applicant was placed under suspension by respondent no.4 under the orders passed by the DRM in exercise of his powers under rule 25 and both the impugned orders thus passed by the respondents are in accordance with law. In the rejoinder filed by the applicant, he has reiterated the grounds taken by him in his petition and pleaded that the orders passed by the respondents against him are illegal and without jurisdiction.

5. As made clear above, with the limited scope of this petition, the only thing to be seen is whether the two impugned orders were passed by the competent authorities authorised under the law and rules. We will first take up the validity of the impugned order of suspension annexure A-14. Assuming for the sake of argument that the Sr.DCS was the appointing/disciplinary authority of the applicant, he became functus officio after passing the order of removal of the applicant from service on 14.10.1986. The applicant had made a representation, copy annexure 12 against the said punishment to the ADRM on 15.10.1986. The said representation was disposed of by the ADRM, Izatnagar and the following order passed by him in that connection was communicated to the applicant by the DRM (C) Izatnagar :-

" On consideration of your representation dated 15.10.1986, the ADRM/IZN has cancelled the aforesaid NIP for removal from service, without prejudice to any action that may be taken in the matter."

6. The aforesaid order does not show that the ADRM had authorised the Sr.DCS to take any further action against the applicant. On the other hand, the allegation of the respondents as stated in para 15 of the reply is that the applicant was again placed under suspension by the Sr.DCS under orders passed by the DRM dated 25.2.1987 while deciding to revise the punishment order in exercise of powers conferred under rule 25 of D.&A Rules. In

this connection, the copy of the said order dated 25.2.1987 of the DRM has not been placed on record by any party. On the other hand, the suspension order, copy annexure 14, shows that the applicant was placed under suspension as the disciplinary proceedings against him were contemplated/pending. The Sr.DCS nowhere mentioned in the suspension order that he was suspending the applicant under the direction of the DRM. In the absence of any authority from the DRM, we are, therefore, of the view that ~~the~~ irrespective of the fact whether the Sr.DCS was the disciplinary authority of the applicant or not, on 25.2.1987,

he had no authority to suspend the applicant, and as will appear from our later discussion, the DRM too had no authority to issue such direction to him. 2

7. Regarding the authority of the DRM to revise the order dated 31.10.1986 passed by the ADRM setting aside the order of removal of the applicant from service, we are of the view that the ADRM had disposed of the appeal of the applicant while exercising powers of the DRM and in view of the concurrent jurisdiction of DRM and ADRM for deciding the appeal, the DRM could not exercise the power of revision<sup>2</sup> under rule 25 of the DA Rules for revising an order passed by the ADRM while deciding the applicant's appeal against the order of removal. The railway administration has placed the same interpretation of Rule.25 and a clarification in this connection was issued by the General Manager N.E.Railway on 8.4.1987 stating that the disciplinary powers of ADRM and DRM are the same in accordance with Railway Board's letter dated 13.6.1985. Therefore, in such a case where ADRM has decided the appeal of a railway servant in a DAR case, the DRM cannot function as revisionary authority under Rule 25 of the DA Rules and the revisionary authority in such cases will be the

concerned Head of Department. A copy of the said letter has been filed as annexure A-21 by the applicant on the record and in our opinion, the interpretation made by the General Manager is in accordance with law. The DRM, therefore, could not issue a show cause notice to the applicant in exercise of his power under R.25 of the DA Rules.

8. We are constrained to observe that the case against the applicant was not properly dealt with departmentally and the authorities were working under some confusion or the other. We are at a loss to appreciate the cryptic and unusual order dated 31.10. 1986 passed by the ADRM in setting aside the order of removal of the applicant without passing a final order in the case. His observation "...without prejudice to any action that may be taken in the matter " can hardly lead one to anywhere. It was for the ADRM to <sup>specify &</sup> ~~satisfy~~ and direct <sup>what &</sup> ~~all the~~ more action <sup>was &</sup> to be taken against the applicant and it is on account of this illegality committed by the ADRM, the DRM might have thought to initiate action under R.25 of the DA Rules. The matter cannot remain pending like this specially when the applicant has to retire from service in the near future. The ADRM has, therefore, to pass a speaking order in accordance with the provisions of R.22 of the DA Rules and the necessary directions contemplated by him should be given now.

9. In view of the above discussions, we allow the petition and set aside both the impugned orders dated 25.2.1987 and 20.3.1987 and direct the ADRM Izatnagar

7.

respondent no.3 to pass a complete and comprehensive order while modifying his order dated 31.10.1986 deciding the appeal of the applicant to make his intention clear as what was meant by him by describing "without prejudice to any action that may be taken in the matter." In doing so, his earlier order cancelling the punishment of applicant's removal from service shall not be disturbed. This will be without prejudice to any other order, which the respondents may like to pass in accordance with law. The parties are directed to bear their own costs.

*[Signature]*  
26.8.87  
MEMBER (A)

*[Signature]*  
26/8/87  
MEMBER (J)

Dated, Aug. 26, 1987  
kkb