

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
CAMP : NAGPUR.

Original Application No: 79/96.

Date of Decision: MARCH 02, 1998.

Shri N. V. Subba Rao,

Applicant.

In Person.

Advocate for
Applicant.

Versus

Union Of India & Others,

Respondent(s)

Shri P. N. Chandurkar,

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R. G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri. M. R. Kolhatkar, Member (A).

- (1) To be referred to the Reporter or not? *yes*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *no*

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

CAMP: NAGPUR

ORIGINAL APPLICATION NO.: 79/96.

Dated this Monday the 2nd day of March, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

N. V. Subba Rao,
Depot Store Keeper,
Durg - Nagpur Railway -
Electrification Project,
Ajni.

R/o. House No. A/52,
Karmcharinagar,
Sikolabhata,
(P.O) Durg - Tah. Durg,
District Durg (M.P).
(In Person)

... Applicant

VERSUS

1. Union Of India through
Secretary,
Ministry of Railways,
Ravi Bhavan, New Delhi.
2. The General Manager,
Central Organisation for
Railway Electrification
(P.O) Allahabad (U.P).
3. The General Manager,
South Eastern Railway,
Garden Reach,
Calcutta - 700 043 (W.B).
4. The Chief Project Manager,
Railway Electrification
Project (P.O) Bilaspur (M.P).
5. The Divisional Rly. Manager,
South Eastern Railway,
(P.O) Bilaspur (M.P).
6. The then Deputy Chief
Engineer-(Civil),
Railway Electrification,
Bilaspur.
C/o. Chief Project Manager,
Railway Electrification
Project,
(P.O) Bilaspur (M.P)

... Respondents

7. The then District Engineer
(Civil),
Durg-Nagpur Railway Electri-
fication, Ajni.

C/o. Chief Project Manager,
Railway Electrification
Project,
(P.O) Bilaspur (M.P).

... Respondents.

(By Advocate Shri P.N. Chandurkar)

: ORDER :

¶ PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN ¶

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply. We have heard the applicant who appeared in person and the Learned Counsel for the respondents.

2. The applicant was working as Depot Store Keeper in the Railway Electrification Project at Nagpur at the relevant time. He was originally working as a Head-Clerk in the South Eastern Railway at Bilal. He was transferred on deputation to the Railway Electrification Project by an order dated 24th June, 1987. His lien was kept in the South-Eastern Railway. After transfer, he was working in the Railway Electrification Project and there he came to be promoted as Depot Store Keeper by the Chief Project Manager, Railway Electrification Project, as per Order dated 19th December, 1987. Then, the applicant started working in the promotional post. Since there was some irregularities and shortage of stock of cement and other materials, the applicant came to be suspended by an order dated 10th April, 1990.

Then, a disciplinary enquiry was instituted against him and others. The applicant denied the allegation and contested the proceedings. The enquiry was conducted even without payment of subsistence allowance to the applicant. Subsequently, the subsistence allowance was paid to the applicant and he participated in the further enquiry. It is alleged that the enquiry officer was prejudicial and in a biased mind as against the applicant. Then, after enquiry, an order has been passed by the Disciplinary Authority by imposing a penalty removal from service. Being aggrieved with that order, the applicant approached this Tribunal challenging the order of removal from service.

3. The respondents have filed a reply justifying the enquiry and the imposition of the penalty of removal from service against the applicant.

4. At the time of hearing, the applicant's main contention was that, he was a borrowed officer as far as the Railway Electrification Project is concerned, and therefore, the borrowing department cannot impose any major penalty and hence, the order is illegal and bad in law and liable to be quashed. He also questioned the legality of the suspension order being passed by an officer who had no competence. Then, he contended that the enquiry is vitiated due to violation of principles of natural justice. He also questioned the findings of guilt recorded by the

Disciplinary Authority against the applicant. He also questioned the issuance of charge-sheet by an authority lower than the Disciplinary Authority. On the other hand, the Learned Counsel for the respondents, refuted all the above contentions and further submitted that the application is not maintainable, since the applicant has not exhausted his statutory remedy of filing an appeal before the competent authority.

5. That ~~the~~ applicant's contention that in the case of deputation, the borrowing department cannot impose any major penalty, sounds attractive. It may not stand ~~the~~ test of scrutiny in the peculiar facts and circumstances of this case. It is true that normally, as a general rule, whenever an officer is sent on deputation from one department to another, then the borrowing authority cannot impose any major penalty but it can impose a minor penalty in consultation with the lending authority i.e. the effect to Rules 15 and 16 of the Railway Servants (Discipline & Appeal) Rules, 1968. Under Rule 15, whenever the services of a railway servant is sent to any other Ministry or department, the borrowing authority can impose minor penalty in consultation with the lending authority and cannot impose any major penalty. Similarly, under Rule 16, whenever the services of a Government servant are borrowed from any other ministry to the Railways, the same rule applies, as mentioned above.

In both rules 15 and 16, the words used are "lending of a railway servant to any other Ministry or Department of Central Govt. or State Government" and in Rule 16 the words used are "borrowing a Government servant from any other Ministry or Department of Central Government or State Government to the Ministry of Railways", but both the rules do not mention about transfer of railway servant on deputation from one wing of the Ministry of Railways to another wing of the Ministry of railways. Both the rules refer to different departments of Central Government or different Ministry of Central Government or State Government, but they do not apply to a case of Railway Servant from one wing of the Railways being transferred to another wing of Railways.

6. In the present case, both the South-Eastern Railways where the applicant was originally working and the Railway Electrification Project to which he was transferred on deputation, both come under the Ministry of Railways and they are not different departments of Central Government within the meaning of Rules 15 and 16.

This position has been further clarified by the Railway Board Circular dated 06.07.1979, which is brought to our notice by Mr. Chandurkar, the Learned Sr. Counsel for the Railway Department. In the circular, the Railway Board has clearly stated that an employee cannot be treated as under the administrative control of more than one department.

One more circular dated 16.10.1973 of the Railway Board is also brought to our notice. It is clearly mentioned in the circular that the railway servant essentially belongs to only one department. That the disciplinary authority would be only the operating department where he is working and none else. It is clearly mentioned as follows :

"Disciplinary action should be initiated and finalised by the authorities under whose administrative control the delinquent employee may be working, as any other procedure would not be in keeping with the instructions referred to in para-I above."

Therefore, it is seen that the authority under whom the railway servant is working for the time being, would be the controlling authority and has every right to initiate disciplinary action.

7. In this connection, we may refer to Section 2(i)(a) of the Railway Servants (Discipline & Appeal) Rules, 1968, where an appointing authority in relation to Railway Servant has been defined. In our view, under sub-clause (i) and (ii), the appointing authority is the one who is the authority empowered to appoint the railway servant for the time being. Even under Clause (iii) also, the appointing authority is one who appointed the railway servant to such service, grade or post.

Therefore, under Clause (i), (ii) and (iii), the appointing authority is the one who, for the time being, appointed the railway servant for the concerned

grade or post, or the authority who is empowered to appoint the railway servant for the time being.

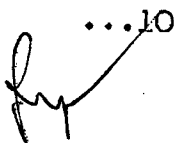
In the present case, the applicant was transferred as a Head-Clerk on deputation from the South-Eastern Railway to Railway Electrification Project. Then, he was promoted as Depot Store Keeper by the Chief Project Manager. Therefore, whether we apply clause (i), (ii) or (iii), the Chief Project Manager was the appointing authority of the applicant for the post of Depot Store Keeper for the time being. He also becomes the appointing authority, as the one who appointed the applicant as Store-Keeper under Clause (iii). Hence, under any of the clauses (i), (ii) or (iii) of Section 2 (1), there is no difficulty to hold that the applicant, being a Depot Store Keeper, promoted and appointed by the Chief Project Manager of the Railway Electrification Project, the said appointing authority becomes the disciplinary authority of the applicant. When the applicant has accepted the promotion and appointment as Depot Store Keeper as per the order issued by the Chief Project Manager, it would not lie in his mouth now to contend that the Chief Project Manager is not his appointing authority and he cannot pass the impugned order of removal from service. In our view, in view of his promotion and appointment as Depot Store Keeper by the Chief Project Manager, the said officer becomes the appointing authority of the applicant and he can pass an order of removal from service being the appointing authority.

8. Hence taking any view of the matter, we can safely conclude that the applicant was under the administrative and disciplinary control of the Chief Project Manager and, therefore, the initiation of the Disciplinary Enquiry and final orders passed by the Chief Project Manager cannot be said to be illegal in law. As already stated, there can be only one administrative control so far as the Railway Servants are concerned and admittedly, the applicant was working under the administrative control of the Chief Project Manager and further, he has been appointed on promotion by the Chief Project Manager and even in that capacity, the Chief Project Manager is the appointing authority and, therefore, the disciplinary authority under the rules. Hence, the argument of the applicant that the whole proceedings are vitiated being illegal and without jurisdiction has to be rejected.

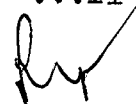
9. The applicant questioned the validity of the suspension order. The suspension order was passed in 1990. The applicant did not challenge the same but now when the final order of removal from service is passed, he now wants to challenge the order of suspension as illegal, being passed by an authority who was not competent. Since the order was passed in 1990 and the present application was filed in 1994, the application is barred by limitation and at this late stage and that too after the disciplinary proceedings have been completed and the order of removal from service is passed, the

cannot
applicant/~~now~~ question the legality of the suspension order. Though this application was filed in the year 1994 in the Jabalpur Bench of the Central Administrative Tribunal, it has been subsequently transferred to Bombay Bench as per the order of the Hon'ble Chairman. Even otherwise, we do not see any merit in the contention that the order of suspension is passed by an authority who did not have competence. The Learned Counsel for the respondents showed us the concerned file where the order ^{is} passed by the District Engineer after getting it approved by the Deputy Chief Engineer, therefore, the order of suspension is passed with the approval of the competent authority. Another contention was that, there was a delay in the payment of subsistence allowance. At any rate, subsequently, the subsistence allowance was paid. Respondents have explained that the delay was because the applicant did not submit the non-employment certificate and that was the reason for the delay.

We also do not find any merit in the plea of violation of principles of natural justice. Some arguments was addressed by the applicant about the findings of guilt recorded by the Disciplinary Authority. In our view, the scope of judicial review is very limited. We cannot go into the question of fact or finding of fact recorded by the Disciplinary Authority. We can only go into the question of decision making process and not the decision itself. As rightly argued on behalf of the respondents, the present O.A. is not

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maintainable since the applicant has not exhausted the statutory remedy of appeal. Section 20 of the Administrative Tribunals Act clearly provides that the applicant should exhaust all available remedies available to him under the rules before approaching the Tribunal. It is not and cannot be disputed that when an order of punishment is imposed by the Disciplinary Authority, an appeal lies to the higher authority. Infact, in the order of punishment itself it is mentioned that the applicant can file an appeal to the competent authority, namely - to the General Manager (Core), Allahabad. The applicant himself has produced the punishment order as Annexure A-1 at page 13 of the paper book, which clearly informs^{that} the applicant has a right to appeal to the General Manager concerned. Instead of filing an appeal, the applicant has directly approached this Tribunal. Since the applicant raised the question of jurisdiction of the Disciplinary Authority, we have considered that question and rejected the same for the reasons already mentioned. We cannot go into the findings of the fact recorded by the Enquiry officer or the Disciplinary Authority in view of the limited scope of judicial review and further, since the applicant has not exhausted his statutory remedy of filing an appeal to the appellate authority. The order of the Disciplinary Authority is 07.03.1994 and the applicant had 45 days time to file an appeal but within that period, he filed the present application in the Jabalpur Bench on 12.04.1994. Therefore, the application is filed before this Tribunal within time



of the appeal period. Therefore, the time spent by the applicant from 12.04.1994 till today has to be deducted while we are directing him to file an appeal before the Competent Authority, provided the applicant files the appeal within 30 days from the date of receipt of this order. If such an appeal is filed within the time directed by us, then the Appellate Authority will consider all the contentions of the applicant, except those contentions which are now disposed of by us today and pass a speaking order.

10. Before parting with this case, we have to mention one more point canvassed by the applicant, namely that the enquiry was conducted by the Deputy Chief Engineer but the punishment was imposed by the Chief Project Manager. It was argued that if the Chief Project Manager is held to be the appointing authority, then the charge-sheet could not have been issued and enquiry could not have been held by an authority subordinate to the disciplinary authority. There is no merit in this submission, since the point is covered by a direct authority of the Apex Court reported in 1995 (1) ATC 299 ¶ Transport Commissioner V/s. A. Radha Krishna Moorthy ¶ wherein the Supreme Court has observed that the departmental enquiry can be initiated by any officer subordinate to the appointing authority, but he cannot pass an order of dismissal or removal. In this case, the Deputy Chief Engineer could not have passed an order

or removal from service and therefore, he has submitted the entire file to the Disciplinary Authority, who has passed the impugned order and being the appointing authority, he has the right to pass an order of removal from service. Hence, the applicant's contention on this point is liable to be rejected. Infact, as seen from the impugned order, the Disciplinary Authority has given a copy of the enquiry report to the applicant and considered the reply of the applicant and then passed the impugned order of removal from service.

Another contention of the applicant that non-sanctioning of the increment during the period of suspension amounts to double punishment, ~~has~~ also no merit. It is a question of postponement of increment during the period of suspension and not a case of denial of increment.

11. In the result, the application is disposed of by rejecting the legal contentions taken up by the applicant but with a liberty to the applicant to exercise his statutory right of appeal by filing an appeal to the appropriate authority within 30 days from the date of receipt of this order. If such an appeal is filed within the time directed by this Tribunal, then the Appellate Authority shall consider the appeal on merits and dispose of the same according to rules by passing a speaking order, in the light of the observations in this order.

Since the order of punishment was passed by the Disciplinary Authority in 1990 and already 8 years have elapsed, we direct the Appellate Authority that if such an appeal is filed by the applicant as directed in this order, he shall dispose of the same as expeditiously as possible and preferably within a period of six months from the date of receipt of appeal memorandum . In the circumstances of this case, there will be no order as to costs.

M. R. Kolhatkar
(M. R. KOLHATKAR)

MEMBER (A).

R. G. Vaidyanatha 2.3.98
(R. G. VAIDYANATHA)

VICE-CHAIRMAN.

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