

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR

.....  
Date of Order : 29.11.2001.

O.A.NO. 44/1999

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Kailash Vasandani S/o Shri Manghara G. Vasandani, aged about 48 years, R/o 18 E/129, Chopasni Housing Board, Jodhpur (Raj), at present employed on the post of Junior Chemist and Metallurgical Assistant (re-designated as Chemist and Metallurgical Assistant-II), in the office of Dy. Chief Mechanical Engineer Workshop, Northern Railway, Jodhpur.

.....Applicant.

VERSUS

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.

Dy. Chief Engineer, Workshop, Northern Railway, Jodhpur.

Shri K.S.Chand, Asstt. Chemist and Metallurgist (LAB), Diesel Shed, Bhagat Ki Kothi, Northern Railway, Jodhpur.

.....Respondents.

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CORAM :

Hon'ble Mr.Justice O.P.Garg, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

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Mr. J.K.Kaushik, Counsel for the applicant.

Mr. S.S.Vyas, Counsel for the respondents.

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PER HON'BLE MR.GOPAL SINGH :

In this application under section 19 of the Administrative Tribunals Act, 1985, <sup>the</sup> applicant <sup>has</sup> prayed for quashing the impugned order dated 5.6.1992 (Annex.A/1), penalty order dated 23.12.1997 (Annex.A/2) and the appellate order dated 16.7.1998 as amended vide Corrigendum dated

*Gopal Singh*

23.7.1998 (Annexs. A/3 and A/4) with all consequential benefits.

2. The applicant was initially appointed as Substitute Khalasi in the grade of Rs. 196-232 w.e.f. 31.1.1975. Thereafter, he was appointed as temporary S&T Khalasi w.e.f. 12.8.1975. Further, the applicant was promoted to the post of Lab Assistant w.e.f. 7.12.1976 on ad hoc basis and was allowed to officiate as Junior Chemist and Metallurgist Assistant (JCMA), w.e.f. 7.2.1980 on ad hoc basis vide order dated 7.2.1980 (Annex.R/3). The applicant was issued a Chargesheet (SF-5) vide respondents order dated 5.6.1992 (Annex.A/1) and on conclusion of the departmental inquiry he was imposed the punishment of reduction to the initial stage in the current time scale of pay for a period of three years without cumulative effect vide disciplinary authority order dated 23.12.1997. In appeal, the penalty was reduced to reduction by one stage in the current time scale of pay for a period of one year without cumulative effect. The contention of the applicant is that the chargesheet was issued by an incompetent authority. There was no post of ACMT in Jodhpur Workshop w.e.f. 6.10.1993 as the post of ACMT, Jodhpur Workshop, was transferred to Jagadhari Workshop. Since there was no post of ACMT, Northern Railway, available in Jodhpur Workshop, Shri K.S.Chand, ACMT, Diesel Shed, Bhagat Ki Kothi, could not have legitimately be given the charge of the Jodhpur Workshop. In the circumstances, it has been contended by the applicant that Shri K.S.Chand, who has issued the chargesheet to him, had no jurisdiction in the matter either in issuing the chargesheet or in imposing the penalty. Hence, this O.A.

3. In the Counter, it has been stated by the respondents that the applicant was served with the Chargesheet dated 5.6.1992 for unauthorised absence for 299 days from 21.7.1991 to 8.5.1992 and on conclusion of the departmental inquiry, the charges were held to be proved by the inquiry officer and the disciplinary authority agreeing

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with the findings of the inquiry officer imposed the punishment of reduction to the lowest stage in the then time scale of the pay of the applicant for a period of three years without cumulative effect. In appeal, this punishment was reduced to reduction by one stage in the then time scale of pay for a period of one year without cumulative effect by the appellate authority. It is also pointed out by the respondents that Shri K.S. Chand, who was ACMT, Diesel Shed, Bhagat Ki Kothi, was also asked to look after the work of Jodhpur Workshop in addition to his own duties vide Dy. Chief Mechanical Engineer, Headquarter's letter dated 29.12.1993, Annex.R/6. It has, therefore, been argued by the respondents that Shri K.S. Chand, was competent to issue chargesheet to the applicant and imposed penalty as he was given the charge of the Jodhpur Workshop by the Northern Railway Headquarters. In these circumstances, it has been averred by the respondents that the application is devoid of any merit and is liable to be dismissed.

We have heard the learned counsel for the parties and perused the records of the case carefully.

5. The learned counsel for the applicant has mainly dwelt upon the in- competency of the authority, who issued the chargesheet. In this connection he has drawn our attention to the definition of 'Disciplinary Authority' as contained in Rule (2 (c) (iii) and (iv) of the Railway Servants (Discipline & Appeal) Rules, 1968. He has also drawn our attention to the Railway Administration Order (7 (2) dated 4.2.1971 under Rule 3 of the said Rules. We consider it appropriate to extract below the relevant rules relied upon by the learned counsel for the applicant.

"(c)'disciplinary authority' means -

- (i).....
- (ii).....

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(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 ;

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

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(7) Authority competent to impose major penalty- It is clarified that there is no contradiction in the provision of Rule 2(1) (c) of (iii) and that of Rule 8(2). The words 'subject to provision of Clause (c) of Sub-rule (1) of Rule 2' used in Rule 8 (2) simply mean that only an authority competent to impose any of the major penalties can initiate disciplinary proceedings for imposition of a major penalty in relation to Rule 9, in respect to non-gazetted staff.

(2).It may be mentioned that while framing the Railway Servants (Discipline and Appeal) Rules 1968, a deliberate decision was taken to the effect that only an authority competent to impose any of the major penalties should initiate disciplinary proceedings for imposition of such a penalty on non-gazetted staff. As such the authority for all purposes of institution of disciplinary proceedings and issue of charge memorandum for imposition of major penalty is the authority competent to impose any of the major penalties."

6. It would be seen from the above that the Railway Administration had taken a deliberate decision in regard to initiation of disciplinary proceedings and imposition of penalty on non gazetted staff and it has been laid down that the authority for all purposes of institution of disciplinary proceedings and issue of charge memorandum for imposition of major penalty is the authority competent to impose any of the major Penalties. It is also seen that the applicant was served with a chargesheet for major penalty by Shri K.S. Chand, a Group B Officer. We have also gone through the Schedule II of Disciplinary Powers of different grades of Railway Officers and Senior Supervisors in respect

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of non gazetted staff of various Railway formations. It is seen that an Assistant Officer in junior scale and a group B officer, was competent for imposing penalty of reduction to a lower stage in the time scale of pay for a period not exceeding three years without cumulative effect upon the group 'C' staff except in grade of Rs. 1400-2300 and above. It would thus be seen that Shri K.S.Chand, ACMT, was competent to impose the above mentioned minor penalty upon the applicant. It is only in respect of issuance of chargesheet that Shri K.S.Chand, was not the competent authority as per the provisions discussed above. The only technical flaw, thus, in this case turns out to be that the authority who issued the chargesheet for major penalty was not competent to issue that chargesheet, though, he was competent to impose a minor penalty as has been done in the instant case. It is also seen that the penalty imposed by the disciplinary authority has further been slashed by the appellate authority to reduction by one stage in the time scale of pay for one year without cumulative effect. It is also not denied that the applicant had absented himself from duties unauthorisedly for 299 days as established in the inquiry. The minor penalty inflicted upon the applicant is quite moderate and commensurate to the established guilt. No prejudice has been caused to him in the imposition of minor penalty by the disciplinary authority, who was ~~not~~ competent to do so. The order of minor punishment which has been confirmed in appeal cannot be faulted merely on the ground that the authority who served the chargesheet for major punishment was not legally competent. Hyper-technicality should not be resorted to for upsetting the otherwise reasonable and valid order of infliction of minor penalty.

7. The applicant has in this regard pointed out the discriminatory

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treatment given to officials for the similar mis- conduct. Such a pleading, in our view, is not going to help the applicant. Each case has to be seen on its own merits. In our view, reduction of pay by one stage in the time scale of pay for a period of one year is not excessive for the alleged misconduct. It is also seen that the applicant has already suffered this punishment. Though, there was procedural lapse inasmuch as the authority who issued the chargesheet for major penalty was not competent, however, we are of the view that no useful purpose would be served by remitting the case back to the respondents in the peculiar circumstances of this case. The primary function of a Court is to adjudicate the conflicting rights between the parties and to advance the cause of substantial justice. Technicalities or procedural shortcomings of immaterial nature, have to be ignored while doing substantial justice.

8. The learned counsel for the applicant has also cited an order of this Tribunal dated 11.9.1998 passed in O.A. No. 494/1994, in support of his contention that the chargesheet issued by an incompetent authority, is not sustainable. Though, apparently, ratio of this order dated 11.9.1998 is applicable to the case in hand but because of the peculiar circumstances of the case, we are of the view that no useful purpose would be served in quashing the punishment imposed upon the applicant which had already taken effect.

9. In the light of the above discussions, we are of the view that the O.A. is devoid of any merit and is liable to be dismissed. Accordingly, we pass the order as under :

The O.A. is dismissed but in the circumstances without any costs.

Gopal Singh  
(Gopal Singh)  
Adm. Member

Justice O.P.Garg  
(Justice O.P.Garg)  
Vice Chairman

Part II and III destroyed  
in my presence on 24-5-07  
under the supervision of  
section officer [ ] as per  
order dated 19/9/07

11/201  
Section officer (Record)

R/COPY  
on 6/12  
M/SF

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4/3/2010