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May 12/2003
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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH , JODHPUR**

ORIGINAL APPLICATION NO. 76/2002.

Date of decision:

20-10-03

B. N. Kasana

.....**Petitioner**

Mr. D. K. Parihar

.....**Advocate for the Petitioner**

Versus

Union of India and Others**Respondents.**

Mr. Anil Mehta**Advocate for Respondents.**

CORAM:

Hon'ble Mr. Justice G.L.Gupta, Vice Chairman.

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

1. **Whether Reporters of local papers may be allowed to see the judgement?**
2. **To be referred to the Reporter or not?**
3. **Whether their Lordships wish to see the fair copy of the Judgement?**
4. **Whether it needs to be circulated to other Benches of the Tribunal?**

(G. R. Patwardhan)
Adm. Member

(G.L. GUPTA)
Vice Chairman

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H/S

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR**

Date of Decision : 20-10-03.

Original Application No. 76/2002.

B. N. Kasana S/o Nathu Singh, Section Engineer (P. Way), N. Rly. Jalore.

Applicant.

Versus

1. The Union of India through the general Manager, N. Rly, Baroda House, New Delhi.

2. Divisional Railway manager, N. Rly. DrM Office, Jodhpur.

3. Shri Sanjay Rastogi D.S.E./C, N. Rly. DRM Office, Jodhpur.

Respondents.

Mr. D. K. Parihar counsel for the applicant.
Mr. Anil Mehta counsel for the respondents.

CORAM

Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.
Hon'ble Mr. G. R. Patwardhan, Administrative Member.

**ORDER
(per Hon'ble Mr. G. L. Gupta)**

Through this OA under Section 19 of the Administrative Tribunals Act, 1985, the orders Annexure A-1 and A-2 have been called in question. By the order dated 31.08.2001 (Annexure A-1), the applicant was placed under suspension by Shri Sanjay Rastogi, Divisional Superintending Engineer, Northern Railway, DRM Office, Jodhpur under the name of the

[Signature]

President of India. Vide Memorandum dated 5/11/09/2001, a major penalty charge sheet was given to the applicant in the name of the President under the signatures of Shri Sanjay Rastogi, Divisional Superintending Engineer, Northern Railway, Jodhpur.

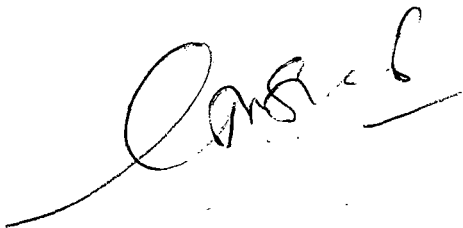
2. The say of the applicant is that the order of suspension and the Memorandum of charge sheet could not be passed by respondent no.3 who was the higher authority than the Disciplinary Authority. It is also stated that the action of the respondent No.3 in suspending the applicant and issuing charge sheet amounts to victimization.

3. In the counter, the respondents have resisted the claim of the applicant stating that the orders have been issued by the competent authority.

4. The applicant has filed rejoinder reiterating the facts stated in the

5. We have heard the learned counsel for the parties and perused the documents placed on record.

6. During the course of arguments, it was brought to our notice that the order of suspension Annexure A-1 has been withdrawn by the respondents vide order Annexure R-1 dated 08.05.2002. Since the order




of suspension has been withdrawn, one part of the relief mentioned at Para 8 (i) of the O.A. does not survive.

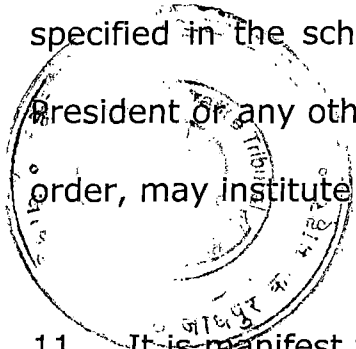
7.. We have to see as to whether the charge sheet Annexure A-2 is liable to be quashed on the ground that it was issued by an authority higher than the Disciplinary authority.

8. The contention of Mr. Parihar was that, that this Court vide its order dated 21.12.2001 passed in OA No. 214/2001 has held that the Divisional Engineer Headquarter who is a senior scale officer was competent to impose penalty on the applicant therein (the applicant herein also) and as in the instant mater the enquiry has been initiated by the higher authority, it is liable to be quashed. His submission was that when the higher authority has issued charge sheet, the right of appeal of the applicant, in case he is punished, has been taken away. In support of contention he cited the cases of Surjit Ghosh vs. Chairman & M.D. United Commercial Bank (1995 SC 1053) and Electronics Corporation of India vs. G. Muralidhar (JT 2001 (3) SC 549).

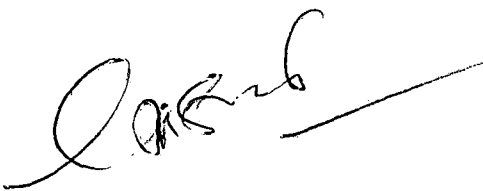
9. On the other hand, learned counsel for the respondents contended that in the Railway (Discipline & Appeal) Rules 1968, there are two types of disciplinary authorities and there is no legal impediment in issuing charge sheet by a higher authority. He pointed out that under the Schedule appended to the Rules of 1968, penalties can be imposed even by the higher authorities in respect of Group-C and Group-D employees.



He drew our attention to the various provisions of appeals to emphasize that whenever an order of penalty is passed by an authority higher than the Disciplinary Authority, an appeal can be taken to the still higher authority and even to the Railway Board. He canvassed that there was no curtailment of right of appeal in this case when the charge sheet was issued by Shri Sanjay Rastogi, Divisional Commercial Engineer, Northern Railway, Jodhpur.

10. We have given the matter our thoughtful consideration. It is seen  that under Rule 7 of the Rules of 1968, the President may impose any of the penalties specified in Rule 6 on any Railway servant and that penalties may be imposed on a Railway servant by the authorities specified in the schedules I, II & III. It is provided in Rule 8 that the President or any other authority empowered by him, by general or special order, may institute disciplinary proceedings against any Railway servant.

11. It is manifest that having defined disciplinary authority in Rule 2(c) and 7, further Rule 8 mentions an 'authority to institute proceedings'. In other words two types of disciplinary authorities have been provided in the Rules. Under Rule 7, the Disciplinary Authority itself has to take decision and to initiate proceedings. Under Rule 8 even a higher authority like President or any other authority may also institute proceedings or may direct the Disciplinary Authority to institute proceedings.



12. In the instant case even if for arguments sake, it is accepted that Shri Sanjay Rastogi as Divisional Superintending Engineer, was the authority higher than the Disciplinary Authority, no illegality can be found when he issued the charge sheet. As already stated, even the higher authority can issue charge sheet to a Railway servant.

13. As to the contention that right of appeal is curtailed when the higher authority issues charge sheet, it may be stated that in the Rules, it has been clearly provided that whenever an order of penalty is passed, the appeal can be taken to the next higher authority and even to the Railway Board in some cases. That being so, there is no merit in the contention that when the charge sheet has been issued by an authority higher than the Disciplinary authority, the right of appeal was curtailed.

13.1 The rulings cited on behalf of the applicant are clearly distinguishable. In the case of Surjit Singh Ghosh (supra), there was a clear provision under the Regulations that the Disciplinary Authority for the officer in Grade E, D, C & B was the Divisional Manager/AGM and the appeal against their order lay to the Deputy General manager or any other officer of the same rank and against the order of the Deputy General Manager, the review lay to the General Manager. Action in that case was initiated by the DGM himself who was the appellate authority. There being no provision of appeal against the order of the DGM, it was held that the right of appeal of the applicant therein was curtailed.



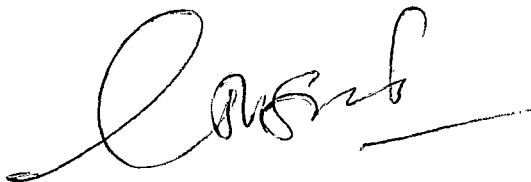
In the instant case, as already stated, the right of appeal does not stand curtailed. The appeal can be taken to the next higher authority.

13.2 So also in the case case of Electronics Corporation of India vs. G. Muralidhar(supra), the order of termination was passed by the appellate authority and not by the Disciplinary Authority. Following the verdict in the case of Surjit Singh, the order of termination was set aside, evidently because the right of appeal of the applicant therein had been curtailed .

13.3. It may be pointed out that the Divisional Superintending Engineer is not the appellate authority when the order is passed by the Divisional Engineer (H). In respect of a Railway servant under the scheme of the Railway Servants (Disciplinary & Appeal) Rules, 1968, the order of penalty can be passed by any authority right from the Senior Supervisor to any of the higher authorities. The right of appeal, against the order of penalty passed by any authority, has been given to a Railway servant.

14. That being so, the rulings cited by the learned counsel for the applicant do not apply to the instant case.

15. The enquiry is at the initial stage. The applicant shall be at liberty to challenge the order of penalty, if passed against him on all the



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grounds. No illegality is found when the charge sheet was issued by the Divisional Superintending Engineer.

16. That being so, the application being devoid of merit, is dismissed.

No order as to costs.



(G. R. PATWARDHAN)

MEMBER (A)



(G. L. GUPTA)

VICE CHAIRMAN

Received Copy
of order

Jan
21/10/03

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