

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 262 / 2006

Wednesday, this the 28th day of May, 2008.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE DR K.S.SUGATHAN, ADMINISTRATIVE MEMBER

C.M.Chandrasekharan,
Junior Engineer-II/
Permanent Way,
Sivaganga R.S. & P.O.
"Jayavilasam", Thenmalai.P.O.
Quilon District.

....Applicant

(By Advocate Mr TC Govindaswamy)

v.

1. Union of India rep. by the
General Manager,
Southern Railway,
Park Town.P.O.
Chennai-3.
2. The Chief Personnel Officer,
Southern Railway,
Park Town.P.O.
Chennai-3.
3. The Principal Chief Engineer,
Southern Railway,
Park Town.P.O.
Chennai-3.
4. The Senior Divisional Engineer/South,
Southern Railway,
Madurai.
5. The Divisional Railway Manager,
Southern Railway,
Madurai Division,
Madurai.

....Respondents

(By Advocate Mrs Sumathi Dandapani, Senior with Ms PK Nandini)

This application having been finally heard on 17.4.2008, the Tribunal on 28.5.2008 delivered the following:

ORDER**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

Applicant, Shri C.M.Chandrasekharan, has filed this case under Section 19 of the Administrative Tribunals Act, 1985 challenging the Annexure A-1 order dated 21.7.2004 by which he was imposed with the penalty of removal from service, the Annexure A-2 order by which the appellate authority has modified the aforesaid penalty to one of reduction to a lower grade with minimum of the pay for an unlimited period of time with recurring effect and loss of seniority and the Annexure A-3 revisional order by which the penalty was further modified to the extent of limiting the operation of Annexure A-2 penalty of reduction in rank and for a period of 5 years with recurring effect and loss of seniority. The applicant has impugned the aforesaid Annexures A-1, A-2 and A-3 orders in this O.A mainly on the ground that the authorities concerned were lacking jurisdiction in passing those orders and there were violations of principles of the natural justice. He, therefore, sought the following reliefs:

- "(a) Call for the records leading to the issue of Annexures A-1, A-2 and A-3 and quash the same.
- (b) Direct the respondents to grant the applicant all the consequential benefits including arrears of pay and allowances as if Annexures A-1, A-2 and A-3 have not been issued at all."

2. The brief facts of the case are that the applicant while working as Junior Engineer//Permanent Way in scale Rs.5500-9000 at Quilon Railway Station of Southern Railway, a derailment of a diesel loco and a coach took place on 23.8.2003 between Kundara and Quilon Railway Station. Consequently, he was served with the Annexure A-4 memo dated 30.10/18..11.2003 which contained the following charge:



"On 23.8.03, at 14.30 hrs. T.No.748 QLN-TEN Up passenger train engine YDM 6185 and coach No.GS.3675, derailed between QLN-KUV at km.753/11-10. Sri C.M.Chandrasekaran, JE/I/P.way/QLN, who was incharge of CTR work in progress between QLN-KUV on 23.8.03, failed to maintain the tack parameters, under his charge to the required safety level before authorising the movement of 748 Up pass over the CTR work spot at km. 753/11-10, which resulted in R1, R2 and R4 wheels of the YDM 6185 and R1, R2, R3 and R4 wheels of coach No.GS.3675, next to TE, dropped inside the track due to spread gauge, on account of the following deficiencies noted at the site.

1. The gauge difference was + 60mm at the point of drop.
2. Cotters were worked out at many places.
3. Cotters that were provided were not split.
4. Fittings at the site were in loose condition.
5. CST-9 sleepers were in shifted condition.

Thus he had violated paras 127(2), 136(a), 224(2), (b)(ii), 224(2)(e), 313(3)(iv), 314(3)(c) and 314(a) of IRPWM."

3. On denial of the aforesaid charge by the applicant an enquiry was held against him under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968. The applicant submitted Annexure A-5 defence brief dated 28.1.2004. After the enquiry was concluded the enquiry officer submitted his report dated 19.3.2004 and held that the charges were partially proved. The findings were as under:

"Findings:


- | | | |
|--|---|-------------|
| 1. Spread of gauge | - | Not proved. |
| 2. Fittings worked out of many places Cotters provided were not split. | - | Not proved. |
| 3. CST/9 Sleepers were in shifted condition | - | Proved. |
| 4. Fittings at the site were in loose condition | - | Proved." |

4. The applicant submitted his objections to the aforesaid findings vide Annexure A-6 letter dated 22.4.2004. Thereafter, the 4th respondent viz, The Senior Divisional Engineer, vide Annexure A-1 order dated 21.7.2004 imposed the penalty of removal from service upon the applicant. Applicant submitted his Annexure A-7 appeal dated 22.7.2004 to the 5th respondent viz, the Divisional

Railway Manager, Southern Railway. Vide Annexure A-2 order dated 3.9.2004 the appellate authority modified the penalty to one of reduction from the post of JE-II in scale Rs.5500-9000 to the post of JE.II in scale Rs.5000-8000 on pay Rs.5000/- recurring with loss of seniority. The applicant, thereafter, submitted Annexure A-8 revision petition to the 3rd respondent, viz, the Principal Chief Engineer, Southern Railway, and the same was disposed of by Annexure A-3 order dated 7.4.2005 fixing the time limit for the penalty of reduction in rank and pay for a period of 5 years with cumulative effect and loss of seniority.

5. The applicant challenged the aforesaid Annexure A-1, A-2 and A-3 orders on the ground that they were totally without jurisdiction, arbitrary and discriminatory and opposed to the mandatory principles of natural justice and hence violative of Articles 14 and 16 of the Constitution. He has submitted that he was appointed to the post of JE.Gr.II and also to the post of JE.Gr.I by the 3rd respondent, viz, the Principal Chief Engineer, Southern Railway and effected by the 2nd respondent i.e. Chief Personnel Officer, Southern Railway. He has, therefore contended that his appointing authority was Chief Personnel Officer/Principal Chief Engineer. Hence the penalty advise by the lower authority, viz, 4th respondent i.e. the Senior Divisional Engineer, Southern Railway is without jurisdiction and is in violation of Article 311 of the Constitution. His other contention was that the Annexure A-1 penalty was imposed upon him based on no evidence on record but it was based on the report of the fact finding enquiry committee, copy of which was not made available to him during the departmental proceedings. He has also alleged that the Annexure A-1 penalty order was passed on the basis of irrelevant considerations as the reference to the dissenting note of the President of the enquiry committee etc. made in the order do not deal with the enquiry conducted in terms of Annexure A-4 charge memo but it related to the findings of the fact finding enquiry conducted by

collecting evidence behind his back. He has also alleged that the findings of the disciplinary authority was perverse, biased and pre-concluded and the same is not based on any evidence on record. He has further contended that the disciplinary authority did not consider any of the objections made by him against the findings of the enquiry officer but it proceeded on the assumption that all the charges levelled against him have been proved. He has also alleged that the appellate authority did not consider any of the points raised by him in his Annexure A-7 appeal, and therefore, the Annexure A-2 appellate order is ultravires to Rule 22(2) of the RS(D&A) Rules, 1968, contrary to law, arbitrary and discriminatory. Similar is the case with the Annexure A-8 revision petition and, therefore, the Annexure A-3 order is arbitrary and illegal. As regards the violation of principles of natural justice, the applicant has alleged that no reasonable opportunity was given to him to defend the case and the findings of the enquiry officer was perverse and they were not based on any evidence on record. On merit, he has submitted that he is not guilty of the misconduct alleged against him because there was a speed restriction of 20 kms per hour and that the spot in question was a works spot and a sharp curve. According to him, the derailment occurred only on account of over speeding of the vehicle and on account of the defective nature of the loco in question which had been accident prone and cause of many derailment all over Southern Railway. He has submitted that there has been large number of accidents involving YDM 4A locos particularly in sharp curves on account of its defective manufacturing. According to him, he was made a scape goat to save the contractor and to hide the defect in manufacturing of the vehicle. The last contention of the applicant is that the penalty imposed upon him is highly disproportionate and shocking the conscience of any one of ordinary prudence.



6. The respondents in the reply have denied all the contentions of the applicant. They have submitted that the 4th respondent was quite empowered to act as his Disciplinary Authority. They have further submitted that the applicant was working as Junior Engineer Gr.I in the scale of Rs.5500-9000 at the time of initiating the disciplinary proceedings against him and as per the Schedule of Powers on disciplinary matters, the lowest appointing authority empowered to make appointment for all posts carrying scale/grade Rs.5500-9000 is Junior Administrative Grade Officer and the Senior Divisional Engineer who removed him from service was a Junior Administrative Grade Officer and therefore, he was fully competent to impose the punishment on him. The respondents contended that the applicant was under the wrong impression that the Principal Chief Engineer is the appointing authority since the Headquarters office controlled his cadre. The actual promotion was ordered by the Junior Administrative Grade Officer only and, therefore, he was competent to act as Disciplinary Authority for the applicant. In this regard, they have referred to the Railway Board's letter No.P(D&A) 2002 RG-6-36 dated 25.11.2002 and 2.9.2003 (Annexure R 2(2) according to which the following authorities at various levels are empowered to make appointments and promotions as under:

<i>S.No.</i>	<i>Grade/Scale of Post</i>	<i>Lowest appointing authority empowered to make appointment</i>
1	For all posts carrying scales/grades above Rs.5500-9000 upto Rs.7450-11,500	Head of Department
2	For all posts carrying Scale/Grade Rs.5500-9000	Junior Administrative Grade Officer
3	For all Group'C' posts carrying scales upto Rs.5000-8000	Senior Scale Officer
4	For all posts in Group'D' service	Jr.scale/Assistant Officer




They have also referred to the provision regarding the "Appointing Authority" as given in the Railway Servants (Discipline & Appeal), 1968 (Annexure R2(3)) which is extracted hereunder:

- "Appointing authority in relation to Railway servant means
- (i) the authority empowered to make appointments to the service of which the Railway servant is, for the time being, a member or to the grade of the Service in which the Railway servant is, for the time being, included, or
 - (ii) the authority empowered to make appointments to the post which the Railway servant, for time being, holds, or
 - (iii) the authority which appointed the Railway servant to such service, grade or post, as the case may be, or
 - (iv) where the Railway servant having been a permanent member of any other service or having substantively held any other permanent post, has been in continuous employment under the Ministry of Railways, the authority which appointed him to that service or to any grade in that service or to that posts, which ever authority is the highest authority."

According to them, the applicant has also never questioned the powers of the disciplinary authority at any stage before he has raised those issues in the O.A and therefore according to respondents, it is only an afterthought.

7. The applicant filed M.As.806 and 807 of 2007 during the pendency of this O.A. with M.A.806/2007, the applicant produced a copy of the Office Order bearing No.ENGG/39/97 dated 25.3.1997 issued by the Chief Personnel Officer, Southern Railway by which he was promoted as Junior Engineer Gr.I in the scale of Rs.5500-9000 along with several others. According to the applicant, the said order of promotion was issued by the Chief Personnel Officer with the approval of the competent authority, i.e. the Principal Head of the Department and the cadre controlling authority, viz, the 3rd respondent. By M.A.807/2007, the applicant has sought for a direction to the respondents to produce the order by which he was promoted to the grade of JE Gr.II in the scale Rs.5000-8000. According to him, he was promoted as PW Inspector Gr.III (JE/PW/I) by Office Order No.P(S)282/1/PWI.III dated 12.12.1990 by the Chief Personnel Officer,



Southern Railway. He contended that unless a copy of the said order is made available by the respondents, substantial prejudice and loss would be caused to him.

8. The respondents, along with an affidavit, produced Annexure R 2(4) letter dated 31.10.2007 from the Divisional Office, Personnel Branch, Madurai addressed to Chief Personnel Officer, Madras to instruct the counsel that the file containing CPO/MAS letter dated 12.12.1990 was not traceable. The Headquarters Office, Personnel Branch, Chennai has also vide Annexure R2(5) letter dated 4.3.2008 informed that the said letter is not available at this distance of time.

9. We have heard Shri TC Govindaswamy counsel for applicant and Smt Sumathi Dandapani, Senior with Ms P.K.Nandini for respondents. We have also perused the entire records of the case available on record and the disciplinary authority's file. The basic contention of the applicant is that the authority which have issued the Annexure A-1 order is not a competent to issue any order of removal from service and therefore, the same is liable to be quashed. Since the competency of the Disciplinary Authority has been questioned in this O.A, in our considered view, before we consider the other issues on merit raised by the applicant, we have to first resolve this preliminary issue. The competency of Senior Divisional Engineer to issue the order of penalty of removal from service to a Junior Grade-II, Permanent Way was considered by Tribunal in O.A.535/2005 – K.G.Valsalan v. Union of India & others recently and vide order dated 6.11.2007, it was held as under:

7 The Learned counsel for the applicant mainly adverted to the question of competency of the order of removal from service issued by the Sr. Divisional Engineer (SDE) on 26.7.2004. It was argued that mere issue of the order by a lower authority does not make him the appointing authority and the order dated 17.4.1997 (R-2(5)) was issued by the CPO, Annexure R-2 order was issued by the HQrs office namely the Chief Track Engineer (CTE) and the subsequent orders issued by the Divisional

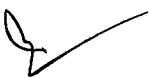


level officer by the DPO or the Divisional Engineer, cannot be termed as appointment orders. On merits of the case also, it was argued that the Enquiry officer had held charges as not proved and the Disciplinary authority has by-passed the enquiry officers' report and imposed the penalty by way of conclusions arrived at independently by Annexure A-7.

8 The learned counsel for the respondents submitted that the SDE is a Junior Administrative Officer and the actual appointment order dated 19.5.97 has been issued after his approval by the DPO and only approval of the panel was given by the Controlling Officer namely the CTE. Merely because approval was given by an authority, he does not become the appointing authority. For this, they relied on the judgment of the Hon'ble Supreme Court in Kanta Devi Vs. Union of India & Another (2003(2) ASLJ 213) to the effect that mere approval of appointment by a higher authority does not make him the appointing authority.

9 We shall deal with the point of jurisdiction first as it was the main plank of the applicant's case on which an affidavit is filed by the respondents on a specific direction from the Court for clarifying the instructions relating to Appointing authority as far as the Railways are concerned. It is not disputed that the applicant was promoted to the post of Junior Engineer in the scale of Rs. 1400-2300 (5000-8000) during 1997. It is also admitted that the Chief Track Engineer (CTE), Southern Railway Madras is the authority controlling the cadre of the applicant. The CTE has constituted a Selection Committee as per rules and the recommendations of the Selection Committee as approved by him the panel was prepared and approved by the CTE. The employees in the panel were allocated to different divisions by the order dated 17.4.2007 in which the applicant was at Sl. No. 31 and he was promoted and posted to Bangalore Division by Annexure R-2(5) order. On a request made by the applicant his allocation was changed from Bangalore Division to Madurai Division on 17.4.1997 (R-2(6)). On receipt of Annexure R-2(6) the order at Annexure R-2(4) dated 13.8.97 was issued posting the applicant as JE under SE Permanent Way, SLT. The orders at Annexures R-2(5) and R-2(6) were issued by the CPO whereas Annexure R-2(4) was issued by the DPO. The stand of the respondents is that the power to appoint the applicant in the scale of Rs. 5000-8000 is vested with the Senior Scale Officer in accordance with the Schedule of powers in Establishment matters copy produced as Annexure R-2(3). Hence SDE was competent to appoint the applicant and it was within the competence of the SDE. The CTE will come in to picture only for administrative convenience for direct recruitment and promotion and the action taken by the said authority was only performance of a managerial function. At the same time, the respondents have also submitted that the operation and maintenance of the posts in the Railway are monitored at different level such as Assistant/Junior Engineer at Unit level, Divisional level and Headquarters level for administrative convenience.

10 In the light of these averments on both sides the question arising for consideration is who is the appointing authority for the posts of JE in the scale of Rs. 5000-8000 which is a promotion post. The respondents have produced Annexure R-2(3) which is an extract of relevant portion of schedule of power of establishment matters of non-gazetted part-II It is a tabular statement. Sl.NO. 3 in col. 1 relates to promotion. Col. 3, 4 & 5 which are relevant are extracted under:



<i>Sl.No.</i>	<i>Nature of powers</i>	<i>PHOD/ GOD</i>	<i>DRM/DRMS AG Officers in Field Units</i>	<i>Divisional Officers Extra Divisional Officers & Officers in Headquarters</i>	<i>Remarks</i>
1	2	3	4	5	6
	Promotions a) regular	Full Powers	Full Powers within the Division/ Workshops except those posts which are controlled by Hqrs.	JAO Full powers to posts in scales to Rs.1650-2660/5500-9000 in respect of Div./Hqrs post controlled by them Sr. Scales Full Powers to posts on unit basis carrying scales upto Rs.1400-2300/5000-8000 under their control Jr. Scale Asst., Officer. Full Powers for Group D posts only	1 Accounts concurrence is not necessary

11 Annexure R-2(2) is the PB Circular No.161/04 which relates to imposition of penalties of dismissals, removal or compulsory retirements of non-gazetted staff – notification of appointing authority as given in the table under para 3 is reproduced below..

	<i>Grade/Scale of pay</i>	<i>Lowest Appointing Authority empowered to make appointment</i>
	For all posts carrying scales/grades above Rs 5500-9000 up to Rs. 7450-11500	Head of Department
	For all posts carrying scale/Grade Rs. 5500-9000	Junior Administrative Grade Officer

	<i>Grade/Scale of pay</i>	<i>Lowest Appointing Authority empowered to make appointment</i>
	For all Group-C posts carrying scales upto Rs. 5000-8000	Senior Scale Officer
	For all posts in group-D service	Jr. Scale/Assistant Officer

12 It is also to be noticed that the respondents in their reply have admitted that the post of JE Permanent Way is a Hqrs controlled post though they maintain that the second respondent namely the SDE who is a Divisional Officer is the appointing authority. Though R-2(2) specifies that for all Group-C posts carrying the scale upto Rs. 5000-8000 the Sr. Scale Officer will be the appointing authority, Col. 5 of R- 2(3) would show that the Sr. Scale Officers have the powers only for posts under their control and Jr. Administrative Grade Officers have powers for the Hqrs posts controlled by them. At the same time the respondents have admitted that the posts are controlled by the Hqrs. It is evident from Annexure-R-2(5) schedule, that for such posts which are controlled by the Hqrs, the powers are vested with the Head of the department only. This can be further confirmed by the fact that under col. 4 even Sr. Administrative Grade Officers in the unit do not have powers on posts which are controlled by Hqrs. The stand of the respondents therefore that the SDE who is a Junior Administrative Cadre Officer, is the appointing authority in view of the delegation ordered in Annexure R-2(3) is not borne out by the wordings of the schedule when it is considered that the post in question is controlled by the Hqrs, which appears to be the important criterion based on which the delegation of powers has been given. It has to be concluded that the appointing authority in respect of the Hqrs controlled posts was only the Head of the department namely the CTE. The same conclusion is reinforced by the fact that the initial order of promotion referred to above at Annexure R-2(5) and R-2(6) were also issued by the Hqrs and communicated by the CPO. It appears that the practice prevailing in the Railways is that once approval of the competent authority is taken the actual orders of promotion, etc. are issued by the Sr. DPOs or Divisional Personnel Officers of the division and they are only issuing authorities and not functional authorities acting under statutory authority. From the averments of the respondents and the wordings of the above order also, it is obvious that the CTE was not only an approving authority as was the case of the applicant in the judgment referred to by the respondents Smt. Kanta Devi Vs. Union of India and another. In the instant case CTE is the cadre controlling authority and not merely the approving authority and the panel has been approved by him and promotions/allotments have been made to the various divisions by the CTE. It is clear from sub para (iii) of the order in Annexure R-2(5) to this effect that "The following PWs in the scale of Rs. 1400-2300 who have been selected and placed in the panel for the post of JE (PW) in the scale of Rs. 1400-2300 by office order dated 31.3.1997 are promoted and posted to the Divisions as indicated against each." In the wake of this finding Annexure R-2(4) can only be termed as a consequential posting order against the existing vacancies in the division issued at the Divisional level. Hence the Divisional Officer cannot be taken as the competent authority to appoint a JE(PW) on promotion. The clarificatory orders issued in Annexure R-2(8) by the Railway Board in this regard dated 25.11.2002 is also relevant:

"...The intention of the rule is that the penalties of dismissal, removal or compulsory retirement from service on a railway servant should be imposed only by the highest of these authorities i.e. either by the authority which actually appointed the railway servant to the relevant grade or post or the authority which is empowered to make appointment to that grade or post at the time of imposition of penalty, whichever is the higher authority. The penalty of dismissal, removal or compulsory retirement from service should obviously not be imposed by an authority which have merely issued the offer of appointment or order of promotion with regard to the appointment or promotion ordered by a competent authority higher to that authority."

It is thus made clear by this order that an authority which merely issued the order of appointment cannot impose the penalty of dismissal or removal of a JE because the promotion has been ordered by a competent authority higher to that authority.

13 The respondents have also argued that the appointing authority should also be determined with reference to the entries in the Service Record of the employee and in this case they have produced the extracts of Service Records of the applicant. The entries at page 5 of Annexure R-2 (7) under col. "Capacity of appointment" shows the order of the CPO dated 17.4.97 which is Annexure R-2(6) issued from the Hqrs. It also shows that the applicant reported for duty according to the DPO's order dated 13.8.97. This entry also therefore supports the contention of the applicant that the authority actually competent to promote him is the Hqrs under order of the CTE whose order was communicated by the CPO.

14 Having determined that the competent appointing authority of the applicant – was the CTE (Hqrs), the question is whether Annexure A-1 order removing the applicant from service by the Sr. Divisional Engineer was without jurisdiction or not. According to the Schedule 2 to the Railway Servants Discipline and Appeal Rules punishments of removal, dismissal and compulsory retirement can be only ordered by the Appointing authority or equivalent or higher grade authority. In this connection, we have to revert back to Annexure R-2(2) order namely the PB circular No. 161/04. Para 4 provides as follows:-

"4 The "Appointing authority" is defined under Rule (2)(1)(a) of the RS(D&A) Rules, 1968. The Authority empowered to make appointment, referred to in Rule 2(1)(a) means the authority empowered to make appointment to the grade or post which the railway servant is holding, at the time of imposition of penalty. Such authority may be higher or lower in rank than the authority which was empowered to make appointments at the time of induction of the Railway servant to the relevant grade or post or the authority which actually appointed him to that grade or post.

The intention of the rule is that the penalties of dismissal, removal or compulsory retirement from service on a Railway servant should be imposed only by the highest of the authorities i.e. either by.

The authority which actually appointed the Railway servant to the relevant grade or post

OR

9 ✓

The Authority which is empowered to make appointment to that grade or post held at the time of imposition of penalty.

Whichever is the higher authority.


The penalty of dismissal, removal or compulsory retirement from service should obviously not be imposed by an authority which have merely issued the offer of appointment or order of promotion, with regard to the appointment or promotion ordered by a competent authority higher to that authority.

Adherence of the authorities specified above while making initial appointments, would avoid the authorities lower than the appointing authority imposing the penalties of dismissal, removal or compulsory retirement in violation of the RS(D&A) Rules."

15 In terms of the interpretation of Rule 2(1)(a) of the Railway Discipline & Appeal Rules, 1968 as given above, it is evident that such punishment can only be imposed by the highest of the authorities who have issued orders of appointment or who are empowered to make such appointment. In this case the authority who was empowered to make appointment and who had actually appointed the employee was the Head of the Department namely the CTE. Hence, he is the authority who could have imposed the penalty of dismissal, removal or compulsory retirement. The Senior Divisional Engineer who has actually imposed the penalty is of the rank of a Junior Administrative Officer and lower in rank to that of the appointing authority. Hence Annexure A-1 order is to be held as having been issued by an incompetent authority.

16 In this context, we would like to invite attention of the Railway Administration to their own instructions in PB Circular No.161/2004 circulating the guidelines in Board's letter No.E(D&A) 2002RG-6 dated 25th November, 2002 and 2nd September, 2003, regarding imposition of penalties of dismissal, removal or compulsory retirement and particularly emphasising adherence to the authorities specified for making appointments in sub paras (1), (2) and (3) of para 4 thereof. Had these guidelines been followed, such cases of challenge on the ground of competency would not have arisen. As many such cases have come before us, we are constrained to make the observation that these instructions are being followed more in the breach than in observance. If the designation of the competent authority is mentioned in the orders/service record instead of general statements like "This has the approval of the competent authority", such situations can be avoided."

9. In our considered view, the aforesaid order of this Tribunal dated 6.11.2007 equally applies to this case also. In this O.A, the competence of the 4th respondent, viz, the Senior Divisional Engineer (South), Southern Railway, Madurai in imposing the penalty of "Removal from Service" upon the applicant has been called in question. The applicant was promoted as Junior Engineer



Gr.II in the scale of Rs.5000-8000 vide Office Order No.P(S)282/1/4/PWIs-III dated 12.12.1990 issued by the Chief Personnel Officer, Southern Railway, Chennai (Respondent No.2). Later on, he was promoted as Junior Engineer Gr.I in the pre-revised scale of Rs.1600-2660 (Revised to Rs.5500-9000) vide Annexure M.A.I Office Order No.ENGG/39/97 dated 25.3.1997. The said order was issued for the Chief Personnel Officer "with the approval of the Competent Authority". The respondents have not controverted the submission of the applicant that the "Competent Authority" in his case was the 3rd respondent, viz, the Principal Chief Engineer, Southern Railway, Head Quarters Office, Chennai. It is based on the aforesaid documents that the applicant has claimed that his appointing authority is the second or the third respondents, viz, the Chief Personnel Officer or the Principal Chief Engineer. We also refer to Annexure R-2(2) P.B. Circular No.161/2004 wherein the "Appointing Authority" as defined under Rule 2(1)(a) of the RS(D&A) Rules, 1968 has been interpreted. It is made clear in the said circular that punishments like dismissal/removal or compulsory retirement from service shall be imposed only by the highest authority i.e. either by "the Authority which actually appointed the Railway Servant to the relevant grade or post OR the Authority which is empowered to make appointment to that grade or post held at the time of imposition of penalty whichever is the higher authority. According to the said circular, only the 3rd respondent could have imposed the penalty of removal upon the applicant in this case. Hence, the Annexure A-1 penalty advice by the lower authority, viz, the 4th respondent, Senior Divisional Engineer is without jurisdiction and hence violative of Article 311 (1) of the Constitution. Annexure A-2 appellate order and Annexure A-3 revisional order being the consequential orders, they also cannot be sustained. Accordingly, the Annexure A-1 penalty advice dated 21.7.2004, Annexure A-2 appellate order dated 3.9.2004 and the Annexure A-3 revisional order dated 7.4.2005 are quashed and set aside. Consequently the respondents are

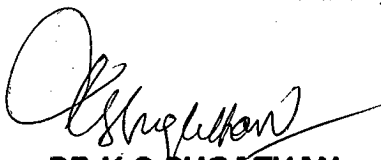


directed to grant the applicant all the benefits including arrears of pay and allowances as if the Annexure A-1, A-2 and A-3 orders have not been issued. These directions shall be complied with within a period of two months from the date of receipt of this order.

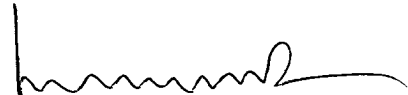
10. However, it is made clear that this Tribunal has not considered the pleadings and arguments of the parties on merits. The competent Disciplinary Authority is at liberty to consider the enquiry report untrammelled by the Annexures A-1, A-2 and A-3 orders and pass appropriate orders in the matter at the earliest possible time..

11. The O.A is partly allowed with the aforesaid directions/observations. There shall be no order as to costs.

Dated, the 28th May, 2008.



DR K.S. SUGATHAN
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

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