

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 1202 /1992

Date of Decision: 23.8.96

D.B.Gaddamwar

Petitioner/s

Shri Utpal Rudra

Advocate for the
Petitioner/s

V/s.

Union of India & Ors.

Respondent/s

Shri M.G.Bhangade

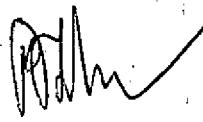
Advocate for the
Respondent/s

CORAM:

Hon'ble Shri B.S.Hegde, Member (J)

Hon'ble Shri P.P.Srivastava, Member (A)

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?


(P.P.SRIVASTAVA)
MEMBER (A)


(B.S.HEGDE)
MEMBER (J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI
CAMP : NAGPUR
OA. NO. 1202/92

23rd this the day of August 1996

CORAM: Hon'ble Shri B.S.Hegde, Member (J)
Hon'ble Shri P.P.Srivastava, Member (A)

Diwakar Baburao Gaddamwar
Supervisor 'B' Grade (Non Tech.)
Ordnance Factory, Chandrapur.

By Advocate Shri Utpal Rudra ... Applicant
V/S.

1. Union of India
Through its Secretary,
Ministry of Defence (Prod.),
South Block, New Delhi.
2. The Chairman/D.G.O.F.
Ordnance Factory Board,
10/A, Auckland Road,
Calcutta.
3. The General Manager,
Ordnance Factory, Chanda
Tq. Bhadrawati, Dist. Chandrapur.

By Advocate Shri M.G.Bhangade
C.G.S.C. ... Respondents

ORDER

(Per: Shri P.P.Srivastava, Member (A))

The applicant in this case is challenging the order of the disciplinary authority placed at 'Annexure-C' at page 15 dated 17.2.1983 wherein the penalty of withholding of three increments without cumulative effect has been imposed on the applicant. The applicant has also challenged the appellate order dated 9.5.1988 wherein the appeal of the applicant has been rejected as well as the order of reviewing authority, i.e. President of India who has upheld the order of the appellate authority.



2. The applicant's counsel has argued that the challenge in this OA. is on the basis of the points which have been raised in OA.NO.1190/92 in as much as here also the applicant has challenged that the General Manager is not competent to impose any penalty as the powers have not been delegated to the General Manager although he happens to be the appointing authority. Since we have already given a finding  and have dismissed the OA.No. 1190/92, the present OA.NO.1202/92 is also accordingly dismissed as having no merit.

3. A copy of the order passed in OA.NO. 1190/92 be placed on record along with this judgement.



(P.P.SRIVASTAVA)

MEMBER (A)



(B.S.HEGDE)

MEMBER (J)

mrj.

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

CAMP : NAGPUR

for OA 1202/92

JSR JEL

OA.NO.1190/92

23rd this the day of August 1996

CORAM: Hon'ble Shri B.S.Hegde, Member (J)
Hon'ble Shri P.P.Srivastava, Member (A)

Diwaker Bapurao Gaddamwar
Supervisor B Grade,
Non-Technical, Ordnance Factory,
Chandrapur.

By Advocate Shri Utpal Rudra ... Applicant
v/s.

1. The Union of India through it's Secretary, Ministry of Defence (Production), South Block, New Delhi.
2. Chairman/Director General of Ordnance Factories, 10/A, Auckland Road, Calcutta.
3. The General Manager, Ordnance Factory, Chanda.

By Advocate Shri M.G.Bhangade C.G.S.C. ... Respondents

ORDER

(Per: Shri P.P.Srivastava, Member (A))

The applicant was working as Supervisor in 'B' Grade in Ordnance Factory, Chanda. He was issued a charge-sheet dated 13.9.1984. Afterwards the applicant submitted his representation against the charge-sheet on 20.10.1984. Thereupon, the General Manager, Ordnance Factory, Chanda had imposed the penalty of withholding one increment without cumulative effect vide his order dated 15.1.1985. The applicant submitted an appeal against this order to the Chairman, Ordnance Factory Board, Calcutta. The Chairman has dismissed his appeal

vide his order dated 12.2.1986. Afterwards, the applicant also submitted a revision petition on 27.11.1990 to the Secretary, Ministry of Defence (Production), New Delhi. The Revision Petition was also dismissed on 22.4.1992. Aggrieved by all these orders of disciplinary authority, appellate authority and revising authority, the applicant has approached this Tribunal through this OA.

2. The counsel for the applicant has raised the question of jurisdiction of disciplinary authority in this case. The counsel for the applicant has argued that according to the Schedule Director General, Ordnance Factory is the only disciplinary authority for the applicant for all purposes and since the General Manager is a lower authority than the Director General in the Ordnance Factory and since no delegation has been made to the General Manager for taking disciplinary action under rules, the General Manager was not competent to impose any of the penalties on the applicant on the date when the penalty was imposed. The counsel for the applicant has also argued that the delegation to the General Manager for taking disciplinary action has been made in the year 1987 and since the penalty was imposed before 1987 by the General Manager, he was not competent at that time to impose the penalty on the applicant. The counsel for the applicant has also argued that although the General Manager was empowered to make the appointment vide the administration order dated 2.3.1972 it would in itself not entitle the General Manager to take disciplinary action and impose penalties on the applicant unless specifically authorised to do so which authority, according to the counsel for the applicant has been delegated only in 1987.

3. Counsel for the respondents on the other hand has brought to our notice a letter dated 15.10.1973 which is a letter in continuation of Circular dated 2.3.1972 referred to above.

In this letter it has been clarified that :-

"By virtue of this delegation of Power, the General Managers etc. of Factories will be deemed to be appointing authorities specified in the Schedule to C.C.S.(C.C.A.) Rules 1965 within the meaning of Rule 12(2)(a) ibid for purposes of imposing penalties both minor and major under Rule 11 ibid to the Class III and Class IV Industrial and Non-Industrial employees excepting the categories of Staffs specified in the annexure to the letter under reference."

4. Counsel for the applicant has argued that this specific clarification was the issue which was under consideration in a case before Central Administrative Tribunal, Allahabad Bench between General Manager, Ordnance Equipment Factory vs. Supriya Roy decided on 1.9.1987. Counsel for the applicant has drawn our attention specifically to Para 13 of this decision which reads as under :-

"13. A bare perusal of the aforesaid entries goes to convince that formerly DGOF alone was the appointing authority of Class III and Class IV posts of the Ordnance Factories and he alone was authorised to impose penalties mentioned under Rule 11 of the CCS Rules. The powers of appointment were delegated by the DGOF Calcutta to the General Managers of the Ordnance Factories under the proviso to rule 9(1) of the CCS Rules under the notification dated 2.3.1972 mentioned above. By delegation of such power the General Manager, however, did not acquire the right of imposing the penalties mentioned in column 4 of the schedule, as above, and for the first time this power of imposing the penalty on class III and IV employees was delegated to the General Manager by the President under the notification dated 2.1.1987. The comparative study of these relevant

provisions clearly goes to show that the proviso to of rule 9 (1) added by the amendment dated 1.7.1966 did not serve the purpose and despite the delegation of the power of appointment to the General Manager the power of imposing penalties could not be delegated by the DGOF under his own orders, the President therefore after considering the desirability of delegating even such powers of DGOF, had issued the aforesaid order of amendment in the CCS Rules and the schedule attached thereto. We are, therefore, of the view that despite the appellant being appointing authority of the respondent, he was not competent to impose any penalty on him before 2.1.1987."

For these observations in Para 13, the Tribunal has given reasoning in Para 14 which reads as under :-

" 14. In support of our view, we will like to refer certain provisions of the CCS Rules here. According to the definition of the 'disciplinary authority' given by clause (g) of rule 2 of CCS Rules, the 'Disciplinary authority' means the authority competent under these rules to impose on a Government Servant any of the penalties specified in rule 11. Clause (a) of rule 2 of CCS Rules defines the 'appointing authority' and lays down that if the authority which appointed the Govt. servant is not the same authority which is also empowered to make such appointment, the appointing authority shall mean highest authority. In the present case, the General Manager had appointed the respondent but the DGOF was also empowered to make his appointment and as such, the DGOF should be his appointing authority within the meaning of this definition and as under the entry (xi) of the schedule quoted above, the DGOF alone was competent to impose penalty, the General Manager could not exercise the powers of the punishing authority. A similar matter had cropped up before a Division Bench of the Andhra Pradesh High Court in B. Daniel v. Scientific Advisor to the Ministry of Defence (1980 LIC 881), and it was observed in that case that the meaning of the definition given in rule 2 (a) is that the authority which actually appoints a Govt. servant need not necessarily be appointing authority within the meaning of CCS Rules. The decisive

test to locate the appointing authority is not who appointed but among the official hierarchy who is highest. The words 'appointing authority' used in rules 12 and 13 have been used in the above special sense which rule 2(a) has assigned to these words. The disciplinary power could not be delegated under rule 9(1) or any other rule of the CCS Rules. The view taken by us, thus, finds support from this decision of the Andhra Pradesh High Court."

5. Counsel for the respondents on the other hand has argued that the controversy regarding the appointing authority and the disciplinary authority as brought out in the Tribunal's judgement of Allahabad Bench as well as the Andhra Pradesh High Court in S.Daniel vs. Scientific Advisor to the Ministry of Defence quoted in the above judgement has been finally decided in terms of the Supreme Court decision in Scientific Adviser to the Ministry of Defence & Ors. vs. S.Daniel & Ors. (1991) 15 ATC 799. The counsel for the respondents has argued that the decision taken by the Hon'ble High Court of Andhra Pradesh in S.Daniel's judgement has been reversed by the Apex Court in the above judgement. According to this judgement of the Apéx Court, the imposition of penalty by the appointing authority against any is not legal provisions. In Para 4 of the judgement, it has been mentioned as under :-

" 4. We shall take Daniel case (C.A.Nos. 1210 to 1217 of 1980) as illustrative of the cases under the Civil Service Rules. Though the employees in these and connected matters are Class III employees of Research Laboratories attached to the Ministry of Defence (shortly referred to as DRDL, DMAL, DERL and DLRL), they are serving in civil

posts therein and, hence, governed by the Civil Service Rules. They had been appointed by the Director of the Laboratory. Disciplinary proceedings were initiated against them by the Director. There is, therefore, no possibility of any eventual violation of the constitutional prohibition in Article 311(1) against a government servant being dismissed or removed from office by an authority subordinate to the appointing authority."

6. Further in Para 15 of the judgement the question of appointing authority and the disciplinary authority as mentioned in Rule 2(a) and Rule 12 have been dealt with which reads as under :-

"15. Still the basic question that remains is, whether, in the context of Rule 2(a) read with Rule 9(1), the reference to the authority empowered to make the appointment is to the authority mentioned in the proviso to Rule 9 or to both the authorities falling under the main part of Rule 9(1) as well as the proviso. The sheet anchor of the respondent's case is that the expression 'appointing authority' is used in very few of the rules. One of them is Rule 12 and there can, therefore, be no valid reason to refuse to apply the definition clause in the context of those rules. It is urged that, by holding the person specified in the schedule also to be the 'appointing authority' as defined in Rule 2(a), none of the other rules relating to appeal, revision, etc. become redundant as urged on behalf of the appellants. 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."

Further, in the same para, the Hon'ble Supreme Court has observed at page 819 while giving the reasons to reach the above conclusion that :-

"The whole intent or purpose of the definition to safeguard against an infringement of Article 311(1) and ensure that a person can be dealt with only by either a person competent to appoint persons of his class or the person who appointed him, whoever happens to be higher in rank."

7. In view of these observations of the Hon'ble Supreme Court in S.Daniel's case, there is no doubt that the punishment order passed by the appointing authority cannot be illegal. In this case, the appointing authority being the General Manager, the punishment order which has been passed by the General Manager cannot be termed as illegal. We are of the opinion that the observations made in the decision of the Allahabad Bench of the Central Administrative Tribunal in Supriya Roy's case, referred to above, stands superseded by the judgement of the Supreme Court in S.Daniel's case, also referred to above. This issue has also come for decision before this Tribunal in OA.NO. 512/89, Gajanan W.Rangari vs. Deputy Director, Vigilance, Ordnance Factory Board, Calcutta, wherein it has been observed in Para 9 as under :-

"9. Reliance was placed on several decisions of the Tribunal and High Courts which would have supported the contention of Shri Deshpande. However, the controversy is now set at rest in Scientific Adviser to the Ministry of Defence & Ors. vs. S. Daniel & Ors. (1991) 15 ATC 799 dealing with the contention which has now been raised before us. It was observed in Para 17 as follows:-

" It has been brought to our notice that notifications have since been issued (for example on August 29, 1979 in the case of the DCR and January 2, 1987 in the case of Ordnance Factories) by the President under Rule 12 empowering certain authorities to exercise disciplinary powers. We need hardly say that any disciplinary proceedings initiated by such authorities from the date when such notifications came into effect will be perfectly valid."

In view of these observations of the Supreme Court, both under the communication dated 2.3.1972 as well as the Notification dated 26.11.1986 the General Manager had the power of initiating proceedings against the applicant and also imposing any penalty that was covered by the rules. Since these were the valid instructions on the powers vested in him, no exception can be taken either to the initiation of the proceedings or to the imposing of the penalty by the General Manager."

8. In the result, we see no merit in the OA.
and the same is dismissed.

^ 11
(P.P. SRIVASTAVA)
MEMBER (A)

(B.S. HEGDE)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Review Petition Nos. 69/97 and 71/97
Original Application No. 1190/92 and 1202/92

CORAM: Hon'ble Shri B.S. Hegde, Member (J)

Hon'ble Shri P.P. Srivastava, Member (A)

Diwakar Bapurao Gaddamwar,
Supervisor 'B' Grade (N/T)
Ordnance Factory, Chanda P.O.
Chandrapur Ordnance Factory,
Tahsil Bedrawati District
Chandrapur.

... Applicant.

V/s.

Union of India and others.

... Respondents.

Tribunal's order on Review Petition by Circulation.

¶ Per Shri B.S. Hegde, Member (J)

Dated: 13.8.97

The applicant has filed this Review Petition seeking review of the judgement dated 23.8.96. The judgement despatched on 4.9.96 and received by the applicant on 13.9.96. The Review Petition has been filed on 6.2.97, after a lapse of 115 days. The applicant has not filed any M.P. for condonation of delay in filing the Review Petition. The only contention raised in the Review Petition is that the Tribunal ought to have disposed of the O.A. considering all the points raised in the application. As per Administrative Tribunals Act No application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed. Admittedly though the judgement was received on 13.9.96, the applicant has filed this Review Petition only on 6.2.97. In the absence of M.P. for condonation

: 2 :

of delay in filing the Review Petition, the Review Petition is not maintainable. Even on merits the applicant has not made out any ground for seeking review of the judgement.

In the result, we are of the view that the Review Petitions are not only barred by limitation but also on merits no grounds to interfere with our earlier orders. Accordingly the Review Petitions are dismissed by circulation,

(P.P. Srivastava)
Member (A)

(B.S. Hegde)
Member (J)

NS

dd. 13/8/97
order/Judgment despatched
to Applicant/Respondent (s)
on 22/8/97

27/8/97