

(7)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 234/88
ExAxxxNo.

198

DATE OF DECISION 16th May 1992

Shri Maheshprasad S. Petitioner

Shri G.S.Walia Advocate for the Petitioner(s)

Versus

Union of India, through Respondent

General Manager, Western Railway

Churchgate, Bombay. and 3 others

Shri A.L.Kasturey.

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Ms. USHA SAVARA, MEMBER (A)

The Hon'ble Mr. S.F. RAZVI, MEMBER (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? No
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 ? No

S.F. RAZVI
115

(S.F. RAZVI)
MEMBER (J)

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 234/88

Shri Maheshprasad S.

.... Applicant.

V/s.

1. Union of India, through General Manager, Western Railway, Churchgate, Bombay - 400 020
2. Divisional Railway Manager, Bombay Division, Western Rly, Bombay - 400 008
3. Senior Divisional Operating Superintendent, Bombay Division, Western Railway, Bombay - 8.
4. Divisional Safety Officer, Bombay Division, Western Rly. Bombay - 400 008. Respondents.

CORAM: Hon'ble Ms. Usha Savara, Member (A)
Hon'ble Shri S.F. Razvi, Member (J)

Appearance

Mr. G.S. Walia, advocate
for the applicant.

Mr. A.L. Kasturey, advocate
for the respondents.

JUDGEMENT

Dated: 1st May 1992

¶ Per Shri S.F. Razvi, Member (J) ¶

1. The applicant who is working as Sub-Assistant Station Master was proceeded against by way of disciplinary proceedings initiated under rule 9 of the Railway Servant's (Discipline and Appeal) rules 1968 in respect of certain alleged acts of misconduct detailed at pages 3 to 5 of the application and incorporated in the memorandum of charges vide Ex A dated 23.8.84. The applicant having denied the charges, an Enquiry Officer came to be appointed and after necessary enquiry the Enquiry Officer (E.O. for short) submitted his report and thereafter the applicant was imposed the punishment of reversion to the next lower grade in scale of Rs. 330 - 560 on the minimum of the pay Rs. 330/- for a period of three years with future effect. The appeal filed by

the applicant having been rejected, the applicant has come up before this Tribunal seeking the quashing of the impugned order of penalty and the further orders passed confirming the same.

2. Having regard to the only point canvassed before us in support of this application by the learned counsel appearing for the applicant, it is not necessary for us to advert to the various ~~plans~~ and grounds raised in the application and those mentioned in the reply filed by the respondents to the application. By way of amendment which came to be allowed, the applicant has raised the plea that the charge memorandum in this case was issued by ~~the~~ ^{an} authority who was not competent to impose any of the major penalties and further that the penalty impugned has also been imposed by an authority not competent to impose such penalty and as such the entire proceedings are vitiated, being incompetent, and on this ground alone the proceedings initiated and culminating in the imposition of the penalty are liable to be set aside. This additional ground taken by the applicant challenging the proceedings taken against him, being the only ground urged before us and no other ground having been canvassed, we do not propose to go ^{into} with the other aspects and grounds taken by the parties in their respective pleadings as originally filed.

3. The learned counsel for the applicant ^{had} strongly urged, Shri B.N. Tandon, the then Divisional Safety Officer (DSO for short) who has issued the charge memorandum as per Annexure 'A' dated 23.8.84 was only looking after the duties of the post of DSO and was not the regular DSO and was not authorised to issue a charge memorandum for imposition of major penalty and that Shri Tandon was a ~~class~~ Class II officer (Assistant Operating Superintendent) and had only

(10)

been detailed to look after the duties of the post of DSO. He also contended that Shri I.P. Malhotra who issued the notice of imposition of the penalty was likewise incompetent to impose such penalty, he also being a class II officer who was only looking after the duties of DSO. He urged that the charge sheet as well as the imposition of penalty impugned having been issued and passed respectively by class II officers who were only looking after the duties of the post of DSO, the disciplinary proceedings initiated and concluded against the applicant are void ab initio and therefore the impugned orders are liable to be set aside. Sustenance for this contention was sought to be drawn from the provisions of rules 6 and 8 of the Railway servants (Discipline and Appeal) rules 1968. He strongly relied on the judgement rendered by a Bench of this Tribunal on 5.6.91 in OA 346/89 in the case of R.J. Rajwadi Vs Union of India and others. He has produced a copy of that judgement rendered by the Bench consisting of the Hon'ble Shri Justice U.C. Srivastava, Vice Chairman and the Hon'ble Member (A) Shri M.Y. Priolkar.

4. Countering the above contention, the learned counsel for the respondents raised a two fold contention before us. He urged in the first place that the applicant not having taken this ground or any earlier stage either before the Disciplinary authority or before the Appellate authority and even in the original application filed before this Tribunal, he cannot be permitted to raise and urge this ground at this late stage. His other contention was that both Shri Tandon and Shri Malhotra were working as D.S.O. at the relevant point of time on full fledged adhoc basis and were thus competent to issue the

2/1/15

Charge sheet and impose the penalty respectively and ^{Kein} this acts in issuing the charge sheet and subsequent imposition of penalty after necessary enquiry do not suffer from the defect of want of jurisdiction. On these grounds, canvassed, the learned counsel for the respondents maintained that the charge sheet has been issued by the competent authority and so also the imposition of penalty and thus the solitary ground canvassed for the applicant is devoid of any merit.

5. We may dispose of the objection raised by the respondents regarding the belated raising of the plea. It is not controverted that this plea now urged before us was not taken by the applicant at any earlier stage and has been taken for the 1st time before us after the amendment of the application. The amendment sought for by the applicant was allowed by the Tribunal and the applicant was permitted by this Tribunal to raise this additional ground by way of amendment. Further as rightly urged for the applicant, the plea taken goes to the root of the matter and is a legal one which cannot be shut out on the ground that such a plea had not been taken at any earlier point of time. In our opinion the applicant having been permitted to raise this plea by way of amendment of pleadings and the plea being one which goes to the very root of the matter and a legal one, the applicant is entitled to canvass this ground for consideration by this Tribunal. We decline to accept the objection raised in this behalf by the respondents.

6. Adverting now to the merits of the contention raised, a more or less similar question now posed before us for consideration, came up for consideration before this Tribunal in Rajwade's case referred to supra. In Rajwade's case disposed of by judgement dated 5.6.91.

A Bench of this Tribunal considered a similar contention and upheld the same holding that disciplinary proceedings initiated by an authority not competent, suffered from the vice of lack of jurisdiction and were void. In Rajwades case the aggrieved applicant was a Head Booking Clerk in the Western Railway in the pay scale of Rs. 425 - 640 and he was removed from service after holding an enquiry for certain alleged acts of misconduct. The ground canvassed for the applicant before this Tribunal was that one Shri H.D. Holdar was merely looking after the post of Divisional Commercial Superintendent, Bombay Central and he was not a regularly promoted Divisional Commercial Superintendent i.e. Senior scale officer and was thus not competent to impose any of the major penalty, he being only a class II officer. A more or less similar contention as now urged before us for the respondents was taken by the respondents in Rajawada's case. The Hon'ble Vice chairman in the judgement rendered in Rajwada's case, after referring to the provision of rules 6, 7, and 8 of the relevant rules and the Railway Board letter dated 4.2.1971 upheld the plea taken and held thus in para 6 of the judgement.

" In the instant case before us the authority who initiated disciplinary proceedings was not the competent authority as he was only looking after the duties and was getting special pay and thus cannot be deemed to be an officer of senior scale, who became a senior scale officer for the first time in the year 1987 which is after culmination of the inquiry. Obviously, as such the proceedings which were taken up by him were without jurisdiction."

7. It is common case that the Divisional Safety Officer Bombay Division is the competent authority to impose any of the major penalties and he is the authority competent to initiate disciplinary proceedings for imposition of any of the major penalties so far as the applicant is concerned. Strong relevance is

.....6....

11
175

placed for the applicant on Annexure J dated 27.5.87 to show that Shri Tandon came to be posted in senior scale of pay of Rs. 3000 - 4500 and that too on adhoc basis only with effect from 13.4.87. The relevant position of Annexure 'J' dated 27.5.87 may be extracted here for proper appreciation of the contentions urged.

It reads thus :

" Sub: Promotions, Reversions and Transfers of Gazetted Officers - T (T) & C Deptt.

Consequent upon completion of three years regular service in Class II on 12.4.87 (AN) the following officers of T(T) & C Deptt who are detailed to look after the Sr. scale post with special pay of Rs. 150/- p.m. in addition to their class II pay are posted to officiate in senior scale on adhoc basis. They will draw full senior scale pay from 13.4.87 in scale Rs. 3000 - 4500 (RS) "

It is evident from the above that Shri Tandon until 13.4.87 was only detailed to look after the senior scale post with special pay of Rs. 150/- p.m. in addition to his class II pay and even from 13.4.87 he was posted to officiate on adhoc basis in the senior scale of pay. The learned counsel for the respondents to buttress has contention that Shri Tandon was the competent authority placed reliance upon Annexure R1 dated 20th December 1983. He pointed out that in Annexure R1 the following material would support the stand of the respondents. In Annexure R1 the position pointed out reads thus :

" Shri B.N. Tandon who is looking after the senior scale post of STO (S) CCG, on adhoc basis is transferred and detailed to look after the senior scale post of DSO - BCT on adhoc basis, vice Shri S.M. Mathur, promoted to J.A. Grade. "

Relaying on the above quoted portion of Annexure R1 it was urged for the respondents that Shri Tandon was working as DSO at the relevant point of time in full fledged capacity and was thus an authority competent to impose any of the major penalties on

HT
115

the applicant and thus the issue of the charge sheet against the applicant is in order and does not suffer from the vice of incompetency and want of ^{Jurisdiction} direction. It was pointed out for the applicant that Shri J.D. Haldar who acted as the disciplinary authority in Rajawadi's case is also one of the officers who came to be placed in the same scale of pay w.e.f. 13.4.87 as could be seen at sl. No. 17 of Annexure 'J' dated 27.5.87.

8. In our opinion the contention urged for the applicant has to be upheld. It is manifest from a reading of Annexure 'J' dated 27.5.87 and Annexure R1 dated 20.12.1983 that Shri Tandon had not been regularly posted to the post of DSO and he was only detailed to look after that post while he was only a class II officer, on adhoc basis with a special pay of Rs. 150 p.m. His position was in no way better than the ^{posting} of J.D. Haldar referred to by this Tribunal in Rajawadi's case. We are in respectful agreement with the view expressed in Rajawadi's case and the principle indicated in Rajawadi's case would equally apply to the case of the applicant herein.

9. For the above reasons we uphold the contention urged ^{by} the applicant that the disciplinary proceeding in this case have been initiated by an authority which was not competent to do so and the proceedings so initiated suffer from the vice of want of jurisdiction and are void. In this view taken, it is not necessary for us to examine the other contention whether Shri Malhotra who issued the notice imposing the penalty against the applicant was also similarly placed like Shri Tandon and as such he was also incompetent and had no jurisdiction to impose the impugned penalty. If once it is held that the very initiation of the disciplinary proceedings is bad in law and void for lack of jurisdiction any further

11/11/

order passed in continuation of such void proceedings is rendered illegal.

9. For the above reasons, we allow the application. We quash and set aside the impugned penalty imposed against the applicant as per Annexure 'F' reverting the applicant to lower grade in scale of Rs. 330 - 560 on the minimum of the pay and the subsequent orders passed confirming the said penalty. The applicant would be entitled to all consequential benefits that flow as if the impugned penalty had not been imposed. The respondents are at liberty to take proceedings afresh against the applicant, if they so desire, by issuing a fresh charge sheet by the competent authority, in accordance with law. No costs.

Syed Faraz Ali
1/5/92

(S.F. RAZVI)
MEMBER (J)

Usha Savara

(USHA SAVARA)
MEMBER (A)