

(S)

CAT/3/12

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 346/89

~~To be xxx~~

198

DATE OF DECISION 5-6-1991

R J Rajwadi

Petitioner

G S Walia

Advocate for the Petitioner(s)

Versus

UNION OF INDIA & 4 OTHERS

Respondent

SHRI S. RAMAMURTHI

Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. JUSTICE U C SRIVASTAVA, VICE CHAIRMAN

The Hon'ble Mr. M Y PRIOLKAR, MEMBER (IA)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
  2. To be referred to the Reporter or not ?
  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 ?
- lv*

(9)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH.  
NEW BOMBAY 400614

Original Application No.346/89

R.J. Rajwadi  
C/o G.S. Walia  
Advocate High Court  
89/10 Western Railway Employees  
Conoly, Matunga Road,  
Bombay - 19

... Applicant.

V/s.

1. Union of India  
through General Manager  
Western Railway : Churchgate:  
Bombay 400020
2. Chief Commercial Superintendent  
Western Railway, Churchgate;  
Bombay 400020
3. Divisional Railway Manager  
Western Railway Bombay Central  
Bombay 400008.
4. Senior Divisional Commercial  
Superintendent; Western Railway,  
Bombay Central; Bombay 400008
5. Divisional Commercial Superintendent  
Western Railway  
Bombay Central, Bombay.

....Respondents.

Coram: Hon'ble Vice Chairman Shri U.C. Srivastava  
Hon'ble Member (A) Shri M.Y.Priolkar.

Appearances:

Shri G.S.Walia, Advocate  
for the Applicant.

Shri S. Ramamurthy, Counsel  
for the Respondents.

ORAL JUDGEMENT

Dated: 5 . 6. 1991

¶ Per: Justice U.C. Srivastava, Vice Chairman¶

The applicant at the relevant time was a Head  
Booking Clerk of Western Railway in the pay scale of  
Rs. 425 - 640. An order of removal from service dated  
3.4.86, was passed after holding an enquiry. On  
7.11.85 a charge sheet was framed against him by the

Divisional Commercial Superintendent(I), Bombay Central regarding misappropriation of railway revenue. Article of charge was that the applicant had misappropriated an amount of Rs. 1,610.40. The applicant defended himself in the inquiry and stated the circumstances and the personal problems under which he was working and according to him it was due to his problems he has forgotten to deposit the amount on his part. After issue of charge sheet inquiry was held and the applicant was removed from service. The appeal preferred by him was rejected by Division Railway Manager on 21.5.86. A review petition was addressed to the General Manager which was also dismissed by the DRM on 13.8.87 who is the competent authority.

2. The applicant has challenged the removal on variety of grounds. The main challenge is that the charge sheet dated 7.11.85 was not issued by the Competent Authority in as much as Shri J.D. Haldar was merely looking after the post of Divisional Commercial Superintendent(I), Bombay Central and he was not a regularly promoted Divisional Commercial Superintendent i.e. Senior Scale Officer. The said Halda was thus not a competent authority to impose any of the major penalties on the applicant, as he was only a Class II Officer in the grade of Assistant Commercial Superintendent.

3. In the written reply the respondents contended that Shri Haldar was not merely looking after the post of Divisional Commercial Superintendent, Bombay, but he was detailed to look after the post of Divisional Commercial Superintendent and was paid an honorarium of Rs. 150/- in addition to Class II and hence was ~~competent~~ to issue

the charge sheet for a major penalty against the applicant. This penalty has been confirmed by the DRM on 21.5.1986.

4. In this connection a reference to rules 6, 7 and 8 of the Railway Servants Discipline and Appeal Rules 1968 were referred and the parties argued at length. Rule 7 has three provisos which state the position about the Disciplinary Authority. The rule reads as under:

DISCIPLINARY AUTHORITIES:

- (1) The President may impose any of the penalties specified in rule 6 on any railway servant.
- (2) Without prejudice to the provisions of sub. rule(1) any of the penalties specified in Rule 6 may be imposed on a Railway servant by the authorities specified in Schedules I, II and III.
- (3) The disciplinary authority in the cases of a Railway servant officiating in a higher post, shall be determined with reference to the officiating post held by him at the time of taking action.

Rule 8 deals with the authority to institute proceedings and has two provisos. The same is as under:

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 railway servant.

(b) direct a disciplinary authority to institute disciplinary proceedings against any Railway servant on whom that disciplinary authority is competent to impose, under these rules, any of the penalties specified in Rule 6.'

(2) A disciplinary authority competent under these rules to impose any of the penalties specified in clauses (i) to (iv) of Rule 6 may, subject to the provisions of Clause (c) of sub-rule (1) of Rule 2, institute disciplinary proceedings against any Railway servant for the imposition of any of the penalties specified in clauses (v) to (ix) of Rule 6, notwithstanding that such disciplinary authority is not competent under these rules, to impose any of the latter penalties.'

5.' It is the case of the applicant that an authority who is not competent to initiate disciplinary proceedings has started the disciplinary action. The counsel for the applicant cited the Railway Board letter dated 2.2.1971 where in it is clarified that only an authority competent to impose any of the major penalties can initiate disciplinary proceedings for imposition of a major penalty in relation to Rule 9, in respect of non-gazetted staff. As such, the authority for all purposes of institutions of disciplinary proceedings and issue of charge memorandum for imposition of major penalty is the authority competent to impose any of the major penalties.

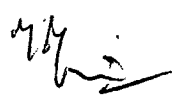
6. In the instant case before us the authority who initiated disciplinary proceedings was not the competent authority as he was only looking after the duties and was getting special pay and thus cannot be deemed to be an officer of senior scale, who became a senior scale officer for the first time in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

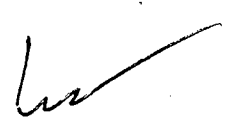
7. The respondents counsel relied upon the decision of the Central Administrative Tribunal in the case of Gafoormia and ors. Vs. Director DMRL decision dated 14.12.87 (page 290) para 36 in the compilation of full Bench Judgement 1986-89 - Bahri Bros. wherein after taking into consideration the provisions quoted by the Railway Board letter the full Bench of Tribunal took the view that it is only an authority competent to impose a major penalty which may initiate disciplinary proceedings for imposing a major penalty in so far as a non-gazetted railway servant is concerned.

8. Shri Ramamurthy, learned counsel for the respondents strenuously contended that the decision of the inquiry officer has been upheld by the appellate authority and thus even if the incompetent authority has initiated the disciplinary action it should be valid, under Rule 7. It is further contended that the competent authority continued to be the same as the explanation has been accorded that the President has power to appoint the disciplinary authority whom he considers fit. We do not find any merit in the argument of Shri Ramamurthy. Accordingly the

contention raised is rejected in view of the fact the proceedings were void abinitio and they were initiated by an authority who is not competent to do so. The application deserves to be allowed on this ground. The application is accordingly allowed.

9. Shri Ramamurthy contended that this application should not be entertained as it beyond time and should be dismissed on the ground of limitation as the applicant approached the Tribunal some eight months after the disposal of the review application. The applicant has filed an application for condonation of delay in which he has stated that applicant has filed application to the General Manager which is not yet disposed. However, the Chief Commercial Superintendent, who acted as Review Authority has disposed of the application dated 11.6.86 of the applicant. Since the applicant did not get any reply to his application he has filed this application. In the facts and circumstances we do not find that he should be thrown out of the court and accordingly the delay is condoned. Accordingly the order of removal dated 3.4.1986 is quashed and set aside and the applicant would be deemed to be in service continuously and is entitled for all benefits according to rules. However, the respondents are at liberty to take proceedings in case they so desire against the applicant in accordance with law. With the above directions the application is disposed of with no order as to costs.

  
(M.Y. PRIOLKAR.)  
MEMBER (A)

  
(U.C. SRIVASTAVA.)  
VICE CHAIRMAN.