

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA No. 350/ 1996

Present: Hon'ble Mr. Mukesh Kumar Gupta, Judicial Member
Hon'ble Mr. M.K. Mishra, Administrative Member

SHRI JAHAR NANDY

Vs

1. Union of India, Service through the General Manager, S.E. rly., Garden Reach, Calcutta - 700 043.
2. Sr. Divisional Engineer, S.E. Rly., Ranchi.
3. The Assistant Engineer, S.E. Rly., Muri P.O. Chota Muri, Dist. Ranchi, Bihar.
4. The Addl. Divl. Railway Manager, S.E. Rly., Ranchi.

For the applicant : Shri P.B. Mishra

For the respondents : Mr. B.P. Roy, Counsel

Heard on : 13.12.2004 Date of Order: 1.01.05

O R D E R

Mr. Mukesh Kumar Gupta, JM:

Shri Jahar Nandy, presently working as Office Superintendent Gr.II, in this application has prayed for the following reliefs:

- (a) The illegal suspension order at Annexure A-2 and the illegal confirmation order thereof at Annexure A-3 should be quashed and set aside.
- (b) The illegal charge sheet at Annexure A-5 and the approving and confirmation order thereof at Annexure A-7 should be quashed and set aside.
- (c) The self appointing order of 24.01.96 as Inquiry Officer by the respondent No.2 at Annexure A-9 and the proceedings of 17.02.96 and the order fixing the hearing again on 18.03.96 should be quashed and set aside.



- (d) The respondents should be directed to pay to the applicant the full pay.
- (e) The respondents should be directed to treat the period of suspension as duty with consequential benefits and pay.
- (f) Such other orders as may deem fit and proper may be passed.

2. The facts as stated are that the applicant was appointed to the Railways on 23.09.65. When he was working as Stores Clerk, stores verification was conducted and nothing was found against him. The Assistant Engineer Muri, vide order dated 26.5.95 placed him under suspension in the name of the President under obsolete Rule 1705 without any jurisdiction under colourable, arbitrary and malafide exercise of power. The said suspension was confirmed by the Sr. Divisional Engineer (West)/ Adra by order dated 12.06.95. Since the said suspension and confirmation were later found untenable the same were withdrawn and the applicant was asked to join duty by 10.00 hrs. on 23.06.95. He joined duty immediately. During the period of suspension, a major penalty charge sheet dated 06.06.95 was issued alleging certain irregularities in the maintenance of stock. The Assistant Engineer was the complainant, who also acted as Disciplinary Authority and was a Judge also. The vires of the said charge sheet was challenged vide his representation dated 15.07.95, which was rejected by the Senior Divisional Engineer vide letter dated 02.11.95. It is contended that the Sr. Divisional Engineer being the revisional authority and the Divisional Engineer being the Appellate Authority, the Sr. Divisional Engineer could

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not have affirmed the said charge sheet. In such circumstances it is contended that the applicant had lost his valuable right of appeal to the proper and concerned authority. When such was the situation, the applicant received a memorandum from the Senior Divisional Engineer, informing him that he would hold disciplinary inquiry against the applicant on 17.02.96 and the applicant was directed to appear. The applicant, as advised, attended the inquiry and denied the charges, which according to him were vague. The next date was fixed on 18.03.96. The order of suspension as well as the issuance of charge sheet has been questioned in the present application on the ground that the same were issued without lawful jurisdiction and suffer from illegality, arbitrariness as well as malafide on the part of the Assistant Engineer, Sr. Divisional Engineer. No witnesses were cited in the charge sheet. The Assistant Engineer, being the complainant also acted as Disciplinary Authority and judged in his own cause, which cannot be sustained. The Senior Divisional Engineer, acted as Inquiry Officer, despite the fact that the charge sheet was issued by a lower authority, i.e. the Assistant Engineer.

3. The respondents filed the reply contesting the application. In para 4 (b) of the reply, it was stated that on 25.05.95, on personal enquiry, the Assistant Engineer, S.E. Riy., noticed that in the store of PWI (II) Muri, the DMTR ledger had not been maintained



properly, the requisition for P.W. materials were not prepared or prepared late due to which the safety of running traffic was affected, heavy shortage of P.W. materials and difference in ledger balance as well as ground balance, and the applicant was the dealer of those materials. It was further contended that there was no illegality in initiating action against the applicant including the suspension of the applicant and the issuance of the charge sheet. Merely because the Sr. Divisional Engineer acted as inquiry officer, the proceedings cannot be said to be vitiated. The disciplinary proceedings could not be concluded due to the interim order passed by this Tribunal on 14.03.96. The respondent No.2, i.e. the Sr. Divisional Engineer has correctly continued the departmental inquiry against the applicant and there was no violation of any rule in appointment of the inquiry officer and in the conduct of the inquiry proceedings. It was further contended that the present application is premature and is liable to be dismissed on that ground alone.

4. We heard the counsel for the parties and perused the pleadings. It is no doubt true that as an interim measure, the disciplinary proceedings referred to in the present OA were stayed. But no efforts were made by the respondents either for vacation of the stay or modification of the said interim order, and no permission was ever sought from this Tribunal to conclude the disciplinary proceedings, either.

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5. Shri P.B. Mishra, learned counsel for the applicant contended that during the pendency of the present OA, the applicant has been promoted as Office Superintendent Gr.II vide order dated 13/16.01.2003. It was further contended that since the applicant is due for retirement on attaining the age of 60 years with effect from 31.01.2006, almost an year from now, and as the applicant had been promoted in the meantime, the proceedings initiated by respondents are to declare as deemed waived and abandoned.

6. Shri P.B. Mishra, learned counsel, placed reliance on Dr. Ramesh Chand Tyagi Vs. Union of India & others - 1994 (27) ATC 112 (SC) to contend that delegation must exist on the date of passing of the order and the transfer order passed by the incompetent authority, could not be ratified by a higher authority subsequently. The disciplinary proceedings based on the alleged noncompliance of such transfer order, which was issued by incompetent authority could not be accepted and the penalty imposed in such circumstances was therefore, quashed. On perusal of the said judgement, we find that the transfer order was passed by an authority claiming to be the delegated authority, which delegation did not exist on the date of passing such transfer order. Instead of cancelling the said transfer offer and issuing a fresh order, second order was issued in continuation of the earlier one and when the compliance was not made to such order, departmental proceedings were initiated and the order of dismissal



was passed. In such circumstances it was held that since the transfer order itself was found to be invalid and non-existent not having been passed by the competent authority, the order of dismissal consequently becomes invalid & accordingly, the same were quashed.

Further reliance was placed on 1989 SCC (L&S) 436 Marathwada University Vs. Seshrao Balwant Rao Chavan to suggest that wide act of delegatee cannot be cured by ratification of the delegant. The statutory authority cannot transfer beyond the power conferred and any action without power has no legal validity. It is ab initio void and cannot be ratified. Reliance was also placed on 1989 (9) ATC 55, Smt. Saroj Kumari Singh Vs. Union of India & others. In the said case also, the transfer order was passed by an officer an incompetent authority. It was held that subsequent approval by the competent authority would not make it valid. The said judgement had followed the dicta laid in AIR 1976 SC 1899, Baradakanta Misra Vs. High Court of Orissa, wherein it was held that: "if the order of initial authority is void, the order of the appellate authority cannot make it valid. The confirmation of the Governor cannot have any legal effect because that which is valid can be confirmed and not that which is void."

It was next contended that since the charge sheet issued by the Assistant Engineer was void and nullity he had submitted representation dated 15.7.95. The charge

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sheet which was nullity in itself was not curable even if such memorandum is ratified by the Senior Divisional Engineer. In this background it was emphasized that Senior Divisional Engineer was not competent and had no jurisdiction to ratify a chargesheet, which was ultra vires. Strong reliance was placed on 1988 (3) SLJ 353 (Hyderabad CAT), I.K. David Vs. Union of India & others. In the said case, after noticing the provisions of Rule 6, 9 and Schedule II of the Railway Servants (D&A) Rules, it was observed that the applicant being a Class III/ Group 'C' employee could not have been charge sheeted by the Assistant Mechanical Engineer and therefore, the act of initiating disciplinary action against the applicant therein, was not approved. On the said ground, the disciplinary proceedings initiated by the Assistant Mechanical Engineer were set aside with all consequential relief.

Shri Mishra, learned counsel appearing for the applicant also strongly argued that the Assistant Engineer became the accused/ complainant/ witness as well as Judge in his own cause, which is, impermissible in law. Reliance was placed on Constitution Bench Judgement in Arjun Chaubey Vs. Union of India & others, 1984 SCC (L&S) 290. In the said case, action of the officer against whom the delinquent employee alleged to had committed acts of misconduct himself called for explanation and took decision thereon, which was not approved being illegal, invalid and violative of



principle of natural justice. It was further held that the basic illegality in the order cannot be cured even accepting that the charge employee was habitually guilty of acts subversive of discipline. The Hon'ble Supreme Court, therein, noticed its earlier judgement in State of U.P. Vs. Mohd Nooh, AIR 1958 SCC 1986 wherein it was observed that the roles of a Judge and witness cannot be played by one and the same person and it is futile to expect when those roles are combined, that the Judge can hold the scales of justice even. It was further observed that the illegality touching the proceedings which ended in the dismissal of the appellant therein was "so patent and loudly obtrusive that it leaves an indelible stamp of infirmity" on the decision of the concerned respondent.

It was further argued that the charge levelled against the applicant was vague in as much as there were 200 items in stores. In the same year of 1995, stock verification report was submitted by the Financial Adviser and Chief Accounts Officer and nothing wrong was found. For this purpose, reliance was placed on para 4.1 and 4.10 of OA as well as Annexure A-1. It was further contended that the contention raised in the said paragraphs were admitted by the respondents in their reply. It is well settled law that the charges must be specific and not vague. When the charge sheet is vague, the allegations cannot be met by the charged officer. For this purpose, reliance was placed on Sawai Singh Vs.

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State of Rajasthan, 1986 (3) SCC 454, which was followed by the Coordinate Bench of this Tribunal in 1998 (37) ATC 257, Jospah Suleman Vs. Union of India & Others. The said judgement was also relied upon for the contention that the charge sheet issued by Assistant Engineer, who is only a Group 'B' Junior Scale Gazetted Officer, cannot impose the major penalty under the Railway Servants (Discipline & Appeal) Rules 1968.

7. Further contention was raised that the appellate authority cannot assume the role of disciplinary authority. In the present case, it was contended that the Senior Divisional Engineer is two grade above the Assistant Engineer, who had issued the charge sheet and over and above him is the Divisional Engineer and then comes Senior Divisional Engineer. The applicant had submitted the representation to ADRM, which was not attended to. DRM/ ADRM is senior in hierarchy to Senior Divisional Engineer as the latter is in the Junior Administrative Grade while the earlier is in the Senior Administrative Grade. Reliance was also placed on 1995 SCC (L&S) 529, Surjit Ghosh Vs. Chairman and Managing Director, United Commercial Bank & others wherein it was held that punishment inflicted by the appellate authority, acting as a disciplinary authority, thereby denying an official the right of appeal and also a right of review suffers from the inherent defect and as such were not justified.

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8. Lastly, it was pleaded with vehemence that the applicant was called to appear in a trade test and after passing the trade test he was promoted as Office Superintendent, Grade II vide order dated 13/ 16.1.2003. Furthermore, he has only a year to retire on attaining the age of superannuation, i.e. 31.1.2006.

9. The respondents disputed the aforesaid contentions & reiterated their submissions as noticed hereinabove.

10. On bestowing our careful consideration to the entire matter and the contentions noticed hereinabove, we are of the view that the OA should succeed as the major penalty under Schedule II of Railway Servants (Discipline & Appeal) Rules 1968 could not be imposed upon the applicant being a Group 'C' employee, by the Assistant Engineer. It is not the case of the respondents that the impugned charge memo dated 6.6.95 has either been cancelled or proposed to be cancelled as it issued by the incompetent authority. From the perusal of judgements noticed hereinabove we find that the void act of delegatee cannot be cured by ratification of the delegant. Similarly, the charge alleged against the applicant that there were improper maintenance of DWTR/ ledger as well as heavy shortage of P. Way materials and deficiency, without providing details of the same is held to be vague and it lack the particulars of the items in which such discrepancy was



allegedly found by the respondents or there was shortfall. On perusal of the charge as well as statement of imputation we do not find sufficient detail of the said aspects. It is well settled law that the charges must not be vague, abstract and general in nature. It must be specific with particulars, which is found to be wanting in the present case. As we have already noticed that the applicant has a year left to retire on attaining the age of superannuation and further that at no point of time the efforts were made by the respondents either to seek variation/modification or recall of the interim order passed on 14.3.96. Similarly, no steps were taken to expedite the hearing of the present case, which in itself goes to show that the respondents were not serious to pursue the charge against the applicant, particularly in the facts and circumstances of the present case. The impugned charge memo was issued by the Assistant Engineer, who had no competence to impose such penalty under Rule 9 of the Railway Servants (Discipline & Appeal) Rules 1968. On cumulative reading and analysing the facts of the present case vis-a-vis the judgements noticed hereinabove, we are of the considered view that the present OA deserves to be allowed and charge memo dated 6.6.95 be quashed and set aside. Accordingly, we quash and set aside the charge memorandum dated 6.6.95 with all its consequences. OA is allowed. No costs.



(M.K. Misra)
Admn. Member



(Mukesh Kumar Gupta)
Judicial Member

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