

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 622 OF 2001
Cuttack, this the 10th day of August, 2005.

DR. SUBASH CH. SAHOO. APPLICANT.

VERSUS

UNION OF INDIA & ORS. RESPONDENTS.

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *yes*
2. Whether it be circulated to all the Benches of CAT or not? *yes*

Sabu
(B.N.SOM)
VICE-CHAIRMAN

MR Mohanty
(M.R.MOHANTY)
MEMBER(JUDICIAL)

10/08/05

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

Original Application No.622 OF 2001
CUTTACK, this the 10th day of ~~July~~, 2005.
August,

C O R A M:-

**THE HON'BLE MR. B. N. SOM, VICE-CHAIRMAN
A N D
THE HON'BLE MR.M.R.MOHANTY, MEMBER(JUDL.)**

DR. SUBASH CHANDRA SAHU,
Aged about 58 years,
Son of Late Antaryami Sahu,
AT/PO: Motto, Dist. Bhadrak.

APPLICANT.

By legal practitioner: M/s. Y.MOHANTY,
B.N.Mohanty,
S.Jena,
M.Jena,
S.N.Mishra,
ADVOCATE.

-Versus-

1. Union of India, represented by General Manager,
South Eastern Railway, Garden Reach, Kolkata-43,
West Bengal.
2. General Manager CUM Disciplinary Authority,
South Eastern Railway, Garden Reach, Kolkata-43,
West Bengal.
3. Union Public Service Commission,
represented by its Secretary, Dholpur House,
Shahjahan Road, New Delhi-110011.

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Railway Board, represented through its
Chairman, Ministry of Railways,
Government of India, Rail Bhavan, New Delhi.

..... RESPONDENTS.

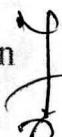
By legal practitioner: M/s.D.N.Mishra,Counsel for Rlys.
For Respondent Nos.1,2 and 4.
Mr.S.B.Jena,Advocate for Res.No.3.

O R D E R.

MR.MANORANJAN MOHANTY, MEMBER(JUDICIAL):-

Applicant, a Railway Doctor, having been removed from service (under Annexure-7 dated 15-10-2001) in a disciplinary proceedings initiated against him, has filed this Original Application Under Section 19 of the Administrative Tribunals Act, 1985. The Respondents Department have filed their counter and the Applicant has also filed a rejoinder.

2. The pleading of the Parties goes to show that the Applicant, while working as Senior Divisional Medical Officer at Bhadrak (under the South Eastern Railway) was issued with a memorandum of charges under Annexure-1, dated 26th September, 1996 for having committed gross misconduct inasmuch as he demanded and accepted illegal gratification of Rs. 54/- (@ Rs.3/- per day) for granting fitness certificate in favour of one Shri N.K.Behera, (who was working in the South Eastern



Railways at Bhadrak as Carpenter) on 20.05.2005. Ultimately, on submission of the show cause/ reply by the Applicant, the matter was enquired into. In the enquiry, as is evident from the enquiry report under Annexure-3, the Respondent Department failed to bring home the charges against him. However, the General Manager of the South Eastern Railway, did not agree with the findings given by the Inquiring Officer, and drew a disagreement note recording the findings (different than the findings recorded in the enquiry) and, thereafter, the General Manager of the South Eastern Railway forwarded a copy of the enquiry report (along with) his dissenting views to the Applicant in order to give him an opportunity to have his say in the matter. After obtaining the representation of the Applicant, the General Manager of South Eastern Railways (as it appears from paragraph 5 of the Counter of the Railways) held that the case of the Applicant warrants imposition of a major penalty like removal/dismissal. As disclosed by the Respondents/Railways in the said paragraph 5 of the counter, that as the Applicant was a Group 'A' Officer, and since the General Manager was not incompetent to impose any major penalty on the Applicant (in terms of delegation of disciplinary powers, as incorporated in Schedule – III to the Railway Servants (Discipline and Appeal) Rules, 1968, as amended from time to time), his (Applicant) case was forwarded to the Ministry of Railways; wherefrom it was sent to the UPSC for their advice. It appears, after

obtaining the advice from the UPSC the penalty of dismissal from services was imposed on the Applicant under Annexure-7 dated 15-10-2001. As against this punishment of dismissal, the Applicant has preferred this Original Application.

3. Mr. Y. Mohanty, Learned counsel appearing for the Applicant has taken us through the materials available on record to show that the Applicant was innocent and that he neither demanded nor accepted the bribe; as alleged in the disciplinary proceedings. He wanted to take us through the evidences. But since this Tribunal is not an Appellate Authority, we are refraining ourselves herein to reassess the evidences.

4. However, in course of hearing, by taking a clue from the counter statements made in paragraph-5 of the Respondents, Mr. Mohanty learned Counsel appearing for the Applicant, had taken us through the Rules to say that the General Manager of the South Eastern Railways, not being the Disciplinary Authority of a Group A Officer, like the present Applicant, was incompetent to record the disagreement note on the findings of the enquiry officer, (that was recorded during enquiry, in the disciplinary proceedings that was started against the Applicant) and was equally incompetent to record that the case warrants imposition of major penalty. It is equally his case that the Competent Disciplinary Authority (President of India/Ministry of Railways/Railway Board)

having not recorded the dissenting note on the findings recorded in the enquiry report, the ultimate penalty of "DISMISSAL" imposed on the Applicant was an illegal action not available to be sustained in the touch stone of judicial scrutiny. On the other hand, learned Counsel appearing for the Respondents submitted that there is no scope for this Tribunal to interfere in this matter; as the proceedings was conducted as against the Applicant (a) as per the Rules and all Rules/instructions of the Railways were scrupulously followed;(b) where Applicant was also granted all reasonable opportunities to prove his innocence and (c) since, after going through the records and obtaining the advice of the UPSC, the removal/dismissal was the only punishment available to be imposed on an Employee, involved in receiving illegal gratification, the Applicant was awarded with the punishment of dismissal (under Annexure-7 dated 15-10-2001) by the Competent Authority; which needs no interference of this Tribunal.

5. We have given our anxious thoughts to the various submissions made by the Parties and examined the facts touching the points of Rule and law governing the field.

Rule-7 of the Railway Servants (D&A) Rules, 1968 provides as to who are to remain as Disciplinary Authorities. Rule-7 of the said Rules, 1968 is extracted herein below for a ready reference:-

"7. DISCIPLINARY AUTHORITIES:-



- (1) The President may impose any of the penalties specified in Rule-6 on any Railway servant;
- (2) Without prejudice to the provisions of sub-rule (1), any of the penalties specified in Rule-6 may be imposed on a Railway Servant by the authorities specified in Schedules I, II, and III.;
- (3) The disciplinary authority in the case of Railway servant officiating in a higher post, shall be determined with reference to the officiating post held by him at the time of taking action".

On perusal of Schedule-III of the aforesaid Rules of 1968, it goes to show that whereas the PRESIDENT of India has been vested with the full powers to place a Group 'A' Railway Servant under suspension and to impose any of the penalties specified in the said Rules of 1968; the Railway Board have been vested with the powers to suspend such an officer and to impose minor penalties specified in clause (i) to (vi) of Rule-6 of the Rules, 1968. Similarly, the General Manager, Additional General Manager (who has been ordered by the competent authority to look after the current duties of the General Manager in the absence of a regularly posted General Manager), Director General/RDSO, Principal, Railway Staff College, Chief Administrative Officer (having independent charge of their organizations) have been vested with the powers to suspend a Group A Railway servant and to impose penalties specified in clauses (i), (iii), (iii-a), (iii-b) and (iv) of Rule 6 of the said Rules, 1968; provided such Group A officer is up to the rank of Selection grade/ Junior Administrative grade.



Thus, the present Applicant being a Group A Railway Servant, the PRESIDENT of India was only competent to impose penalties of removal/Dismissal as specified under Rule 6 of the said Rules, 1968 and, as such, his EXCELLENCY of the PRESIDENT of India was/is the only disciplinary authority of the Applicant/Group A Railway Servant having the power to impose the penalties of removal/Dismissal on him. In the present case, no doubt, the President of India has imposed penalty of Dismissal under Annexure-7 dated 15-10-2001 on the Applicant.

In the present case, however, disciplinary action was initiated against the Applicant by the General Manager of South Eastern Railway/by an authority other than the Disciplinary Authority; for which, the entire disciplinary proceeding ~~could~~ be bad. But for the reason of the provisions contained under Rule-8(2) of the aforesaid Rules of 1968, the initiation of the proceedings against the Applicant cannot be said to be bad. The text of Rule-8(2) of the Rules of 1968 reads as under:-

“8. AUTHORITY TO INSTITUTE PROCEEDINGS:-

XXXXX XXXXX XXXXX

(2) A disciplinary authority competent under these rules to impose any of the penalties specified in clauses (i) to (iv) of Rule 6 may, subject to the provisions of clause © of sub – rule (l) of Rule 2, **institute** disciplinary proceedings against any Railway servant for the imposition of any of the penalties specified in clauses (v) to (ix) of Rule 6, notwithstanding that such disciplinary authority is

not competent under these rules, to impose any of the latter penalties".

Thus, initiation of the disciplinary proceedings against the Applicant by the General Manager of the South Eastern Railway (having powers to impose minor penalties under Rule-6 of the Rules, 1968) leading to imposition of a major penalty, was/is in no way illegal or arbitrary. But under Rule-10 of the aforesaid Rules of 1968, an authority who is in- competent to impose the major penalty should forward the records of the enquiry (on receipt of the enquiry report from the enquiry officer) to the appropriate Disciplinary Authority; who should act in the manner prescribed under sub rule (2) to (5) of the Rule-10 of the aforesaid Rules of 1968 .Rule 10 of the aforesaid Rules of 1968 which deals with regard to the action to be taken on the enquiry report is extracted here in below for a ready reference:-

“10. ACTION ON THE INQUIRY REPORT:-

(l) If the disciplinary authority, having regard to the findings where it is itself the inquiring authority, or having regard to its decision on all or any of the findings of the inquiring authority, is of the opinion that the penalty warranted is such as is within its competence, that authority may act on evidence on the record or may, if it of the opinion that further examination of any of the witnesses is necessary in the interests of justice, recall the witnesses and examine, cross examine and re examine the witnesses and may impose on the Railway servant such penalty as is within its competence, in accordance with these rules. Where such disciplinary authority is of the opinion that the penalty warranted is such as is not within its competence, that authority shall forward the records of the inquiry to the

-9-

appropriate disciplinary authority who shall act in the manner as hereinabove provided.

(2) The disciplinary authority, if it is not itself the inquiring authority, may for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold further inquiry according to the provisions of Rule 9 as far as may be.

(3) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any articles of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record, is sufficient for the purpose;

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (i) to (iv) of Rule 6 should be imposed on the Railway servant, it shall, notwithstanding anything contained in Rule 11, make an order imposing such penalty.

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Railway servant.

(5) If the disciplinary authority, having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of the opinion that any of the penalties specified in clauses (v) to (ix) of Rule 6 should be imposed on the Railway Servant, it shall make an order imposing such penalty and it shall not be necessary to give the Railway servant any opportunity of making representation on the penalty proposed be imposed.

Provided that in every case, where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Railway servant."

Thus, as per the mandate of the Rules (as specified in Rule 10 of the Rules of 1968) an authority incompetent to impose major penalty

(though has got powers to initiate the proceedings leading to major penalty) was to forward the record of the enquiry to the appropriate Disciplinary Authority – no sooner he receives the enquiry report; whereafter such competent authority should exercise the powers like (a) may remit the case to the I.O. to conduct further enquiry and submit report for the reasons to be recorded in writing; (b) may record his reasons of disagreement with the enquiry report and records its own findings, if the evidence on record is sufficient for the purpose; (c) may impose minor penalty specified under rule 6 of the Rules, 1968 (d) may impose major penalties as specified under Rule 6 thereof and in all such cases, wherever necessary, should consult the UPSC.

In the present case, on receipt of the enquiry report, the General Manager of S.E. Railways (although he was incompetent to impose major penalty on the Applicant) acted in a manner specified in Rule 10(3) of the Rules of 1968 i.e. before forwarding the records of the enquiry officer to the Disciplinary Authority competent to impose major penalty. In stead of forwarding the records of the enquiry/Disciplinary proceedings to the competent Disciplinary Authority, the General Manager of S.E. Railways recorded a disagreement note and upon obtaining the reply of the Applicant thereon, decided to impose major penalty ;which was the arena of an authority other than him/the General Manager of South Eastern Railway. There are also no materials on record to show that on receipt of

the records forwarded from the General Manager of South Eastern Railway, the Competent Disciplinary Authority applied its mind independently to the enquiry report submitted by the enquiry officer (which was in favour of the Applicant) ~~or~~ that, it recorded disagreement note on such enquiry report. There are no materials also available on record to show that the competent Disciplinary Authority, who imposed the major penalty on the Applicant, drew disagreement note and that it took steps to obtain the views of the Applicant thereon. It appears that the competent Disciplinary Authority mechanically acceded to the disagreement note of an incompetent authority and basing thereon passed the final orders. In any event there being no materials available on record to show that the Competent Disciplinary Authority (President of India/Ministry of Railways/Railway Board) recorded its disagreement note and gave opportunity to the Applicant to have his say on any such disagreement note of the Competent Authority, ~~but~~ the impugned order of dismissal (as imposed on the Applicant under Annexure-7 dated 15.10.2001) is not available to be sustained.

6. Law is well settled that the enquiry report, before imposition of major penalty, should not only be supplied to the delinquent ^{but} he should also be given a chance to represent against the same. Similarly the disagreement note (on the enquiry report) should also be supplied to the delinquent Government servant giving him opportunity to have his say in

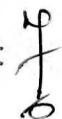
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the matter. Such disagreement note, in the present case, having not been drawn by the competent Disciplinary Authority and copies thereof having not been supplied to the Applicant, final order of penalty of Dismissal from service is not sustainable.

7. It is to be noted here that in disciplinary proceedings, the authority vested with the powers to decide the matter should apply his independent mind and no authority either higher or lower can give any type of dictation or suggestion as to what should be the punishment to be imposed on the charged officer or else the decision is bound to be vitiated. It appears from the materials placed on record, in this case, that the Competent Disciplinary Authority, who passed the final order of dismissal against the Applicant, did not apply its mind independently to the enquiry report nor drew an independent disagreement note to the enquiry report and was swayed away by the disagreement note of the General Manager of South Eastern Railway (who was incompetent to pass final orders) and passed the final order of dismissal. Presuming that the competent authority who passed the dismissal order drew an independent disagreement note on the enquiry report, still then the final order of dismissal is not sustainable; because such a disagreement note (even if drawn by the Competent Disciplinary Authority) was never supplied to the Applicant before imposition of the impugned penalty/punishment. It is mandatory that the order of dismissal or

4

removal must be made by an authority not subordinate to the Disciplinary Authority. It does not require that the order initiating the inquiry or the inquiry itself must be made by the Disciplinary Authority himself. But ultimate order of dismissal should only be passed by the competent Authority himself, who has to apply mind on the enquiry report independently and issue notice requiring the delinquent employee to show cause on the enquiry report (and the disagreement note, if any, of the Competent Authority) and to consider the cause shown, before making the order of dismissal or removal. This view is fortified by the decision of the Hon'ble Apex Court of India rendered in the case of **D. S.GAREWAL vrs. STATE OF PUNJAB AND ANOTHER AIR 1959 SC 512 (519)**.

Further more, the 'appointing authority' must not only decide the measure of punishment but also the primary question of guilt or innocence and he has to consider the report of the inquiry independently. This view is also fortified by the decision of the Hon'ble Apex Court rendered in the case of **KHEM CHAND vrs. UNION OF INDIA , AIR 1958 SC 300**. It is a settled position of law that when the rule vests powers with a Competent Authority (and the Rules, by implication, excludes powers from same authority) such powers can not be delegated to a subordinate authority and should only be exercised by the Competent Authority alone. No Officer can exercise that power in the name or on behalf of the Competent Authority, unless statutorily delegated (Ref:

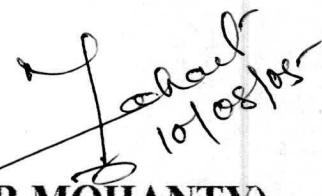


MOTI RAM DEKA vrs. G.M., N.E.F. Rly., (reported in AIR 1964 SC 600).

8. In view of the discussions made above, we are of the considered view that the impugned order of punishment of dismissal (under Annexure 7 dated 15.10.2001) was passed de horse the sound principles of Rules of law and, in the circumstances, the same is hereby quashed.

9. In the result, this Original Application stands allowed. No costs.


(B.N.SOM)
VICE-CHAIRMAN


(M.R.MOHANTY)
MEMBER(JUDICIAL)