

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL (5)
BOMBAY BENCH

Exh. R. 12

Review Petition No.59/94
in
Original Application No.347/90

Narayan D. Apte

.. Original Applicant
(Present Respondent)

Vs.

Union of India through
Secretary, Ministry of
Defence and 2 others.

.. Original Respondents
(Present Review Petitioners)

Coram: Hon'ble Shri Justice M.S.Deshpande,
Vice-Chairman

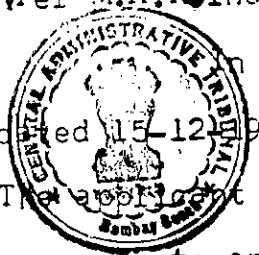
Hon'ble Shri M.R.Kolhatkar, Member(A)

Appearances:

1. Mr.R.K.Shetty
Counsel for
Review Petitioner.
2. Mr.D.V.Gangal
Counsel for
present respondent.

TRIBUNAL'S ORDER:
(Per M.R.Kolhatkar, Member(A))

Date: 7-10-94.

 In this Review Petition, our order dated 15-12-1993 has been sought to be reviewed. The applicant held a Group 'C' post under the respondents and a chargesheet was given to him on 25-3-1981 by the General Manager. The penalty of withholding of the next three annual increments without cumulative effect was imposed on the applicant on 4-2-1984. In the judgment the entire disciplinary proceeding culminating in the order of finding him guilty and the penalty was held to be bad on the short ground that the powers of

appointment and disciplining the employees of the category of the applicant were delegated by the DGOF to the General Manager only w.e.f. 26-11-86. The applicant was denied promotion as the DPC found him 'Not Suitable' for promotion to the post of Supervisor 'B'(Tech). The judgment therefore directed the respondents to hold a review DPC for considering the applicant for promotion w.e.f. the date on which his immediate junior came to be promoted with a direction to the Review DPC to ignore the disciplinary action taken against the applicant while assessing the suitability for promotional post.

2. The grounds urged for the review petition are: Firstly that the applicant nowhere urged in the original application that he was not the competent person for the post of Supervisor 'B'(Tech) and imposing penalty and it was not open to the Tribunal to entertain such a new plea at the argument stage and pronounce a judgment and order. According to the respondents, the General Manager was appointed as Appointing Authority in respect of the applicant by the general circular relating to delegation vide Ministry of Defence No.4(11)/63/II/D/(Fy) dated 14-2-1964(Exhibit 'R2') which position was reiterated by subsequent order No.1480/A/Vig(DEL) dated 11-2-1980. According to the respondents as there was no denial of this position by the applicant, the same was not specifically brought out in the reply of the respondents though it was generally stated that

the General Manager was the competent disciplinary authority. The respondents have also referred to a judgment delivered by the Division Bench of this very Tribunal in O.A. 194/91 decided on 8-3-94 of which one of us (Hon'ble Shri Justice M.S. Deshpande) was a member in which the competence of the General Manager to take disciplinary action against such category of the staff was acknowledged and upheld. In particular para 8 of the judgment is relevant and is reproduced below :

"8. The contention of the learned counsel for the applicant is that this order is dated 11-2-80 and as the applicant was imposed penalty of removal earlier to this order this may not empower the General Manager/Ordnance Factories to exercise the powers of DGOF in removing him from service.

A careful perusal of this order will indicate that this order of 11-2-80 is only by way of reiteration of power conferred on the General Manager/Ordnance Factories way back in 1964. As per the Ministry of Defence letter No.4(11)/63/II/D(FY) dt.14-2-64 General Managers have full concurrent powers to recruit N.G.Officers upto and including Assistant foreman right from 14-2-64. As the applicant was only a Chargeman Grade II at the time of his removal from service General Manager/Ordnance Factories has full powers to remove him from service because of the powers conferred on him from 1964 onwards by the above said letter. Further the order of removal dated 10.3.80

was signed by the General Manager himself who by the above said letter is competent to appoint the applicant in non-gazetted service as Chargeman Grade II. Even the appointment order of applicant on 30-12-64 had been signed by the then General Manager/ Ordnance Factories only. Hence we see no violation of any statutory rules much less use of powers arbitrarily in removing the applicant from service. Hence both the contentions that issue of charge sheet by a subordinate authority to the Director General/ Ordnance Factories and General Manager/ Ordnance Factories and his removal by General Manager/Ordnance Factories are irregular cannot be sustained and hence fails. "

The ^{original} respondents therefore submit that there is an error apparent on the face of the record, that their contentions in the Review Petition go to the root of the matter and therefore the order dated 15-12-93 needs to be reviewed.



The original applicant and the respondent in this review petition has resisted the review petition on the following grounds. The review petition nowhere explains as to why 1964 order was not pointed out to the Hon'ble Tribunal at the time of the hearing of the original application. Secondly there is a distinction between delegation of administrative and financial powers and delegation of statutory powers as contained in CCS(CCA) Rules. Thirdly the applicant was appointed two days prior to the Presidential notification dt. 14-2-64 making the delegation in favour of the General Manager and therefore the disciplinary authority of the applicant

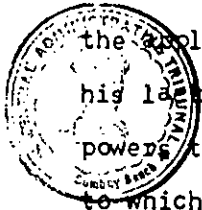
still remains the DG and not GM. Fourthly the original applicant has referred to the Supreme Court case of Krishna Kumar vs. Divisional Assistant Electrical Engineers & Ors. 1980 SCC (L&S) Page 1. In this case which was delivered on behalf of three Judge Bench of the Supreme Court by Hon'ble Shri Chandrachud CJ, the appellant was appointed as a Train Lighting Inspector under an order issued by the Chief Electrical Engineer and was removed from service under an order passed by the Divisional Assistant Electrical Engineer. Since the appellant was removed by an authority subordinate in rank to the appointing authority, it was held that the order of removal was in patent violation of provisions of Article 311(1) of the Constitution. According to Original Applicant, this ratio fully applies to him. Fifthly the original applicant states that the Daniel's case viz. Scientific Adviser to the Ministry of Defence vs. S. Daniel, (1991)15 ATC 799 which is a decision of two Judge Bench of the Supreme Court rendered on 10-4-90 does not also help the review petitioner because in that case it was held that if there is actual appointment by superior authority, then delegation to lower authority does not clothe the inferior authority the power to take disciplinary action. Sixthly even assuming that the first part of the judgment relating to disciplinary proceeding and penalty are reviewed, the second part of the judgment relating to the review DPC directing the respondents to consider the original applicant for promotion should remain especially because the punishment is a minor one.

4. Let us consider the various arguments for and against review seriatim. So far as the first argument of the review applicant is concerned.

the same appears to be valid because the relevant para in the O.A. vide para 5(a) reads as below :

"a. Right to know is the basic foundation of Rule of Law and equality before law. Unless a citizen knows what the law is, he cannot command the state to follow the Law. Therefore, it was the duty of Disciplinary Authority/Appointing Authority/Respondents to satisfy the applicant and show to him if at all any proof was existing that subordinate authorities are competent to issue a chargesheet to the applicant. Until that delegation was shown to the applicant, it must be held that under CCS(CCA) Rules, 1965 there was no delegation to the subordinate authority to issue chargesheet. Assuming without admitting that such a delegation is existing, yet the same was not shown to the applicant when demanded, thereby violating the basic foundation of Rule of Law of right to know. Thus, there is violation of Article 14 and 16 of the Constitution."

It is clear from a ^{plain} reading of the ground that the applicant has only raised the issue regarding his lack of knowledge regarding delegation of powers to issue a chargesheet to the applicant to which the reply of the respondents is that sub-rule (3) of Rule 14 of the CCS(CA) Rules 1965 provide that a chargesheet can be signed by a subordinate officer of the disciplinary authority and as such there has been no violation of any of the provisions of Article 14 and 16 of the Constitution of India. We also note that original respondents have taken the ground vide para 13 that the power of making appointment in Group 'C' and 'D' has been delegated to respondent No. 2 by Respondent No. 2 who is the authority indicated in the schedule to CCS(CA) Rules



in terms of sub-rule (1) of the Rule 9 ibid;
and that the applicant is a Group 'C' employee
in the industrial establishment; that sub-rule
2(a) of Rule 12 empowers the appointing authority
to impose any of the penalties specified in
Rule 11 of the CCS(CCA) Rules, 1965 on a government
servant, and as such respondent No.3 has due
authority to initiate the disciplinary proceedings
and impose penalty on the applicant. The first
contention of the review applicant is therefore
borne out by record. So far as the second ground
of the review applicant is concerned it is true
that a judgment was delivered on 8-3-94 by
division bench. But that is a subsequent judgment
and it cannot be said to be binding on us though
it can have persuasive authority.

5. So far as the arguments of the
respondent (original applicant) are concerned,
the reason as to why 1964 order was not
specifically brought to the notice of the
Tribunal is not specifically explained by the
review applicant but we are required to note
the general contentions raised by the review
applicant (original respondent) in the written
statement in the O.A. and we are also required
to note the handicap that the grounds about
the delegation of power ^{having} ~~have~~ come into effect
on 26-11-1986 was brought up for the first time
only at the argument stage and was not there
in the original pleadings. We, therefore, do not
consider that this argument of the original
applicant has ^{any} ~~no~~ validity. The second argument
regarding distinction between delegating

..8/-

financial and administrative powers and delegation of statutory powers is without substance. It amounts to saying that the powers of the appointing authority under the CCS(CCA) Rules cannot be delegated.

That, however, is not borne out by the rules because the rules specifically provide vide Rule 12 on the subject of "Disciplinary Authority". Sub rule (2)(b) states that the penalties specified in Rule 11 may be imposed by the authorities specified in the schedule in this behalf by general or special order of the President. Thus this rule, envisages a special order being issued by the President specifying the authority which can impose the penalties. In the review petition at Annexure R-2 is the order dated 14-2-1964 which reads that the President is pleased to lay down the revised financial



of the D.G. O.F. and the General Managers in Annexures I and II respectively to this letter.

Although the reference is to the financial powers, the subject is delegation of administrative and financial powers and the powers enumerated under the administrative of GM deal with powers under item No. 6/ creation of posts and deal with item no. 7/ recruitment of staff. The distinction sought to be made by the original applicant between the administrative delegation and the statutory delegation therefore is not borne out by the rules and record and is required to be rejected. The third ground is that the applicant was appointed prior to the Presidential notification and therefore he

was not appointed by the General Manager but by the DG. Thus the case materially differs from O.A.194/91 in which the order of appointment was dated 30-12-1964 i.e. subsequent to the delegation. There is substance in what the original applicant states and Krishna Kumar's case would have helped him if any of the three penalties referred to in Article 311 were imposed on the applicant viz. Dismissal, Removal and reduction in rank. But as noticed above, the penalty imposed is only a minor penalty of withholding of next three annual increments without cumulative effect. Therefore Krishna Kumar's case will not apply. The Fourth argument of the original applicant that Daniel's case does not help the Review Petitioner is not correct, because the ratio of Daniel's case as contained in para 15 which we reproduce below is:

"We agree with the respondents that the expression 'appointing authority' in Rule 12 should have the meaning attributed to it in Rule 2(a). But what is the real and true interpretation of Rule 2(a)? What does that sub-rule talk when it refers to a 'person empowered to make the appointment' in question? These words clearly constitute a reference to Rule 9. Does Rule 2(a) refer then to the authority empowered by the schedule to make the appointments or the authority to whom he has delegated that power or both? We think, on a proper and harmonious reading of Rule 2(a) and Rule 9, that sub-rule (a) of Rule 2 only envisages the authority to whom the power of appointment has been delegated under Rule 9 and not both the delegator and the delegate. "

In our view, therefore, Daniel's case does support the original respondent and does not help the original applicant. The next contention of the

original applicant that the second part of the judgment can still be allowed to stand cannot be accepted because we had set aside the disciplinary proceedings and penalty and had asked the original respondents to hold review DPC and the review DPC to ignore the disciplinary action taken against the applicant while assessing the applicant's suitability for promotional post.

6. In the result we hold that there are sufficient reasons to review our order dated 15-12-93 in O.A. 347/90 and we accordingly review the same. We hold that the disciplinary proceedings against the applicant were legal and valid and it was not vitiated by the fact that penalty was imposed not by the Director General of Ordnance Factories but by the General Manager. Consequently our further order that a review DPC should be held which should ignore the disciplinary action taken against the applicant while assessing the applicant's suitability for promotional post is also set aside. We consider that the O.A. has no merit which accordingly stands rejected.

7. No order as to costs.

(M.R.KOLHATKAR)
Member(A):

(M.S.DESHPANDE)
Vice-Chairman

M

Certified True Copy

Date

Section Officer

Central Tribunal,
Bombay Bench.