

O.A.No.1079/92

Dt. of order: 29.6.94

V.B.L.Rawat

: Applicant

Vs.

Union of India & Ors.

: Respondents

Mr.J.K.Kaushik

: Counsel for applicant

Mr.Manish Bhandari

: Counsel for respondents

CORAM:

Hon'ble Mr.Justice D.L.Mehta, Vice Chairman

Hon'ble Mr.O.P.Sharma, Member(Adm.)

PER HON'BLE MR.JUSTICE D.L.MEHTA, VICE CHAIRMAN.

Heard the learned counsel for the parties and have perused the records. The applicant was charge-sheeted and penalty of removal from service was imposed by the Disciplinary Authority on 13.10.87 (Annx.A-11). The applicant preferred an appeal. The appeal has been decided on 3.6.88 vide Annx.A-15. It will not be out of place to mention here that the O.A. has been submitted on 10.5.88 and the same has been admitted on 26.5.88. The appeal was decided after the admission of the O.A. From the record it seems that the Respondent No.1, the General Manager, was served on 3.6.88 and the appeal was also decided by the D.F.M. on 3.6.88.

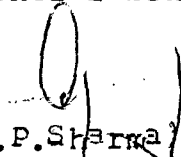
2. For the purpose of this case, it is not necessary to go into the merits of the case in detail. The applicant in para 4 of the O.A. has submitted that the Chief Commercial Supt. Bombay, was promoted and posted him as Commercial Inspector vide order dated 5.9.84. In para 5, it has also submitted been submitted that the applicant was promoted as Sr.Commercial Inspector by the Chief Commercial Supt., Bombay. Further in para 6 it is submitted that the Chief Commercial Superintendent, Bombay was the competent authority to take any action including the action of selection, promotion, reversion, transfer, seniority and all other establishment purposes. The respondents in their reply has submitted that it is a matter of record and it is not necessary to reply in the averments made in paras 4, 5 & 6 of the O.A. Thus they have admitted the position not denying

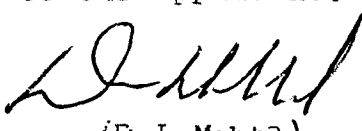
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these averments.

3. The applicant's contention is that the Disciplinary Authority was not competent to impose the penalty of removal from service. It is true that the appointing authority, in the light of the reply submitted by the respondents, is the Chief Commercial Supdt. and not the Sr.Divisional Commercial Supdt. In the course of argument, the learned counsel for the respondents submits that it is not feasible to produce any document or order to show that the Sr.Commercial Inspectors are appointed by the Sr.Divisional Commercial Dupdt. Thus, we are of the view that the Sr.Divisional Commercial Supdt. is not the competent authority to pass the order of removal from service and the penalty has been imposed by a person who was not competent to pass such orders.

4. In the result, the ^{penalty} ~~order~~ passed by the Sr.Divisional Commercial Supdt. is bad in law and is without jurisdiction. This point was also raised by the applicant in Annx.A-12, the memo of appeal but the Appellate Authority, DRM, has not considered this point and passed the order in a mechanical form without application of mind. In the result we are of the view that the Sr.Divisional Commercial Dupdt. was not the competent authority to pass the order of removal from service and the same is bad in law. The consequence is that the Appellate Authority had no jurisdiction to maintain the order or to reduce the penalty because the Disciplinary Authority has acted without jurisdiction as such it cannot be regularised or condoned by him. In the result we accept the O.A. and set aside the order passed by the Appellate Authority Annx.A-15 as well as the order Annx.A-11 passed by the Disciplinary Authority. We would like to observe that the respondents shall be at liberty to proceed according to law in the disciplinary proceedings pending, if they so choose. All the consequential benefits shall be available to the applicant.


(O.P.Sharma)
Member(A).


(D.L.Mehta)
Vice Chairman.