

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 729 of 2001

DATE OF DECISION: 3 / 8 / 2004

P.R.Rampise

Applicant

Shri G.S.Walia

Advocate for
Applicant/s

V/s.

Union of India & 3 ors.

Respondents

Shri R.R.Shetty

Advocate for
Respondents

CORAM:

Hon'ble Shri A. K.Agarwal -Vice Chairman
Hon'ble Shri S.G.Deshmukh - M (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. ✓


(A.K.Agarwal)
Vice Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Dated this *Friday* the *3rd* day of ~~August~~ *September*, 2004

Coram: Hon'ble Shri A.K.Agrawal - Vice Chairman
Hon'ble Shri S.G.Deshmukh - Member (J)

O.A.729 of 2001

P.R.Rampise,
Ex-Head Booking Clerk,
Kurla Terminus (L.T.T.)
Central Railways, Mumbai.
R/o Railway Quarters No.MS/RB/II/8/6,
Railway Colony, G.T.B.Nagar,
Mumbai 400037
(By Advocate Shri G.S.Walia) - Applicant

Versus

1. Union of India
through the General Manager,
Central Railways,
Headquartes Office,
Mumbai CST, Mumbai.
2. Divisional Railway Manager,
Mumbai Division,
Central Railway, DRM's Office,
Mumbai CST, Mumbai.
3. Sr.D.C.M.,
Mumbai Division,
Central Railways,
DRM's Office,
Mumbai CST, Mumbai.
(By Advocate Shri R.R.Shetty) - Respondents

O R D E R

(Per: A.K.Agarwal - Vice Chairman)

This OA has been filed by applicant Shri P.R.Rampise under Section 19 of the Administrative Tribunals Act, 1985 for quashing and setting aside the order of his removal from service

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dated 14.6.2001 passed by the disciplinary authority and also order dated 19.3.2001 of the appellate authority confirming the penalty imposed by the disciplinary authority. The applicant has also prayed for quashing and setting aside the order dated 17.9.2001 of the revisional authority whereby the punishment of removal from service was reduced to punishment of compulsory retirement from the date of his removal from service.

2. The facts of the case as mentioned by the applicant in the OA are as follows. The applicant was appointed in the Central Railways in December, 1979 as Junior Booking Clerk and was thereafter promoted as Senior Booking Clerk and then Head Booking Clerk. The applicant was given a charge sheet on 14.2.2000 and the charges were that he overcharged a decoy passenger by Rs.20/- and he was found with a shortage of railway cash in his possession by Rs.138/-. The applicant in his representation dated 12.3.2000 denied the charges and stated that they were false and fabricated. The Enquiry Officer submitted his report dated 25.1.2001 holding the applicant guilty of both the charges. The applicant in his reply to the enquiry report mentioned that he was not examined as a witness as required under Railway Servants (Discipline & Appeal) Rules, 1968 and this vitiated the enquiry.

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3. The learned counsel for the applicant during his initial submissions stated that the applicant has been punished by an authority not competent to do so. The applicant at the time of issue of charge sheet was working as a Head Booking Clerk in the pay scale of Rs.5000-8000/-. As per the Schedule of disciplinary powers given in Schedule II of the Railway Servants (Discipline & Appeal) Rules, 1968, only a Junior Administrative Grade Officer or a Senior Scale Officer holding independent charge is empowered to issue charge sheet to an employee holding the pay scale of Rs.5000-8000/-. In this case the applicant was issued charge sheet by DCM who is neither a Junior Administrative Grade officer nor he was holding an independent charge. It is the Senior DCM in Junior Administrative Grade who held independent charge. When this question relating to the competence of the officer who issued charge sheet, was raised earlier on 27.1.2004, the learned counsel for the respondents submitted that the Senior Scale Officer holding independent charge or Incharge of the Department/Division was competent to issue charge sheet in respect of employees in Group 'C' and 'D' posts. Affidavits were to be filed by both parties in support of their contentions. The applicant had filed an affidavit on 11.2.2004 stating therein that DCM is subordinate to and a rank below to Senior DCM and he does not hold an independent charge of the department/division

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and thus DCM was not competent to issue charge sheet to the applicant. The respondents also filed an affidavit on 4.3.2004. Thereafter one more affidavit dated 9.3.2004 was filed by the applicant. The learned counsel for the applicant further stated that the Schedule was amended in the year 1997 and the charge sheet has been served in the year 2000. Therefore there is no dispute that the provisions of the amended schedule will apply to the present case. On this issue relating to the competence of the DCM to issue charge sheet to the applicant, the learned counsel for the applicant has relied on a decision of C.A.T. Mumbai Bench in R.J.Rajwadi Vs. Union of India & others, OA 346/89 decided on 5.6.1991.

4. The learned counsel for the applicant mentioned that as per the provisions contained in Indian Railway Establishment Manual, shortage of cash has to be made up by the concerned employee. The shortage of cash was only Rs.138/- and shortage of such a small amount cannot be construed as misconduct. He has relied upon a verdict of C.A.T.Jabalpur Bench in Ram Kishore Vs. Union of India & others, (1989) 11 ATC 630 holding therein that

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the presence of cash does not lead to the inference of dishonesty. The learned counsel for the applicant mentioned that when there is specific provision in the manual for dealing with the situation relating to shortage of cash then as a consequence no disciplinary action can be initiated against the applicant. In support of this contention, the learned counsel has relied on the decision in the case of A.L.Kalra Vs. The Project and Equipment Corporation of India Ltd. AIR 1984 SC 1361. The Apex Court in this case has observed as follows.

"If the Rules for granting the advance themselves provided the consequence of breach of conditions, it would be idle to go in search of any other consequence by initiating any disciplinary action in that behalf unless the 1975 Rules specifically incorporate a rule that the breach of House Building Advance Rules would by itself constitute a misconduct."

5. The learned counsel for the applicant submitted that in this case the provisions contained in Paras 704 705 of the Railway Manual which are mandatory in character have not been complied with. On this issue the learned counsel has relied on the judgment of Andhra Pradesh High Court while disposing of Writ Petition no.1489/02 Union of India & others Vs. M.Anjaneyulu & another on 4.9.2002. This judgment confirms the view taken by C.A.T., Hyderabad Bench wherein it has been held that the provisions of Paras 704 and 705 of the Railway Vigilance Manual are mandatory in nature and if the

investigating agency does not follow the procedure then it vitiates the entire proceedings.

6. The learned counsel for the respondents mentioned that the charge sheet was issued to the applicant by an officer who was competent to do so. As per the provisions contained in Rule 8 (2) of Railway Servants (Discipline & Appeal) Rules, 1968 a disciplinary authority is competent to initiate disciplinary action for imposition of major penalties though it may not be competent to impose such a penalty. On this issue he has relied on the order dated 23.7.2004 of C.A.T., Mumbai Bench in O.A. 520 of 2003 Rajesh Verma Vs. Union of India & others.

7. Making further submissions he said that a decoy passenger was used as a witness and the applicant returned twenty rupees less. That was definitely a misconduct. He said the Courts/Tribunals while exercising the power of judicial review are not expected to reverse the findings because of insufficiency of evidences as held by the Apex Court in the case of Apparel Export Promotion Council Vs. A.K.Chopra, AIR 1999 SC 625. He said that in the affidavit submitted on 4.3.2004, the deponent Senior Divisional Personnel Officer has clearly mentioned that Shri Ashok Malhotra, Senior Scale Officer (DCM) was competent to impose major penalty of compulsory retirement

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including dismissal from service. The learned counsel for the respondents drew our attention to the Schedule attached to this affidavit indicating extent of powers delegated to the various authorities. He said that the extent of powers delegated for appointment is an old one and has not been modified by the Railways since 1985. According to this delegation of powers a Senior Scale Officer has the powers to make the first appointment even on substantive basis upto the pay scale of Rs.455-700/-.

8. The learned counsel for the respondents mentioned that the provisions contained in Paras 704 and 705 of the Vigilance Manual are in fact not relevant in the cases of trap. He said that against the judgment of the Andhra Pradesh High Court in M.Anjaneyulu (supra), an SLP No.5612/03 has been filed in the Supreme Court and the same has been admitted on 10.7.2003. However, final decision of the Supreme Court is still awaited. He further stated that against the decision of the Mumbai Bench of C.A.T. in a similar case, the parties who had approached the High Court of Judicature at Bombay, the decision of Tribunal has been upheld confirming therein that the provisions contained in Paras 704 and 705 are not mandatory in nature. He said from the evidence it has been conclusively proved that the applicant had

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charged Rs.20/- extra from the decoy passenger. As far as the matter of integrity is concerned, the quantum of amount does not matter. The applicant cannot get away by saying that the amount is small. Regarding the competence of the disciplinary authority, the learned counsel for the respondents has relied on the judgment of the Allahabad High Court in the case of P.N.Lal Vs. General Manager, N.E.Railway, Gorakhpur and others, 1975 Lab.I.C. 1027 wherein it has been held that authorities who were competent to impose all the minor penalties under Rule 6 of Railway Servants (Discipline & Appeal) Rules, 1968, were contemplated as disciplinary authorities competent to institute disciplinary proceedings for imposition of major penalties notwithstanding that such authorities were not competent to impose major penalties. The learned counsel further stated that the Mumbai Bench of C.A.T. while disposing of OA 520/2003 (supra) has also relied on this judgment.

9. The learned counsel for the applicant mentioned that the judgment of the Allahabad High Court relied upon by the learned counsel for the respondents is in fact based on a wrong version of Rule 8 (2) of the Railway Servants (Discipline & Appeal) Rules, 1968. He said that it appears that the High Court had

relied upon the wordings given in a private publication of Bahiri Brothers which is not the correct version. He submitted copies of the version from the Book of Bahiri Brothers as well as the version from the Government of India publication. For this reason the judgment of the Allahabad High Court cannot be relied upon. Further the delegation of powers enclosed with the affidavit of respondents is a very old one and the learned counsel for the respondents himself has admitted that it is of 1985. Thereafter schedule relating to delegation of powers to various authorities for imposing penalty has been amended in 1997 which is in force now. He said that during the period of last two decades a number of Junior Administrative Grade level posts have been created in the Divisions with the result that the Senior Scale officers do not hold independent charge of a particular department. He said for all these reasons the amended delegation of powers, relating to disciplinary authorities will be now applicable.

10. We have heard both the counsel and have gone through the material placed on record. So far as initiation of disciplinary proceedings is concerned, this will depend upon the provision contained in Rule 8 of Railway Servants (Discipline & Appeal) Rules, 1968. As per the judgment of the Allahabad High Court cited by the respondents, even an authority who is not competent

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to impose any major penalty has the powers to initiate disciplinary action for imposing major penalty. The Mumbai Bench of C.A.T. has also relied upon such a verdict of the Allahabad High Court while disposing of OA 520/03 (supra). However, the learned counsel for the applicant has pointed out that the decision of the Allahabad High Court is based on the wordings of the Rule taken from a private publication of Bahiri Brother, and its wordings are not exactly similar to the wordings given in the Government notification.

11. In this case the question relating to jurisdiction of various authorities is important and we would like to analyse it on the basis of provisions in the rules and judicial verdict of the Apex Court. The disciplinary power is different and a separate power from the power to appoint under Railway Servants (Discipline & Appeal) Rules, 1968. While the appointing authority has been defined in Rule 2 (1) (a) the definition of 'disciplinary authority' is given in Rule 2 (1) (c). Rule 2 thus defines both, the authorities to appoint and the authority to impose penalty. However, the authority competent for initiation of disciplinary proceedings is a third category and is distinguishable from the other two.

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12. The competence of any disciplinary authority for imposing a penalty on a railway servant would be as per provisions of Rule 2 (1) (c). Rule 2 (1) (c) which is as follows -

"(c) 'disciplinary authority' means -

(i) in relation to the imposition of a penalty on a Railway servant the authority competent, under these rules, to impose on him that penalty;

(ii) in relation to Rule 9 and clauses (a) and (b) of sub-rule (1) of Rule 11 in the case of any Gazetted Railway servant, an authority competent to impose any of the penalties specified in Rule 6;

(iii) in relation to Rule 9 in the case of any non-gazetted railway servant, an authority competent to impose any of the major penalties specified in Rule 6;

(iv) in relation to clauses (a) and (b) sub-rule (1) of Rule 11, in the case of non-gazetted Railway servant, an authority competent to impose any of the penalties

13. We observe that while in of sub clause (c) (ii) the wordings are "authority competent to impose any of the penalties specified in Rule 6", the wordings in sub clause (c) (iii) are "an authority competent to impose any of the major penalties specified in Rule 6." Both sub clauses define 'disciplinary authority' in relation to Rule 9 i.e. for the procedure for imposing major penalty but sub clause (c) (ii) defines 'disciplinary authority' for gazetted officers and sub clause (c) (iii) for non-gazetted staff.

14. As mentioned above the power to institute disciplinary proceedings is different from the power to appoint or the power to impose penalty. Rule 8 mentions about the authorities competent to institute disciplinary proceedings in relation to railway servants and Rule 8 (2) is as follows -

"8 (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 from the wordings of the rule that an authority who is not competent to impose any of the penalties specified in clause (v) to (ix) of Rule 6 is also competent to institute disciplinary proceedings for the imposition of a major penalty.

15. It has been held by the Apex Court in the case of Director General ESI, and another Vs. T.Abdul Razak, 1996 SC (L&S) 1061 as follows -

"It is not necessary that the authority competent to impose the penalty must initiate the disciplinary proceedings and that the proceedings can be initiated by any superior authority who

can be held to be the controlling authority who may be an officer subordinate to the appointing authority. The Regional Director, being the officer-in-charge of the region, was the controlling authority in respect of the respondents. He could institute the disciplinary proceedings against the respondents even in the absence of specific conferment of a power in that regard."

16. The Apex Court in another case Registrar of Cooperative Societies, Madras and another Vs. F.X.Fernando, 1994 SCC (L&S) 756 has held that issuing of charge sheet by an officer who was not empowered to impose any penalty is also permissible.

17. In the case of Inspector General of Police and another Vs. Thavasiappan, 1996 SCC (L&S) 433, while dealing with the case in Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, 1955, the Apex Court has observed that "it is not necessary that the charges should be framed by the authority competent to award the proposed penalty or that the enquiry should be conducted by such authority. In this judgment, the Apex Court has referred to its earlier decision in the case of State of M. P. Vs. Shardul Singh, (1970) 1 SCC 108 explaining the guarantee given under Article 311 (1) to the Government servant in following words.

".....we are unable to agree with the High Court that the guarantee given under Article 311 (1) includes within itself a further guarantee that the disciplinary proceedings resulting in dismissal or removal of a civil servant should also be initiated and conducted by the authorities mentioned in that article."

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18. The learned counsel for the applicant has contended that the judgment of the Allahabad High Court in the case of P.N.Lal (supra) is based on an erroneous version of Rule 8 (2). We do not find any such error in the version submitted which may lead to a different interpretation. In any case we have basically relied on the authentic version of Rule 8 (2).

Thus on this issue we hold that the authority which initiated disciplinary proceedings against the applicant was a competent authority to do so. The reliance placed on R.J.Rajwadi (supra) is also not legally sustainable because the decision was based on a verdict of Full Bench in the case of Gafoor Mia (supra) which has been set aside by the Apex Court in Scientific Adviser to the Ministry of Defence & ors. Vs. S.Daniel & ors., 1991 SCC (L&S) 355.

19. As per provisions contained in Rule 7 (2) of Railway Servants (Discipline & Appeal) Rules, any of the penalties specified in Rule 6 may be imposed on the Railway Servant. by the authorities specified in Schedule I, II and III. The powers in respect of non-gazetted staff have been given in Schedule II. According to this Schedule any penalty starting from withholding of promotions and withholding of increments can be imposed on railway servants in the pay scale of Rs.1600-2660/- (Fourth Pay Commission) and above, by an officer of Junior Administrative Grade or a Senior Scale Officer holding independent charge. The replacement scale of Fifth Pay Commission for Rs.1600-2660/- is

Rs.5000-8000/-. Thus for any of such penalties a Senior Scale Officer, not holding an independent charge is not the competent authority. Since the Railway Servants (Discipline & Appeal) Rules have been issued in exercise of powers conferred by proviso of Article 309 of the Constitution, they will take precedence over any executive instructions. The delegation of powers relating to appointments also gives full powers only to Junior Administrative Grade officers in respect of non-gazetted posts. Only for the posts upto the pay scale of Rs.455-700/-, powers were delegated to Senior Scale Officers. As mentioned above, the replacement of scale of the Fifth Pay Commission is Rs.4500-7000/- and, therefore, even according to this delegation a Senior Scale officer cannot be considered as the appointing authority for all categories of non-gazetted staff in the pay scale of Rs.5000-8000/-. Besides it is absolutely clear from Schedule II that he has no powers to impose a number of penalties other than compulsory retirement/removal/dismissal on a staff of this grade.

20. A foot note to Schedule II reads as follows -

"The appointing authority or an authority of equivalent rank or any higher authority who is competent to impose penalties of dismissal, removal or compulsory retirement may also impose any lower penalties."

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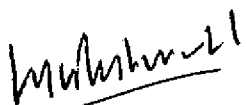
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21. It is thus presumed that an authority competent to impose penalties of the nature of dismissal/removal/compulsory retirement, will also be competent for any other penalty specified in Rule 6. This also shows that penalties other than dismissal/removal/compulsory are regarded as comparatively lower penalties.

22. In this case the order dated 19.3.2001 imposing penalty of removal on the applicant was given by DCM who is a Senior Scale Officer. In this order itself it was mentioned that an appeal would lie to Senior DCM i.e. to an officer of Junior Administrative Grade. The existence of a Senior DCM shows that the DCM was not holding an independent charge. According to the disciplinary powers given in Schedule II, a Senior Scale officer who is not holding an independent charge is not competent to impose penalties mentioned in 3 (a) onwards on a person in the pay scale of Rs.1600-2660/- (Fourth Pay Commission) and above. The replacement scale is Rs.5000-8000/-. Thus it is absolutely clear that a Senior Scale Officer cannot impose penalties like withholding of promotion or reduction in rank or reduction to a lower time scale of pay on a railway servant in the pay scale of Rs. 5000-8000/-. In view of this, any higher higher penalty would certainly be clearly outside the ambit of power of an officer of this grade.

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23. In view of the discussions herein above, we are of the considered view that although a Senior Scale officer not holding independent charge was competent to initiate disciplinary proceedings under Rule 8 (2), but he was not competent to impose any penalty higher than withholding of promotion/increments as per provisions contained in Rule 7 (2) and Schedule II of the Railway Servants (Discipline & Appeal) Rules, 1968. We, therefore, hold that the impugned order dated 19.3.2001 removing the applicant from service was passed by an authority not competent to do so. As a result the order of removal dated 19.3.2001 is quashed and set aside along with order dated 14.6.2001 of the appellate authority and order dated 17.9.2001 of the revisional authority. The applicant would be entitled for reinstatement. The respondents will be at liberty to proceed in the matter by referring it to a competent authority for appropriate orders and also the period relating to absence from duty. The OA is disposed of accordingly. No costs.


(S. G. Deshmukh)
Member (J)


(A. R. Agarwal)
Vice Chairman

**CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI**

Dated this Thursday the 2nd day of February, 2006

**Coram: Hon'ble Shri A.K. Agarwal - Vice Chairman
Hon'ble Shri Muzaffar Husain - Member (J)**

**Contempt Petition No.57 of 2005
(Arising in OA 729/01)**

R.R.Ranpise,
Ex-Head Booking Clerk,
Kurla Terminus (LTT),
Central Railway, Mumbai.
R/o Rly.Qtrs.No.MS/RB/II/8/6,
Rly. Colony, GTP Nagar, Mumbai.
(By Advocagte Shri G.S.Walia)

- Applicant

Versus

Shri A.Z.Ansari,
General Manager,
Central Railway, Hqrs Office,
Mumbai CST, Mumbai.

Shri R.S.Virdi,
Divisional Railway Manager,
Mumbai Division, Central Railway,
DRM's Office, Mumbai, CST,
Mumbai.

Shri Avinash K.Garekar,
Addl. Divisional Railway Manager (S),
Mumbai Division, Central Railway,
DRM' s Office, Mumbai CST,
Mumbai.

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Shri Arvind Malkhede,
Sr.Divisional Commercial Manager,
Mumbai Division,
Central Railway, DRM's Office,
Mumbai CST, Mumbai.

Shri R.B.Dixit,
Divisional Commercial Manager,
Mumbai Division,
Central Railway, DRM's Office,
Mumbai CST, Mumbai.

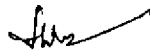
(By Advocate Shri V.S.Masurkar) - Respondents


ORDER

Per: A.K.Agarwal – Vice Chairman

Heard the learned counsel of parties.

2. The learned counsel for the respondents submitted a copy of letter dated 1.2.2006 issued by Divisional Railway Manager, Personnel Branch, Mumbai indicating that the applicant has been reinstated in service. Thus the direction of the Tribunal has been complied with. The Contempt Petition is therefore dismissed. Notices are discharged.


(Muzaffar Hussain)
Member (J)


(A.K. Agarwal)
Vice Chairman

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