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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No. 39/2004

Date of decision: 10.05.2007

Hon'ble Mr. Kuldip Singh, Vice Chairman,

Hon'ble Mr. R.R. Bhandari, Administrative Member.

Akeel Mohammed Nayak, S/o Shri Ishaq Mohammed, aged about 37 years, resident of 82, Kumharwara, Near Sabji Mandi, Udaipur, at present employed on the post of Asst. Station Master, Bantu Raghunath Garh (BGG) District, Pali, Vaia Samerpur, Ajmer Division, North West Zone.

: Applicant.

Rep. By Mr. Khan : Counsel for the applicant.

VERSUS



1. Union of India through General Manager, North West Railway, Jaipur. (Rajasthan)
2. Divisional Railway Manager, North West Railway, Ajmer Division, Ajmer (Rajasthan)
3. Divisional Safety Officer, North West Railway, Ajmer Division, Ajmer (Rajasthan)
4. Divisional Operating Manager, North West Railway, Ajmer Division, Ajmer (Rajasthan)

: Respondents.

Rep. By Mr. Salil Trivedi : Counsel for the respondents.

ORDER

Per Mr. Kuldip Singh, Vice Chairman.

The applicant in this case has challenged the charge sheet dated 26.03.1996 (Annex. A/1), the penalty order dated 17.05.99 (Annex. A/2) and the Appellate Order dated 07.02.2003 (Annex. A/3).

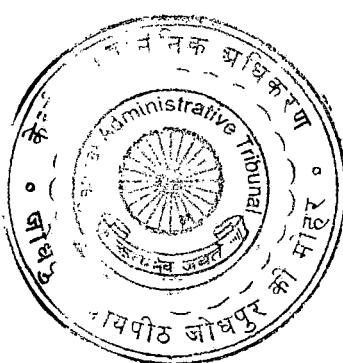
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2. The facts in brief are the applicant is presently working as Assistant Station Master and he belongs to the Operating Department. He was issued a charge sheet by the Divisional Safety on the allegation that on 03.05.95 while working as Assistant Station Master at JYM station he remitted Rs.2697/- instead of Rs. 2754/- i.e. Rs. 57/- less to cash office, though he was handed over the correct amount of Rs. 2754/- by Shri P.P. Sharma, Station Master. Hence S/F No. 5 was issued for violation of Rule 3 (i) (ii) & (iii) or Railway Services (Conduct) rules. An inquiry was conducted and the inquiry officer held the charge as proved. He was imposed a penalty of withholding of one increment without cumulative effect. He preferred an appeal and the same was also dismissed. The applicant is challenging charge sheet and the orders on the ground that he is working in operating department and the charge sheet was issued by Divisional Safety officer, who belongs to another department i.e. Safety Department, who was not his Disciplinary Authority and was not competent to issue the same to him. Therefore there is illegality in the issuance of charge sheet itself. The same plea was taken in his appeal also but the same was rejected on the ground that though the charge sheet was issued by DSO, but subsequently due to revised instructions from Railway Board, the disciplinary authority was changed and the Sr. DOM has acted as a disciplinary authority and finding of the DAR proceeding was

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considered by Sr. DOM and notice for imposition of punishment was also issued by Sr. DOM and as such the DA proceeding was not illegal. However, the applicant insisted that since the charge sheet has not been issued by the appropriate authority, the same is liable to be quashed and consequently the orders passed by the Disciplinary Authority and the Appellate Authority would have to be quashed.

3. The respondents are contesting the O.A by filing a detailed reply. The respondents have admitted that the charge sheet has been issued by the Divisional Safety Officer and the Divisional Safety Officer is empowered to issue the charge sheet and the applicant was imposed the penalty after an inquiry was conducted and the inquiry report was sent to him before imposition of penalty and the Disciplinary Authority passed the penalty order after getting the explanation from the applicant. It is submitted that there is no irregularity in issuing the charge sheet.

4. We have heard the learned counsel for the parties and perused the records and pleadings very carefully. The learned counsel also produced before us a Full Bench decision dated 27.05.2002 in O A No. 214/98 (Akeel Mohammed Nayak vs. UOI and ors.) wherein the same question of issuance of charge sheet by the Divisional

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Safety Officer has been raised. The question posed before the Full Bench was whether the Divisional Safety Officer was competent to initiate the departmental enquiry against Assistant Station Master, prior to the issuance of Circular No. E (D&A)94 RG 6-69 dated 04.08.97 of RBE No. 82/97. After full discussion, the Full Bench has answered the reference as under:

" The Divisional Safety Officer was not competent to initiate the departmental enquiry against Assistant Station Masters (or for that matter Station Masters), who are the members of the operating branch of the Railways prior to issuance of circular letter No. E (D&A) 94 RG 6-69 dated 04.08.97 of RBE 82/97"

Relying on the above decision of the Full Bench, the learned counsel for the applicant contended that the charge sheet in this case was issued on 26.03.96, which is definitely prior to 04.08.97 and as such it should be declared as illegal since the Divisional Safety Officer is not competent to issue the charge sheet in the applicant's case prior to 04.08.97.

5. On the contrary the learned counsel for the respondents submitted that as per the Railway Board circular 82/97, there was another circular dated 16.10.73 which permits the Safety Officers also to issue charge sheet to the staff working the Operating Department and only the Commercial Officers were specifically excluded from exercising disciplinary powers in respect of Operating Staff like ASMs/SMs etc. and hence the charge sheet has been issued by the competent authority.



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6. We have carefully gone through the Full Bench decision dated 27.05.2002 cited supra. The contention of the learned counsel for the respondents has no merit since the Full Bench has held that Divisional Safety Officers are not competent to initiate departmental inquiry against Assistant Station Masters (or for that matter Station Masters), who are the members of the operating Branch of the Railway prior to the issuance of Railway Board Circular No. 82/97 dated 04.08.97.

7. We have not been shown any other ruling to take a different view than the one taken by the Full Bench. Rather we are bound to follow the Full Bench decision. In view of the above, the charge sheet issued by the Divisional Safety Officer in this case is declared as non-est in the eye of law and it has to be quashed. Accordingly we quash the charge sheet dated 26.03.96 issued in this case. Consequently, the Disciplinary Authority's order dated 17.05.99 and the Appellate Authority's order dated 07.02.2003 are also quashed. We direct the respondents to restore the increment to the applicant, which was stopped in view of the penalty imposed. No costs.

R.R.Bhandari
(R.R Bhandari)
Administrative Member

Kuldeep Singh
(Kuldeep Singh)
Vice Chairman.

Part II and III destroyed
in my presence on 03-6-14
under the supervision of
Section Officer () as per
order dated 26-3-14.

Section Officer (Record)

R/C (Copy
and file
D/P)

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(for record/ record)