

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH: JODHPUR**

ORIGINAL APPLICATION NO. 269/2004

Date of decision: 31st Aug, '05

Anil Kumar Jain

...Applicant

Mr.S. K.Malik & Daya Ram

**...Advocate for
the applicant.**



V E R S U S

Union of India & ors

...Respondents.

Mr. Vinit Mathur & Mr. Mahendra Godhra

...Counsel for the respondents.

CORAM:

Hon'ble Mr. J.K. Kaushik, Judicial Member.

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

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

*_____
(G.R. Patwardhan)*

Administrative Member

*J K Kaushik
(J K Kaushik)*

Judicial Member

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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No. 269/2004

Date of decision: 31st August, 2005

**HON'BLE MR. J K KAUSHIK, JUDICIAL MEMBER.
HON'BLE MR. G R PATWARDHAN ADMN MEMBER**

Anil Kumar Jain, S/o Nihal Chand Jain aged about 49 years, r/o C-28, Sir Pratap Colony, Panch Batti circle, Ratanada. Jodhpur (Rajasthan) presently working on the post of Inspector (Customs) in the Office of Additional Commissioner Customs, Jodhpur (Rajasthan)

: Applicant.

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

VERSUS

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1. Union of India through the secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi.
 2. The Commissioner of Central Excise, Jaipur-I New Central Revenue Building, Statue Circle, C-Scheme, Jaipur (Rajasthan)
 3. The Additional Commissioner (P&V), Central Excise, Jaipur I New Central Revenue Building, Statue Circle, C Scheme, Jaipur (Rajasthan)

: Respondents.

Rep. By Mr. Vinit Mathur: Counsel for the respondents.

ORDER

Per Mr. J K Kaushik, Judicial Member.

Shri Anil Kumar Jain has assailed the order dated 30.05.2003 (Annex. A/1), order dated 02.07.2004 (Annex. A/2) passed by the respondent no. 2 and the memorandum of charges dated 14.07.99 and has prayed for declaring them as illegal as well as for quashing them with a further direction to the respondents to restore the withholding increments with all consequential benefits.

2. We have heard the learned counsel for both the parties and have carefully perused the records and pleadings of this case. The

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brief facts of this case are that the applicant while working on the post of Inspector of Central Excise at Bhilwara in the year 1997, was issued with a charge sheet under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for brevity Rules), vide memo dated 14.07.99. The same contained three articles of charges. He denied the allegations and submitted that the respondent No. 3 was not the competent authority to issue the memorandum of charges to him since the Head Of Office is the Additional Commissioner, Central Excise, Jaipur II, under whose control the applicant was working. Despite the specific objection, respondent No. 3 proceeded further in the matter. A detailed inquiry was conducted and the inquiry officer concluded the inquiry wherein none of the charge was held as proved. The applicant was issued with a show cause notice on 10.01.2001 by an authority lower in rank than the respondent No. 3, as to why the findings of the inquiry officer in respect of charges mentioned at Sl. Nos (b) and (c) should not be rejected. The applicant submitted a reply to the said show cause notice. Thereafter, the impugned order dated 30.05.2003 has been passed whereby the penalty of with holding of an increment for a period of three years (sic three increments of his pay) with cumulative effect. An appeal was preferred and the same came to be rejected by the Commissioner, Central Excise, Jaipur I. This Original Application has been filed on numerous grounds mentioned in para 5 and its sub paras. However, we would be dealing with the grounds that has been stressed and considered necessary for resolving the controversy involved in this case in the later part of this order.



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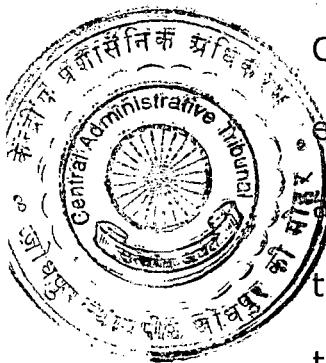
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3. The respondents have contested the case and filed a detailed reply to the O.A wherein the facts and grounds raised in the O.A have been refuted. It has been averred that though the applicant was under the control of Commissioner, Central Excise Jaipur II, the cadre being the combined one, the then Chief Commissioner, Customs and Central Excise (JZ) Jaipur vide order dated 23.12.98 entrusted the work relating to initiation of disciplinary action against all Group C officers to the Commissioner, Central Excise, Jaipur-I through Additional Commissioner (P & V) Jaipur I irrespective of their working. It has been averred that as per the rules in vogue, the Head of Office has been specified as the appointing authority as well as authority to impose the penalties on Group 'C' officers and therefore the respondent No. 3 is competent to issue the charge sheet. The said disciplinary authority disagreed with the findings of the inquiry officer on charges (b) and (c) after issuing the show cause notice and imposed the penalty. There is lot of repetitions regarding the entrustment of power to initiate disciplinary action against Group C Officers. The grounds raised in the O.A have been generally denied.

4. The learned counsel for the applicant has firstly submitted that the Joint Commissioner, who is subordinate to respondent No. 3, who has taken the final decision in the matter, communicated the points of disagreement to the applicant. He has submitted that one who hears must decide. It has been next contended that the very charge sheet is without jurisdiction in as much as the respondent No. 3 is not competent to impose any of the penalties as mentioned in Rule 11 read with part III Sl. No. 4 (ii) of the Schedule to Rules.



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He has also contended that it is the Head of Office who has been delegated with the powers to impose all the penalties as mentioned in Rule 11 of the Rules and the Additional Commissioner Central Excise Jaipur II is the Head of Office in respect of the applicant. But the charge sheet has been issued by the Additional Commissioner (P & V), Jaipur I i.e. respondent No. 3. Therefore the complete action is without jurisdiction and void ab initio. He has also reiterated certain other grounds mentioned in the O.A.

5. Per contra, the learned counsel for the respondents has reiterated the facts and grounds mentioned in the pleadings of the respondents and has submitted that respondent no. 3 has been empowered to initiate disciplinary proceedings as per the delegation of power vide office order dated 23.12.98 (Annex. R/2). He has also submitted that due procedure for imposition of penalties has been followed and the disciplinary authority is empowered to get the matter inquired through the inquiry officer and thereafter take final decision as per the rule in vogue. Final decision has accordingly been taken by the disciplinary authority. In this view of the matter and keeping in view the scope of judicial review in disciplinary matters, no interference is called in the matter from this Bench of the Tribunal. He lastly submitted that if any procedural lapse is found at any stage, the respondents may be permitted to proceed further from that stage.

6. We have considered the rival submissions put forth on behalf of both the parties. As far as the factual aspect of the matter is concerned, the applicant has been issued with the charge sheet by the respondent No. 3. Admittedly, the Head of Office is the




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Additional Commissioner, Central Excise, Jaipur II. Now examining the crux of the matter, we would advert to a very significant issue relating to the competence of the authority to act as a disciplinary authority. To appreciate the same we may refer to relevant rules and para 4(ii) of Schedule III of the CCA (CCA) Rules, 1965 in respect of Group C Officers. The contents of the same are extracted as under:

12. Disciplinary Authorities-- (1) The President may impose any of the penalties specified in rule 11 on any Government servant.

(2) Without prejudice to the provisions of sub-rule (1), but subject to the provisions of sub-rule (4), any of the penalties specified in rule 11 may be imposed on--

(a) xx xx xx

(b) a person appointed to a Central Civil post included in the General Central Service, by the authority specified in this behalf by a general or special order of the President or, where no such order has been made, by the appointing authority or the authority specified in the Schedule in this behalf.

13. Authority to institute proceedings--

(1) The President or any other authority empowered by him by general or special order may--

(a) institute disciplinary proceedings against any Government servant;

(b) direct a disciplinary authority to institute disciplinary proceedings against any Government servant on whom that disciplinary authority is competent to impose under these rules any of the penalties specified in Rule 11.

(2) A disciplinary authority competent under these rules to impose any of the penalties specified in clauses (i) to (iv) of rule 11 may institute disciplinary proceedings against any Government servant for the imposition of any of the penalties specified in clauses (v) to (ix) of rule 11 notwithstanding that such disciplinary authority is not competent under these rules to impose any of the latter penalties."

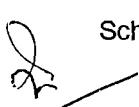
14. PROCEDURE FOR IMPOSING PENALTIES

(2) Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

(4) The Disciplinary Authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article or charges is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and state whether he desires to be heard in person.

(6) The Disciplinary Authority shall, where it is not the Inquiring Authority, forward to the Inquiring Authority -

- (i) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;
- (ii) a copy of the written statement of the defence, if any, submitted by the Government servant;
- (iii) a copy of the statements of witnesses, if any, referred to in sub-rule (3);
- (iv) evidence proving the delivery of the documents referred to in sub-rule (3) to the Government servant; and
- (v) a copy of the order appointing the "Presenting Officer".



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Serial No.	Description of service.	Appointing authority.	Authority to impose penalties and which it may impose (with reference to items numbers in Rule 11)	Penalties	Appellate Authority.
-1	-2	-3	Authority.	-5	-6
			-4		
	<u>General Central Service Group 'C'</u> (i)..... (ii) Posts in non-secretariat office other than posts in respect of which specific provision has been made by a general or special order of the President. Head of Office Head of Office All. If such head of Office is subordinate to a Head of Department under the Ministry or Department of Government such Head of Department. If the Head of Office is himself the Head of Department, or is not subordinate to any Head of Department, the Secretary in the Ministry or Department or Government.

7. Now adverting to the main controversy, a conjoint and coherent reading of the aforesaid rules makes it evident that the disciplinary proceedings can be initiated only the disciplinary authority who may be the President or any authority that has been delegated with such powers as indicated in the schedule to the Rules. It is also clear that one who has power to impose any of the penalties, may be even a minor penalty under rule 11 of Rules, on the delinquent employee, can only act as disciplinary authority (emphasis supplied). It is also borne out from rule 14 of the Rules that the disciplinary authority either himself inquire into or appoint an authority to inquire into the truth of the imputation of misconduct of misbehavior. It shall also cause to deliver the Article of charges, a

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statement of imputation, list of documents and witnesses to substantiate the allegations thereof and shall require the government servant to submit a written statement of his defence. Thereafter, forward the requisite papers to the inquiry officer. After inquiry, it shall impose the penalty and in case a major penalty is to be opined for which it is not competent, it shall forward the records to the competent authority for the same.

8. Now we would advert to Office Order **C. No.11-3(21 CCU (JZ) ET/98 Dated. 23.12.98** Annex. R.2, which has been used as a shield by the respondents. This Office Order was issued on 23.12.98 by the then Chief Commissioner of Custom and Exercise, wherein the following has been provided for initiating disciplinary proceedings.



"3. Commissioner, Jaipur I through Additional Commissioner (P&V) Jaipur I will be the disciplinary authority for all Group C and other staff for regulating all matters and functions and conduct such as deployment, redeployment and punctuality.

Such functions will be performed by Addl. Commissioner (P&V) Jaipur I under the over all control of Commissioner Jaipur I without reference to Commissioners of Customs or Commissioner, Central Excise, Jaipur II except in respect of technical matters of Customs and Technical matters of Central Excise."

9. The aforesaid has been said to be a delegation order for initiating the disciplinary proceedings whereby Commissioner, Jaipur I through Additional Commissioner (P&V) Jaipur I will be the disciplinary authority for all Group C and other staff. Firstly, the disciplinary powers are never exercised through some other authority and the so-called delegation is misconceived. Secondly, the rules do not provide for further delegation of such power by the designated authority. In the instant case, as envisaged in the

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schedule part-III ibid, the power to impose all the penalties to group C employees, under Rule 11 of the Rules, has been delegated to the Head of the Office. The aforesaid order is hit by the principle delegatus non potest delegare, i.e. a delegate cannot delegate. The principle of law on this point is fairly settled by the apex court in case of **Director General E.S.I. and another v. T. Abdul Razak**

etc. AIR 1996 SC 2292, wherein their lordships have held as under:



"14. The law is well settled that in accordance with the maxim delegatus non protest delegare, a statutory power must be exercised only by the body or officer in whom it has been confided, unless sub-delegation of the power is authorised by express words or necessary implication. [See : Halsbury's Law of England, 4th Edn. Vol. 1 para 32 p.34; Craies on Statute Law, 7th Edn. p.316; Barium Chemicals Ltd. v. Company Law Board 1966 Supp SCR 311 at p.330 : (AIR 1967 SC 295 at pp. 306 - 07) and Sahni Silk Mills (P) Ltd. v. Employees State Insurance Corporation, (1994) 5 SCC 346, at pp. 350-51 : (1994 AIR SCW 3832, at p. 3836)."

Thus it is axiomatic that the respondents No.3 who is not the Head of the Office and the rules do not provide for further delegation by the prescribed authority (delegate), cannot initiate a disciplinary case against the applicant who is a group C employee and therefore the very initiation of disciplinary case against the applicant is without jurisdiction and the same shall have to be considered as void ab initio and non-est in the eye of law.

10. Now we shall examine the impact of issuance of the charge sheet as well as penalty order by an incompetent authority. The same does not need elaborate analysis and discussion since the competent or higher authority can not legalise such void and non-existent order by passing a legal order and we are fortified with this proposition of law from a celebrated decision of supreme court in case of **Baradakanta Mishra vs. High Court of Orissa & Another AIR 1976 SC 1899 = 1976 SCR 561**, where their Lordships of Supreme court has held as under:

"There is no question of merger of the orders of the High Court in the orders passed by the Governor. If the order of the initial authority is void an order of the appellate authority cannot make it valid. The confirmation by the Governor in appeal cannot have any legal effect because it is only that which is valid that can be confirmed and not that which is void"

Thus none of the impugned orders can be sustained in the eye of law since the very initiation of disciplinary case as well as proceedings thereof stand vitiated and having no existence in the eye of law and the Original Application deserves to succeed on this ground itself. We do not find any necessity to examine other grounds.



11. In the result, this Original Application merits acceptance and the same stands allowed, accordingly. The complete disciplinary proceedings against the applicant and all the orders passed thereof including the penalty order and appellate orders are hereby quashed. The applicant shall be entitled to all the consequential benefits. The competent authority shall have liberty to initiate fresh disciplinary proceedings in accordance with rules. No costs.

(G.R. Patwardhan)
Administrative Member.

J K Kaushik
(J K Kaushik)
Judicial Member.

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John
S. K. Malhi, J.D.
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