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631/KM)
CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NO. 470/99

Date of Decision: 10.04.2003

Shri N.B. Joshi. Applicant(s)

Shri G.S. Walia. Advocate for Applicants

Versus

Union of India & ors. Respondents

Shri S.C. Dhawan. Advocate for Respondents

CORAM: HON'BLE SHRI GOVINDAN S. TAMPI. MEMBER (A)
HON'BLE SHRI V.K. SACHIDANANDAN. MEMBER (J)

1. To be referred to the reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?
3. Library.


(K.V. SACHIDANANDAN)
MEMBER (J)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO. 470/99

THIS THE 10th DAY OF ^{APRIL} MARCH, 2003

CORAM: HON'BLE SHRI GOVINDAN S. TAMPI. MEMBER (A)
HON'BLE SHRI K.V. SACHIDANANDN. MEMBER (J)

N.B. Joshi, Asst. Cook,
working under
Chief Canteen Inspector / R. Ca
Mumbai Division,
Central Railway, Mumbai CST,
Mumbai-400 001. .. Applicant

By Advocate Shri G.S. Walia

Versus

1. The Union of India, through
General Manager, Central Railway,
Headquarters Office,
Mumbai CST, Mumbai-400 001.
2. Divisional Railway Manager,
Mumbai Division, Central Railway,
Mumbai CST, Mumbai-400 001.
3. The Chief Commercial Manager,
Central Railway,
Mumbai CST, Mumbai-400 001.
4. Assistant Catering Services Manager,
Headquarters office,
Central Railway, CST Mumbai,
Mumbai-400 001. .. Respondents

By Advocate Shri S.C. Dhawan.

O R D E R

Hon'ble Shri K.V. Sachidanandan. Member (J)

The applicant has filed this application
against the charge sheet (impugned) dated 31.10.1996
issued by the Respondent No.4 and Disciplinary
Authority. The impugned charge sheet is challenged
inter alia on the ground that Respondent No.4 is not the
competent authority and is not authorised under rule to

initiate disciplinary proceedings against the applicant. The charge sheet has been impugned as defective and by the order of the higher authority without application of mind by the Disciplinary Authority and that charge is without jurisdiction (i.e. Disciplinary Authority). Therefore the charge sheet is challenged on the ground of jurisdiction and non application of mind.

2. The impugned charge sheet has been issued to him alleging certain irregularities by the applicant during the duty hours, it is signed by the respondent No.4 as Disciplinary Authority who is Assistant Catering Service Manager, Group-B officer who is working under the Chief Commercial Manager in the Headquarters office and is not the controlling authority of the applicant. The applicant averred in the OA that Headquarters office and Mumbai Division of Central Railway are two different entities for the purpose of administration and control of staff, seniority and promotion. Mumbai Division is headed by Divisional Railway Manager with other subordinate officers. Catering Department is headed by Chief Catering Service Manager, who is the controlling authority of the staff and his assistant officers are also the controlling / disciplinary authority of the staff who are working in the Headquarters office. Applicant is under the control of Mumbai Division for all purposes. The applicant never worked under the administrative control of Headquarters office for the

disciplinary purposes. Therefore, the charge sheet could not have been issued by the Assistant Catering Service Manager of Headquarters office. The charge sheet issued by Headquarters office is wrong and illegal and not applied their mind and simply carried out the order of his superior officers, the charge is void. Aggrieved by the said charge sheet and culminating in passing the orders for dismissal of the applicant, the applicant has filed this OA seeking the following reliefs:-

- a) This Hon'ble Tribunal will be pleased to call for the records and proceedings which led to the passing of the impugned order dated 31.10.1996 and after going through its validity, constitutionality, propriety, quash and set aside the same with all consequential benefits such as increments, back wages, arrears etc.
- b) Any other or further order as to this Hon'ble Tribunal may deem fit and necessary in the circumstances of the case may be passed.
- c) Cost of this Original Application be provided for.

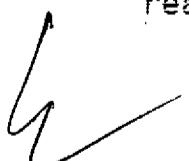
3. The respondents have filed reply statement stating that this Tribunal has no power to examine the truthness of the charges and the applicant has no cause of action and the same is misuse of the process of law and the same is required to be dismissed. The applicant was appointed as Assistant Cook in the pay scale of Rs.800-1150 by the Senior Personnel officer, Headquarters on 06.01.1993. All the posts of catering cadre below Rs.1440-2300 are controlled by Mumbai

Division. Catering cadre consists of persons employed in Headquarters office and Divisional Railway Manager. The appointment order clearly states that his link is maintained in Mumbai Division. ACSM is competent to issue charge sheet to catering staff in the pay scale of Rs.800-1150. The controlling authority of the staff working in Headquarters is the CCM. There is no protection in Article 311 that the charge sheet cannot be issued by the person who is below the appointing authority. ACSM is competent to impose minor penalty who is in the pay scale of Rs.800-1150. The allegation that the charge sheet is issued at the instance of senior offices is wrong and false. The charge framed in the charge sheet are to be investigated by the inquiry office where the applicant can defend himself.

4. Shri G.S. Walia Learned counsel appears for the applicant and Shri S.C. Dhawan appears for respondents. The learned counsel had taken us to the pleadings of the OA and reply statement and we have perused the material and evidence placed on record. The learned counsel for the applicant submitted that the procedure adopted in issuing the charge sheet is totally against Railway Servants (Discipline, & Appeals) Rules 1968. Apart from that it is submitted that the charge sheet was issued at the instance of the higher authorities and the officer who has issued the charge sheet is not competent and he has issued without due

application of mind. The learned counsel for the respondents on the other hand submitted that the officer who has issued the charge sheet is competent and the mere fact is that the applicant is working on the division level cannot be charge sheeted by a lower authority because charge sheet is subjected to an inquiry by inquiry officer and it is wrong to be presumed that action to be taken as stated in the charge sheet.

6. We have given due consideration to the arguments advanced by the Learned counsel and perused the materials on record. The impugned charge sheet dated 31.10.1996 is issued by the ACSM. On going through the record, we find that it has been issued by Respondent No.4 Headquarters office of Central Railway, who is a group "B" officer working in the CCM Headquarters office. He is not the controlling authority of the applicant. The applicant is under the Mumbai Division and not under Headquarters office. Therefore, DRM under whom the staff are working like the applicant is the competent authority. Therefore, we are of the view that Respondent No.4 is not competent to impose any of the major penalty to the applicant as he is only a Group "B" officer in the cadre of ACSM. A reference is made to Rule 7, 8 and 9 of the Railway Servants (Discipline & Appeals) Rules, 1968. Rule 7 reads as follows:



- (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 Disciplinary Authority to institute proceedings and is reproduced below:-

- (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.

It is clear that an authority who is not competent to initiate disciplinary proceedings has initiated the disciplinary proceedings by issuing the charge sheet, which is irregular. With reference to rule 9 the position is that the authority for all purposes for



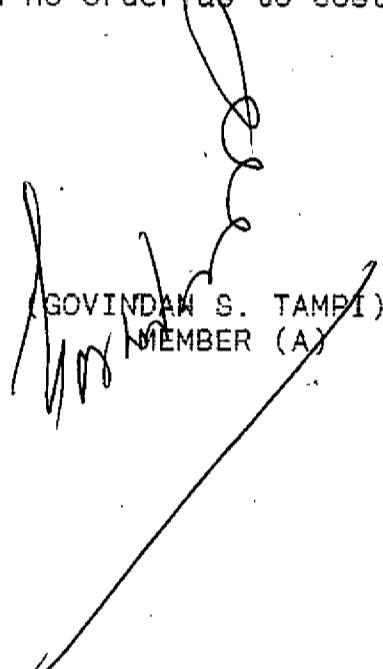
institution of disciplinary proceedings and issue of charge memo for all major penalties is competent to impose any of the major penalties. We are convinced that in this instant case the authority who has initiated the disciplinary proceedings is not the competent authority and the contention that the charge sheet issued by such authority will not hold good. Therefore, we are of the view that the proceedings initiated by Respondent No.4 is without jurisdiction and not in good spirit of the procedure. The learned counsel for the applicant has taken us to the decision of this Tribunal in OA 346/89 dated 05.6.1991 wherein a charge sheet was framed against an employee who was only a booking clerk of the Western Railway. This court has set aside the charge sheet taking into consideration the rule position mentioned above, the said order is also on the similar facts and legal position are also same. We are in respectful agreement with the decision of this Tribunal and besides it is interesting to note that the Disciplinary Authority was influenced by the higher authority in issuing the charge sheet. His superior officers had directed the Disciplinary Authority to issue charge sheet and suggested "that a very serious disciplinary action should be taken against the staff. It is clear that the Disciplinary Authority has not followed the law in its true spirit, even if he is otherwise competent, he has acted according to his superior. For that reason also we do not find any

justification in issuance of charge sheet. In the circumstances we are of the view that the charge sheet requires to be set aside and quashed.

7. In the facts and circumstance the charge sheet dated 31.10.1996 is set aside and quashed and the applicant would be deemed to be in service continuously and shall be entitled to all benefits according to rules. However, the respondents are at liberty to take proceedings if so desire against the applicant in accordance with law. With the above direction, this application is disposed off with no order as to costs.



(K.V. SACHIDANANDAN)
MEMBER (J)


GOVINDAN S. TAMPI
MEMBER (A)

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