

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 1500 of 1995.

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DATE OF DECISION: 6-3-96

Shri J. K. Chaurasia, Petitioner

Shri M. S. Ramamurthy, Advocate for the Petitioners

Versus

Union Of India & Others, Respondents

Shri S. C. Dhavan, Advocate for the Respondent(s)

CORAM :

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

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

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

Hegde
(B. S. HEGDE)
MEMBER (J).

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
GULESTAN BLDG. NO. 6, 3RD/4TH FLOOR
PRESCHOT ROAD, FORT, BOMBAY-400 001.

ORIGINAL APPLICATION NO.: 1500 OF 1995.

Dated, this Wednesday the 6th day of MARCH 1996.

CORAM : Hon'ble Shri B. S. Hegde, Member (J).
Hon'ble Shri M. R. Kolhatkar, Member (A).

J. K. Chaurasia ... Applicant

Versus

Union Of India & Others ... Respondent.

APPEARANCE :

1. Shri M. S. Ramamurthy,
Counsel for the applicant.
2. Shri S. C. Dhavan,
Counsel for the respondents.

: ORDER :

¶ PER.: SHRI B. S. HEGDE, MEMBER (J) ¶

1. Heard Shri M.S. Ramamurthy, Counsel for the applicant and Shri S.C. Dhavan, Counsel for the respondents. The applicant in this O.A. challenged the impugned orders passed by the respondents vide dated 09.03.1995 by the Disciplinary Authority, dated 07.06.1995 by the Appellate Authority and Show Cause Notice dated

10.07.1995 by the Revisional Authority i.e. the Senior D.C.M., DRM's Office, Commercial Branch, Bombay V.T., stating that the orders passed by the respective authorities is ab initio void and without jurisdiction and are contrary to rules and the same is required to be set aside.

2. The Tribunal, after hearing the learned counsel for the applicant granted the ex-parte interim order directing the respondents not to impose any penalty in terms of show cause notice dated 10.07.1995 till the next date.

The brief facts are:-

3. The applicant was appointed as a Senior Booking Clerk in the pay scale of Rs. 1200-2040. However, during the tenure of service, on receipt of the Vigilance Officer's report he was kept under suspension and thereafter served with charge-sheet for major penalty for misconduct stated in the statement of Articles of Charges and imputation of mis-conduct. He was given inspection of relevant documents before the enquiry and the enquiry was conducted. The applicant remained present in the enquiry and he was given full opportunity to defend his case. The Enquiry Officer submitted his report holding the applicant guilty of the charges levelled against him. A copy of the enquiry report was furnished to the applicant. Thereafter, he made a representation, which has been

considered by the Disciplinary Authority i.e. the Assistant Commercial Manager (Coaching), who is a group 'B' officer and under the schedule of powers, he is entitled to issue charge-sheet and impose penalty on group 'C' staff in the basic pay upto Rs. 1800/- As the applicant was working as a Senior Booking Clerk at Matunga in the grade of Rs. 1200-2040 and his pay was Rs. 1240/- on the relevant date, the said Assistant Commercial Manager (Coaching) imposed the penalty according to the Discipline & Appeal rules. The Disciplinary Authority imposed the penalty of reduction by two stages in the same scale for a period of two years with cumulative effect, against which the applicant preferred an appeal to the Divisional Commercial Manager, who vide his order dated 07.06.1995 agreeing with the findings of the disciplinary authority, rejected his appeal. In the appeal the applicant did not ask for any personal hearing nor did he point out any violation of principles of natural justice or irregularities in the enquiry proceedings. Under Rule 25(1)(v) the Revisional Authorities are entitled to review on its own motion or otherwise call for the records of the enquiry and pass appropriate orders against the employee. The Revisional Authority, after giving a personal hearing to the applicant, passed an order vide dated 16/21.11.1995 confirming the punishment and dismissal from service with immediate effect. However, the respondents directed the applicant that he may prefer an appeal against this order under Rules 18 and 19 of the Railway Servants

(Discipline & Appeal) Rules, 1968, within a period of 45 days from the date of receipt of order.

4. The Learned Counsel for the applicant, Shri Ramamurthy, vehemently urged that the various orders passed by the respondents are without jurisdiction and the same be set aside. The very order is passed by the Disciplinary Authority who is not competent to pass such an order and similar is the case of Appellate and Revisional Authority. According to him, as per Schedule-II, clause 3 would apply to the facts of this case because the applicant is a Class-III employee and the imposition of penalty was levied by an officer who is not competent to pass such order, since he was in the pay scale of Rs. 1200-2040.

5. The Learned Counsel for the respondents, Shri S.C. Dhavan, submits that the contention raised by the applicant's counsel is untenable because Schedule-II, clause 2 clearly states, who is a competent authority to issue charge-sheet and penalty. Since the applicant was drawing salary of Rs. 1240/- on the relevant date, the punishment imposed by the Assistant Commercial Manager is in accordance with the rules and powers envisaged in Schedule-II, Clause-2 of the disciplinary powers of the non-gazetted staff on zonal railway. Further, he draws our attention to the notification issued by the respondents vide dated 20.10.1989, which is the amended rules to the Railway Servants (Discipline and

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Appeal) Rules, 1968, wherein Rule 25 has been substituted. Under clause (iv) - the appellate authority not below the rank of a Divisional Railway Manager in cases where no appeal has been preferred and under clause (v) - any other authority not below the rank of Deputy Head of Department in the case of a railway servant serving under his control may at any time, either on his or its own motion or otherwise, call for the records of any inquiry and revise any order made under these rules or under the rules repealed by Rule 29, after consultation with the Commission where such consultation is necessary, etc. Since the Revisional Authority has revised the order of the Appellate Authority pursuant to Rule 18, the appeal is permissible under the rules and thereby, the applicant has been directed to prefer an appeal on their passing the order dated 16/21.11.1995, against which he did not prefer any appeal so far. Any penalty imposed under rule 9, if it is revised, the appeal lies against the revised order. The applicant has not availed that opportunity so far.

6. In the light of the above, one thing is clear that the applicant has not availed of the opportunity given to him by virtue of the final order passed by the respondents vide dated 16/21.11.1995 directing him to prefer an appeal against the order of dismissal, which he did not do so. It is not the case of the applicant that he was not

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given due opportunity to defend himself except stating
is
that the penalty imposed by the authorities who are not
competent to pass such orders, thereby, the very penalty
order passed is without jurisdiction and the penalty order
is not maintainable. As stated earlier, the applicant has
not made out any such grievance either in his appeal or
at any later date that he was not given due opportunities.
As a matter of fact, the applicant seems to have agreed to
the charges levelled against him vide his letter dated
11.12.1993 which is in Hindi. Since the applicant has not
preferred any appeal, as provided under the rules and in
the facts and circumstances of the case, we hereby direct
the applicant to prefer an appeal taking all the grounds
which he has taken in this O.A. and file the same within a
period of fifteen days from the date of receipt of a copy
of this order. On receipt of the appeal, the respondents
may give a personal hearing and pass appropriate order in
accordance with law and dispose of the appeal within a
period of two months thereafter. In the result, the O.A.
is disposed of with the aforesaid direction at the admission
stage itself. No order as to costs.

M. R. Kolhatkar
(M. R. KOLHATKAR)
MEMBER (A).

B. S. Hegde
(B. S. HEGDE)
MEMBER (J).