

AT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
LUCKNOW CIRCUIT BENCH

Registration O.A. No. 58 of 1989 (L)

Nand Kishore Srivastava Applicant

versus

Union of India & Others Opposite Parties

Hon. Justice Kamleshwar Nath, V.C.

Hon. K.J. Raman, Member (A)

(By Hon. Justice K. Nath, V.C.)

This application under Section 19 of the Administrative Tribunals Act XIII of 1985 is for quashing an order dated 24.1.89, Annexure-A7 whereby the applicant was placed under suspension.

2. The applicant, Nand Kishore Srivastava was originally a Senior Cashier in the office of the Senior Divisional Accounts Officer, Northern Railway Lucknow, but shortly after detection of some acts of misconduct which were subject matter of a chargesheet dated 10.1.86, Annexure-A2, he was posted as Clerk in the Provident Fund Arrears Cell in the same office.

The chargesheet, Annexure-A2 dated 10.1.86 was for alleged carelessness and negligence in keeping ^{and} handling cash, causing cash loss of Rs.1,28,336-05 to the Railways and misappropriation of Rs.990/-.. The applicant was already under suspension since 19.4.84 in connection with an earlier chargesheet which was withdrawn on 10.1.86, followed by the issue of chargesheet, Annexure-A2, the suspension was withdrawn on 16.1.86 by the Senior

92

RJ

Divisional Accounts Officer.

3. While the enquiry under the chargesheet, Annexure-A2 was still pending, the impugned suspension order dated 24.1.89, Annexure-A7 was issued under the signatures of the Assistant Chief Cashier stating inter alia that since the case against the applicant in respect of criminal offence was under investigation/enquiry/trial hence he (the authority competent) to place the railway servant under suspension/ an authority mentioned in the proviso to Rule 5(1) of Railway Servants (Discipline & Appeal) Rules, 1968) in exercise of powers under Rule 4/Proviso to Rule 5(1) placed the applicant under suspension with immediate effect. A remark is further recorded that the suspension order had the approval of the Senior Divisional Accounts Officer recorded at page 1 of File No.CP/NSK/88.

4. Befeft of various insubstantial points raised in the case by the applicant, the principal contentions are that the chargesheet had been issued by the Assistant Chief Cashier who was not competent to suspend as he was not the Appointing Authority or the authority empowered to make suspension and that there were no "exceptional circumstances" within the meaning of proviso to Rule 5(1) of D.A.R. enabling him to pass the suspension order pending subsequent approval of Senior Divisional Accounts Officer.

5. The reply of the opposite parties is that the approval of the Senior Divisional Accounts Officer had already been given before the issue of the impugned

(PA)

suspension order which though signed by the Assistant Chief Cashier is in substance in the nature of a mere communication of suspension done by the Senior Divisional Accounts Officer. The alternative contention is that there did exist 'exceptional circumstances' inasmuch as the applicant had been subjected to a criminal offence chargesheet dated 27.10.88 in a Criminal Court and a Criminal Case under Section 409, Indian Penal Code read with Section 5(2) and other provisions of the Prevention of Corruption Act was pending in the Court of the Special Judge (Central) Anti Corruption, Lucknow.

6. We have heard Shri B.C. Saxena for the applicant and Shri Anil Srivastava at considerable length and have gone through the record. It is not disputed that in terms of the Schedule of Disciplinary Powers and powers of suspension of different grades of Railway Officers/ Senior Supervisors appended to Railway Servants (Discipline and Appeal) Rules, 1968, the Senior Divisional Accounts Officer was competent to place the applicant under suspension and the Assistant Chief Cashier was an officer next below to the Senior Divisional Accounts Officer.

7. It is clearly mentioned in para 25 of the Counter Affidavit that prior approval of Senior Divisional Accounts Officer, Opposite Party No.2 had been taken on 24.1.89. The allegation of the applicant that the approval was accorded on 27.1.89 was specifically denied. The learned counsel for the applicant produced before us another photo copy of the impugned suspension order, Annexure-A7 in which there is some illegible initial below

26

10

and across the remark of approval of the Senior Divisional Accounts Officer, bearing the date of 27.1.89.

It may be mentioned that Annexure-A7 filed originally with the petition does not contain the initial or date below the initial. *Prima facie* the initial ^h ~~does not~~ seem to concern any responsible officer and therefore we have no reason to doubt the clear statement contained in para 25 that the Senior Divisional Accounts Officer, opposite party No.2 had recorded the prior approval of the suspension on 24.1.89, which approval was clearly endorsed on the impugned suspension order, Annexure-A7. In this state of affairs, even though the language of the suspension order could be read to imply the passing of the suspension order by the Assistant Chief Cashier, in substance it constitutes a mere communication of an order of suspension issued with prior approval of the competent authority.

8. Even otherwise, we think that the mere fact of the lapse of time between 10.1.86 when the chargesheet Annexure-A2 was issued and the date of the impugned suspension order (24.1.89) would not justify a conclusion that there were no 'exceptional circumstances' within the meaning of the proviso to Rule 5(1) which could enable the Assistant Chief Cashier to order suspension. The new factor consists of a criminal investigation into the alleged act of misappropriation of railway money and misuse of the powers ^{by} the applicant in a corrupt manner punishable under the penal law as also under the Prevention of Corruption

11

(P)

Act. The institution of a criminal case in the competent Court on those charges on the basis of a criminal offence chargesheet dated 27.10.88 is certainly a new feature vis-a-vis the original chargesheet Annexure-A2 dated 10.1.86 for disciplinary proceedings on account of carelessness, negligence and misappropriation of a specified amount. We are of the opinion, that the new development of institution of a criminal case was certainly an 'exceptional circumstances'^u which could justify the Assistant Chief Cashier to place the applicant under suspension during the pendency of the criminal case.

9. In view of the above, we find no force in this application which therefore is dismissed. Parties shall bear their costs.

W.Ramam.

Member (A)

S

Vice Chairman

Dated the 2nd March, 1990.

RKM