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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH, JODHPUR.

Date of Decision: 21/12/2001

OA 214/2001

B.N.Kasana, Section Engineer (P Way), Jalore, Northern Railway.

... Applicant

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Shri Alok Mishra, Divisional Engineer Headquarters, Northern Railway, Jodhpur Division, Jodhpur.
3. Divisional Superintending Engineer (Co-ord), Northern Railway, Jodhpur Division, Jodhpur.

... Respondents

CORAM:

HON'BLE MR.JUSTICE O.P.GARG, VICE CHAIRMAN

HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

For the Applicant

... Mr.J.K.Kaushik

For the Respondents

... Mr.Anil Mehta



O R D E R

PER HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

The applicant is a Section Engineer in the scale of Rs.6500-10500. A charge-sheet of minor penalty was issued against him and the disciplinary authority, Divisional Engineer (Hqrs), Jodhpur, vide order dated 26.7.2001, imposed a penalty of reduction in pay in the same scale from Rs.8900/- to Rs.8100/- for a period of three years without cumulative effect. When this application was heard for admission on 16.8.2001, an interim order was passed staying the operation of the impugned order dated 26.7.2001 and that interim order has continued till date.

2. We have heard the learned counsel for the parties on admission. We find the only ground on which the impugned order has been challenged is that the Divisional Engineer (Hqrs) is not the competent authority under the Schedule of Powers annexd to the Railway Servants (Discipline & Appeal) Rules, 1968 for imposing any penalty on an employee in the grade of Rs.6500-10500, to which the applicant belongs.

3. The same issue came up for consideration in another OA No.28/2000, R.K.P.Singh v. Union of India & Ors. The applicant in that OA was also in the same grade of Rs.6500-10500 as the applicant in the present OA. The powers of disciplinary authority were exercised in that case by the same officer, Shri Alok Mishra, Divisional Engineer, and his competence to issue the charge-sheet and to impose punishment had been challenged. We have discussed the implications and merits of the rival contentions in that case and we consider it necessary to reproduce the relevant portion in this case as the same applies mutatis mutandis to the facts of this case:-



"2. The only ground on which the action of the disciplinary authority has been challenged by the applicant is that the Divisional Engineer was not the competent authority under the rules to impose any penalty against the applicant who was holding the post of Section Engineer (P.Way) in the scale Rs.6500-10500. The learned counsel on either side depended on the same Schedule of Powers in the Railway Servants (Discipline & Appeal) Rules, 1968 in support of the respective contentions. Schedule-II to the rules provides for the delegation of powers to officers of various levels for imposing specified penalties. The disciplinary authority in this case i.e. the Divisional Engineer is admittedly a Senior Scale Officer. The powers delegated to the Senior Scale Officers are indicated in column-

3 and column-4 of the Schedule. Column-3 relates to Sr. Scale Officers and Assistant Officers (Junior Scale & Group-B) holding independent charge, whereas column-4 relates to Jr. Administrative Grade Officers and Sr. Scale Officers holding independent charge of Department on the Division. The entire controversy in this case rests on the fact whether Divisional Engineer (Hqrs), Jodhpur, is Sr. Scale Officer in independent charge or not. The respondents in their reply have stated that the Divisional Engineer (Hqrs), Jodhpur, is an officer in independent charge of the portion of the Division under him and that his Confidential Report is initiated by the Divisional Railway Manager and not by Divisional Superintending Engineer (Coordination), (DSE (C), for short). In support of this contention the respondents have filed a copy of the D.O. from the General Manager, Northern Railway, dated 9.2.2000, addressed to various units of the Railway including DRM Jodhpur. Annexure-III to the said D.O. states that Confidential Reports of Divisional Engineers, who hold independent charges will be initiated by the DRMs direct. Thus, the respondents contend that Divisional Engineer (Hqrs), whose report is initiated by the DRM Jodhpur, is an officer in independent charge. This contention of the respondents has been refuted by the applicant in his rejoinder. The learned counsel on his behalf vehemently argued that there is a contradiction in the action of the respondents themselves inasmuch as while the respondents claim that Divisional Engineer (Hqrs) is an officer in independent charge, the order of penalty served on the applicant specifies that the appeal lies to DSE (C). This would mean, the learned counsel stated, that the Divisional Engineer was working under the control of DSE (C) and not independently. He submitted that merely because the Confidential Report of an officer is being



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initiated by the DRM directly does not make him an officer in independent charge.

3. We have given our anxious considerations to the rival contentions and have also perused the records placed before us.

4. The structure of a Division on a Railway is that the same is headed by the DRM who is assisted by an Addl.DRM and each of the departments in the Division headed by the Branch Officers for the respective jurisdiction. In the Engineering Department, which is the largest department of the Organisation, the Division gets divided into different areas and the Civil Engineering activities including Permanent Way and Works are controlled by an Officer Incharge who could be either in Jr.Administrative Grade or Sr.Scale. In the large divisions there could be more than two or three DSEs or Sr.DENs in Jr.Administrative Grade and in these divisions also there is an officer designated as DSE (C). This does not mean that other DSE/Sr.DEN work under the DSE (C). They are all independent Branch Officers in their own right. In smaller divisions some portion could be headed by a Jr.Grade Officer and some portion could be headed by a Sr.Scale Officer and such Sr.Scale Officer is a Branch Officer in his own right and holds an independent charge. The learned counsel for the applicant raised doubt on this Organisational structure by pointing out that there is no policy circular declaring such Sr.Scale Officers as Officers in independent charge and that in absence of such declaration the Divisional Engineer (Hqrs), Jodhpur, cannot be considered as an



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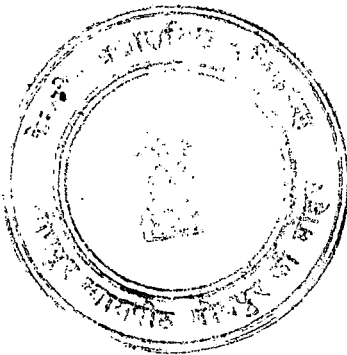
Officer in independent charge. In support of his contention, the learned counsel referred to the decision of the Central Administrative Tribunal, Allahabad Bench, in SLJ 1991 (2) (CAT) 479, Hemendra Nath Mishra v. Union of India & Ors. In that case, the Tribunal had an occasion to discuss that Stationary and Printing Superintendent (SPS), a Sr.Scale Officer of the Railway, was an officer in independent charge or otherwise. Based on the facts of that case, the Tribunal came to a conclusion that SPS was not an officer in independent charge as there was no notification shown to the Bench by the department in support of their contention. The case before us is of a division where the structure of the Organisation is well established and the same continues to exist for a very long time. In fact till a few years back all the Branch Officers were only Sr.Scale Officers and during the course of time, because of restructuring and upgradation, a large number of posts of Branch Officers have been upgraded to Jr.Administrative Grade. In smaller sections of the divisions Branch Officers have continued to be in Sr.Scale but this does not change the position of their being in independent charge. The facts of the case before Allahabad Bench are clearly distinguishable and the applicant cannot find any support from that case in his favour. As we have stated that the structure of the divisional organisation has existed for a very long time, in our view no notification is required in such a situation to declare whether any Branch Officer in a division is an officer in independent charge. The respondents have stated that Divisional Engineer (Hqrs) is a Branch Officer and we have no reason to doubt that contention. From the facts and circumstances of this case, we are of the view that the Divisional Engineer (Hqrs), Jodhpur, is a Branch Officer and, thus, a Sr.Scale Officer in independent



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charge. The delegation of powers, as per Schedule-II, permit a Sr. Scale Officer in independent charge to impose a penalty of withholding of increments on Group-D and Group-C staff. Thus, we do not find any infirmity in the impugned order."

4. In view of the discussions aforesaid, the OA is dismissed. The interim order is vacated. However, in this case, we find that the applicant had come before us before exhausting the remedy of appeal and revision available under the Railway Servants (Discipline & Appeal) Rules, 1968. The disposal of this OA shall not preclude the applicant from availing of the statutory remedy available to him. He is at liberty to file an appeal before the appellate authority and the revisioning authority, if he so chooses. No order as to costs.



[Signature]

(A.P. NAGRATH)
MEMBER (A)

[Signature]

(JUSTICE O.P. GARG)
VICE CHAIRMAN

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Received
for
31/12/2001

Lead for
Date
4/10/01

Part II and III destroyed
in my presence on 29/8/02
under the supervision of
section officer (1) as per
order dated 13/3/07

MGN
Section officer (Record)