

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 8th DAY OF AUGUST 1997

Original Application No. 880 of 1995

HON.MR.JUSTICE B.C.SAKSENA, V.C.

HON.MR.D.S.Baweja, MEMBER(A)

Yadu Nath Prasad
S/o Sri Bindeshwari Prasad
R/o 227/3B Lal Bagh Colony
Rajrappur, Allahabad

..Applicants

By Advocate Shri K.S. Saxena

Versus

1. Union of India through General Manager
Northern Railway, Baroda House
New Delhi.
2. Asstt. Electrical Engineer/Const.
Northern Railway.
Allahabad
DRM Office Complex
3. Sr. Electrical Engineer/Const.
Northern Railway,
Kanpur.

..Respondents

By Advocate Shri A.K. Gaur

O R D E R (Oval)

JUSTICE B.C.SAKSENA, V.C.

that
A short ground has been urged to challenge the order of punishment dated 20.3.95 is that the order of punishment has been passed by the Asstt. Engineer(C) Northern Railway Allahabad who was subordinate in rank to the applicants appointing authority viz the Senior Electrical Engineer(C).

2. The respondents in their counter affidavit have taken a stand that no doubt the applicant was appointed as casual khalasi on daily rated basis by the S.E.E/C/Allahabad but the powers to appoint class IV staff are vested with a junior officer as such the power to take disciplinary action is not automatically withdrawn from AEE/C/Allahabad. As such the dismissal order issued by the AEE/C/Allahabad

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is valid. In other words, the respondents admit that the applicant was factually appointed by the S.E.E/C/Alld who is the higher authority than the A.E.E.

2. The answer to the question posed is to be found in Rule 2 of the Railway Servants (Discipline & Appeal) Rules 1968. The term 'Appointing Authority' in relation to the Railway servant has been provided to mean :

"The authority empowered to make appointments to the services of which the Railway servant is, for the time being, a Member or to the grade of the service in which the railway servant is, for the time being included or "

"The authority which appointed the railway servant to such service, grade or post as the case may be"

The AEE has been shown in the counter affidavit as the appointing authority empowered to make appointment to the posts to which the applicant belongs. The provision of clause (3) of Rule 2 which provides that the Appointing Authority shall be the authority which appointed the railway servants to such service, grade or post clearly makes the SEE^{is} the appointing authority qua the applicant. Significantly at the end of Rule 2 the words "which ever authority is highest authority occurs.

3. Thus, in our opinion there is merit in the plea taken by the applicant. The SEE being the highest authority as discussed hereinabove would be the appointing authority qua the applicant and since the order has been passed by an authority subordinate in rank to the applicant's appointing authority the order of punishment passed by the AEE/c/Allahabad is clearly illegal. The order of punishment of dismissal from service dated 20.3.95 is set aside.

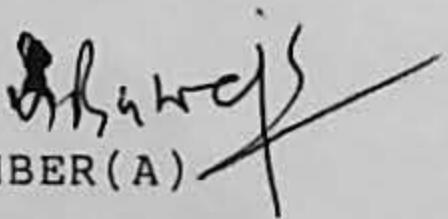
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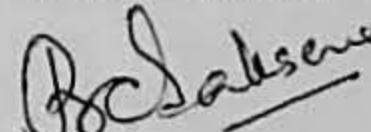
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4. Significantly, it needs to be noted that this ground of challenge to the order of punishment was raised as ground no.1 in the appeal preferred by the applicant, copy of which is Annexure A-5. The Appellate Authority without application of mind to the said plea in a routine manner appears to have passed the order rejecting the appeal. Thus the appellate order dated 3.7.95, Annexure A-1 also deserves to be set aside and is accordingly set aside.

5. Since the order of punishment and the appellate order have been quashed, the applicant would be entitled to be reinstated in service and to the consequential relief of being treated to have continued in service and to be paid arrears of salary and allowances which accrued, due to him accordingly. The respondents shall carry out and give effect to these directions and pass necessary orders within two months from the date a certified copy of the order is served upon them.

6. We, however, provide that nothing in our order shall preclude the appointing authority of the applicant from initiating and taking disciplinary action against the applicant afresh. The parties shall bear their own costs.


MEMBER(A)


VICE CHAIRMAN

Dated: July 8th 1997

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