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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No.309/2003

Date of decision:..... 6-10-2004

Hon'ble Mr. Kuldip Singh, Vice Chairman.

Hon'ble Mr.G.R.Patwardhan, Administrative Member.

B N Kasana, s/o Shri Nathu Singh Ji, aged about 55 years, R/o C/o Sh Narpat Lal Bhati, House No. 1 P-4, Madhuban Society, Jodhpur (Rajasthan). Presently working on the post of Sectional Engineer (P. Way/ MTS) in the Office of Chief Controller, North Western Railway, Jodhpur (Rajasthan).

: Applicant.

Rep. By Mr. S.K. Malik/ Mr. Dayaram: Counsel for the applicant.

Versus

1. Union of India, through the General Manager, North Western Railway, Jaipur (Rajasthan).
2. Chief Engineer, North Western Railway, Jaipur (Rajasthan).
3. Senior Divisional Engineer/C, North Western Railway, Jodhpur (Rajasthan).
4. Sh. Sandeep Gemawat, Senior Divisional Engineer (East)/ Enquiry Officer, North Western Railway, Jodhpur (Rajasthan)

: Respondents.

Rep. By Mr. Kamal Dave: Counsel for the respondents.

ORDER
Mr. Kuldip Singh, Vice Chairman.

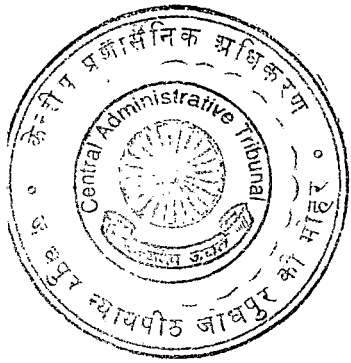
In this O.A, the applicant has assailed the order dated 17.12.2003 (Annex. A/1) vide which the applicant was inflicted the penalty of compulsory retirement from service with immediate effect. The said order has been passed on 17.12.2003 and has been issued by Shri D.P. Lal, Senior



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Divisional Engineer/C/ JU, North Western Railway, Jodhpur. The order of punishment has been passed after issuing a charge sheet for major penalty and after conducting an inquiry thereupon. The allegations as contained in the charge sheet are reflected in Annex. A/2, that has been issued in Standard Form No. 5, to him. The inquiry officer had held that the applicant was found guilty of the charges and consequently the impugned order has been passed against the applicant.

2. The applicant has taken various grounds to challenge the same. One of the main grounds of challenge to the impugned order is that the order of compulsory retirement has been passed by respondent No. 3, who is lower in rank and grade than the appointing authority of the applicant i.e. Respondent No. 2. Thus it has been issued in violation of provisions of Art. 311 of the Constitution of India as well as in violation of Disciplinary and Appeal Rules, 1968. Thus the impugned order is without jurisdiction and is void ab initio. Therefore the same is liable to be set aside and quashed.



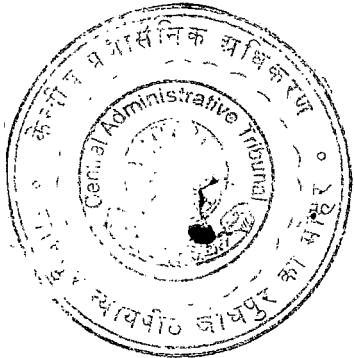
3. It may not be out of place to mention here that the applicant in the O.A has asked for an interim relief for staying the operation of the impugned order and this Tribunal vide its order dated 24.12.2003, had granted the interim prayer and stayed the operation of the impugned order. However, against this interim order, the respondents had filed Writ Petition No.547/2004, before the Hon'ble High Court of Rajasthan, at

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Jodhpur. The Hon'ble High Court of Rajasthan at Jodhpur vide its order dated 10.05.2004, had stayed operation of the interim order granted by this Tribunal on 24.12.2003.

4. The respondents have contested the O.A and filed their reply. In their reply, they have taken a preliminary objection since the applicant has not availed the remedy available to him against the impugned order since the impugned order is appealable one and as such without filing an appeal and exhausting the remedies available the O.A is not maintainable. It is denied that the impugned order has been passed by an officer lower in rank than the appointing authority of the applicant.



5. We have heard the learned counsel for the parties and have gone through the records. The learned counsel for the applicant claimed that the applicant was appointed vide order dated 18/19-09-72 (Annex. A/3), which was issued by Chief Engineer (Estt) of Head Quarter Office, Church Gate Bombay, whereas the applicant has been inflicted the penalty of compulsory retirement by an officer of the rank of Senior Divisional Engineer, vide Annex. A/1. Thus the impugned order is bad in law for want of jurisdiction of the officer who had issued the impugned order.

6. Though, ex facie, this document would go to show that the letter Annex. A/3 had been issued by the Chief Engineer (Estt.) Hqrs. Office, Bombay, whereas the impugned order has been

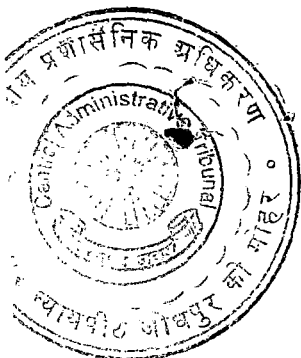
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passed by Senior Divisional Engineer, who is lower in rank than the Chief Engineer and that is why perhaps this Tribunal had granted the interim relief earlier.

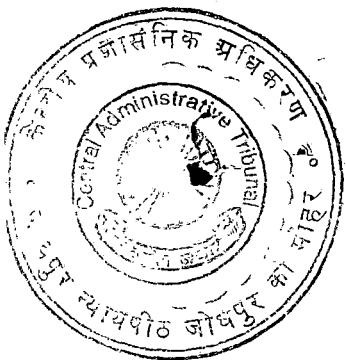
7. However, the learned counsel for the respondents controverted the contention of the applicant and submitted first of all, annexure A-3 is not an appointment order and the annexure A-3 is a letter which is the subject matter of employment to Class III service - Engineering Department - Apprentices and the offer of appointment is to the post of Apprentice - Assistant Inspector of Works with stipend of Rs.205/- per month, under the rules. The counsel for the respondents submitted that this letter is not an appointment to a civil post rather it is an offer of appointment as Apprentice. Under the Indian Railway Establishment Manual (IREM for short), apprentices get appointed only on completion of prescribed training and in case he fails to complete the training he cannot be given appointment to a civil post.

8. The learned counsel for the respondents submitted that even otherwise the letter dated 18/19.7.1972, Annexure A-3, has not been signed by Chief Engineer (Establishment), as it is signed by "for P.A./for Chief Engineer (Estt.)". The learned counsel for the respondents further submitted that in fact this letter has been signed by for and on behalf of P.A. to Chief Engineer. The person who signed the same is only an Assistant Personnel officer of the rank of the Assistant Grade who has

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signed for and on behalf of the P.A. to Chief Engineer (Estt.) who is of the rank of Executive Engineer. Thus, the Annexure A-3 has in fact been signed by P.A. to Chief Engineer and not by Chief Engineer himself nor on his behalf. The learned counsel further submitted as per the IREM, such type of apprentices are entitled to be appointed after completion of the prescribed course of training. In this case the applicant had been appointed vide orders dated 10.3.1974 which has been passed by the Executive Engineer, copy of which is Annexure R-3, which shows the date of regular appointment of the applicant as 16th August, 1973 whereas the letter Annexure A-3 has been issued on 18/19.7.1972. Counsel for the respondents further submitted even this order dated 10th March, 1974 had been further modified because a policy decision was taken to reduce the training period by 6 months and a modified letter has been issued vide annexure R-4 reducing the period of training by 6 months and thus the date of regular appointment of the applicant has been shown as 16.2.1973 which again has been issued by Executive Engineer (C) Surendranagar. The learned counsel further pointed out that the applicant has been in fact given a regular appointment only by order of Executive Engineer and the question of giving appointment vide Annexure A-3 does not arise at all.



9. We have given our anxious consideration to the rival contentions put forth by both the parties. As far as the contention of the learned counsel for the applicant that the

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applicant had been appointed vide Annexure A-3 is concerned, the same seems to be bereft of merits for the following reasons :

- (i) First of all, Annexure A-3 is not an appointment order to a civil post rather it is merely an offer of appointment on apprenticeship and as per the rules it is quite clear that an apprentice is entitled to get the regular appointment only on completion of the prescribed period of training to be imparted by the railways and in this case after completion of the training vide Annexure A-3, the applicant had been given regular appointment w.e.f. 16.8.1973 by an order of Executive Engineer © though this date of appointment had been modified later on because of the policy of the railways, that they had reduced period of training by six months modifying date of appointment as 16.2.1973. By no stretch of imagination, Annexure A-3, which is the letter dated 18/19.7.1973, can be construed as an appointment letter.



- (ii) Moreover, the date of regular appointment of the applicant as Assistant Inspector of Works is constantly being shown from the years 1974 and 1977 vide Annexure R-3 and R-4, as 16.8.1973 and 16.2.1973. Thus, in a way the applicant had himself acquiesced to the fact that the letter dated 18/19.7.1972 is not a letter of regular appointment but is merely an offer for apprenticeship training. Moreover, he has accepted his date of regular appointment as 16.8.1973 and 16.2.1973 as reflected in annexure R-3 and R-4 from the date the same had been issued. Now, the applicant cannot turn around and contend that he was regularly

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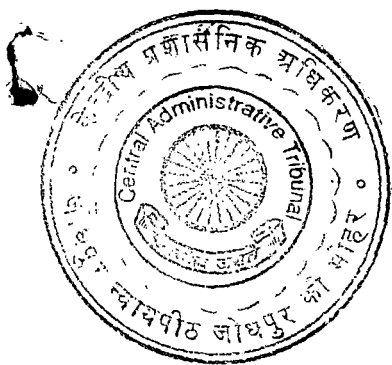
appointed from 18/19.7.1972. Besides, Annexure A-3 is not signed by the Chief Engineer but has been signed by "for PA / ~~for~~ Chief Engineer (Estt.). This means that the letter has been signed for and on behalf of the PA to Chief Engineer. The word "For" appearing between the words "for PA" and "Chief Engineer" has been deliberately scored off, meaning thereby that the person who has signed Annexure A-3 had deliberately scored off the word "for" appearing between those words so that it is made clear that the letter is being issued for and on behalf of the PA to Chief Engineer who himself is of a rank of Executive Engineer.

(iii)

Assuming for the argument's sake that the person who has signed 'for PA' to the Chief Engineer then also it cannot be read as for the person who has signed for and on behalf of the Chief Engineer because the Chief Engineer had himself delegated his powers to sign such type of letters to his P.A. who is of the rank of Executive Engineer. As per rules this power cannot be delegated further to Assistant Personnel Officer who has signed on behalf of PA for Chief Engineer and it is established practice of law that powers delegated to one officer cannot be further delegated. So, on this principle also it cannot be said that Annexure A-3 has been signed for and on behalf of the Chief Engineer.

(iv)

Hence, from whatever angle we may examine the case the position remains the same i.e. no regular appointment has been made vide Annexure A-3, specifically when the letter has been signed "for PA / ~~for~~ Chief Engineer

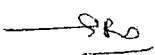


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(Estt.)" who is of the rank of Executive Engineer. As regards the regular appointment is concerned, the same had been made by Executive Engineer and the impugned order has also been signed by an officer of the rank of Senior Divisional Engineer. Hence, it cannot be said that the person who has passed the impugned order is lower in rank than the appointing authority.

10. Thus, the O.A. fails and the same is liable to be dismissed. However, before parting with the case we may mention that the applicant has under the mistaken belief that the impugned order has been passed by an authority lower in rank than the appointing authority, had not preferred any appeal which remedy was available to him. Further, the respondents themselves have also taken a preliminary objection that the O.A. is premature. Hence keeping in view the principles of natural justice, we feel it would be proper that in case the applicant prefers to file an appeal then the appellate authority shall consider the same without taking any objection with reference to question of limitation. O.A. is disposed of with the above observations. No order as to costs.




(G.R.PATWARDHAN)
Member (A)


(KULDIP SINGH)
Vice Chairman

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