

(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD.

* * *

O.A. 1547/93,
O.A. 1573/93 &
O.A. 6/94.

Dt. of Decision : 26.4.1994.

- | | |
|----------------------|-------------------------------------|
| 1. E. Vankata Ramana | .. Applicant
in OA. No. 1547/93. |
| 2. C. Nagamani | .. Applicant
in OA. No. 1573/93 |
| 3. V. Jayaraman | .. Applicant
in OA. No. 6/94. |

Vs

OAs 1547/93 & 1573/93:

1. The General Manager,
~~South Central Railway.~~
Secunderabad.

2. The Chief Works Engineer,
Railnilayam,
Secunderabad.

3. Deputy Chief Mechanical Engineer,
Carriage Repair Shop,
Tirupathi.

.. Respondents.

O.A. 6/94: *MA. 140/94*

1. Union of India rep. by
SC Rly, Railnilayam,
Secunderabad.

2. Sr. Divisional Mechanical Engineer,
Diesel Shed, SC Rly,
Gooty-RS-Anantapur District.

3. Divisional Railway Manager,
SC Rly, Guntakal-Anantapur Dist.

4. Deputy Chief Mechanical Engineer,
Carriage Repair Shops,
SC Rly, Tirupathi
Chittoor District.

.. Respondents.

Counsel for the Applicants : Mr. K.K. Chakravarthy in
OA Nos. 1547/93 & 1573/93
person in OA No. 6/94.

Counsel for the Respondents : Mr. N.V. Ramana, Addl. CGSC
in all the OAs

CORAM:

THE HON'BLE SHRI JUSTICE V. NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

JUDGEMENT

[AS PER HON'BLE JUSTICE SHRI V. NEELADRI RAO,
VICE-CHAIRMAN]

Heard Shri V. Jayaraman, party-in-person
is not present. Heard
in OA 6/94, Shri K.K. Chakravarthy, learned
counsel for the applicants in OAs 1547/93 &
1573/93 and Shri N.V. Ramana, learned standing
counsel for the Respondents in all the OAs.
2. All the three OAs can be conveniently
disposed of by a common order as some points
which arise for consideration are common in all
these 3 OAs. Charge memo. dated 24-1-91 was
issued to the applicant in OA 1547/93 by Shri
N.S. Sivanandan, Works Manager, while charge memos.
dated 24-1-91 & 8-2-91 were issued to the applicants
in OAs 1573/93 & 6/94 by Assistant Engineer (Electri-
cal) *and* Shri N. Sivanandan, Works Manager
respectively. Shri K. Damodar, Works Manager,
incharge ordered common enquiry against all these
three applicants by issuing proceedings under
Rule 13 of Discipline & Appeal Rules 1968. After
the enquiry, the orders of removal were passed
in regard to the applicants in ^{OAs} 1543/93 & 1573/93
the order of removal of the applicant in OA 6/94
was passed by Senior DME. Appeals against these
three OAs.

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3. By the dates the charge memos. were issued, all the three applicants were working in Carriage Repair Shop, Tirupati and Deputy Chief Mechanical Engineer is the head of the unit. ^(He is) Respondent 3 in OAs 1547/93 & 1573/93 and Respondent 4 in OA 6/94). By the time all these disciplinary proceedings were initiated against the applicants, the applicant in OA 1547/93 was working as Chargeman B in the pay scale of Rs. 1400-2600, the applicant in OA 1573/93 was electrical fitter Gr. II in the pay scale of Rs. 1200-2040 and the applicant in OA 6/94 was working as Lab Superintendent in the pay scale of Rs. 1640-2900/-.

4. The schedule of powers compiled by the -----, states that the Senior Scale Officer is the competent authority to make first appointment to non-gazetted posts upto and inclusive of scale of Rs.450-700 same is equivalent to Rs.1400-2600/- as per the pay scale of the 4th Pay Commission. Shri K. Damodar who ordered common proceedings against these 3 applicants was Senior Scale officer and he was placed in ----- Carriage Work Shop. One of the contentions raised for the applicants is that Shri K. Damodar was not competent to order common proceedings as he was not the disciplinary authority in the ^{regard to} ~~case of~~ any of these three applicants.

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5. Article 311 of the Constitution envisages that any authority lower than the appointing authority cannot impose punishment by way of compulsory retirement, removal from service, or dismissal from service. As such, it is laid down in schedule ^{II} of D&A rules that the order of punishment by way of compulsory retirement, removal from service and dismissal from service can be imposed only by the appointing authority or an authority ^{of} equivalent rank or of any higher authority. It is seen from the schedule of powers that Shri K. Damodar who was senior ^{scale} officer at the time was competent to appoint only the applicants in OAs 1547/93 & 1573/93 and he was not competent to appoint the applicant in OA 6/94 for by then the applicant was in the pay ^{senior scale} officer was competent to appoint non-gazetted staff upto and inclusive of the pay scale of Rs.1400-2600. As such, Shri Damodar was not the disciplinary authority in regard to Shri Jayaraman, the applicant in OA 6/94. ~~fact~~, Shri Damodar has not passed the order of removal of Shri Jayaraman.

6. Rule 13 of D&A Rules to the extent to which it is relevant is as follows:

Rule 13 (1) " Where two or more Railway servants are composed in any case, the President from service on all such Railway servants, may make an order directing disciplinary action against all of them may be taken in a common proceedings.

Note:-

If the authorities competent to impose the penalty of dismissal on such Railway servants are different, an order for taking disciplinary action in a common proceeding may be made by the highest of such authorities with the consent of the others. "

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7. It is manifest from the note to Rule 13 (1) that if the authorities competent to impose the penalty of dismissal on such Railway servants as referred to in Rule 13(1) are different, then the order for taking disciplinary action in common proceedings has to be made by the highest of such authorities with the consent of others. It is evident from the facts narrated that the disciplinary authority competent to impose the penalty of removal or dismissal of Shri Jayaraman ~~has to be~~ an authority higher to Shri K. Damodar who was then only a Senior Scale officer. Thus it is clear that Shri Damodar was not the highest of the disciplinary authorities, and as such, the contention for the applicant that the order in regard to all the three applicants is illegal has to be held as tenable. In view of that infirmity, the entire enquiry ~~has~~ against all these ~~three applicants has to be held as void, thereby~~ ~~it is clear that~~ the orders of removing all these three applicants from service are void. In this view, it is not just and proper to advert to the ~~the applicants and~~ hence we are not expressing any view in regard to the same.

8. While setting aside the orders of removal ~~if necessary, it is just and proper to~~ give liberty to the competent authority to order joint enquiry, if so advised, and to continue the enquiry on the basis of the charge memos. issued to these applicants.

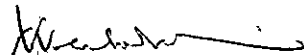
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9. In the result, the orders removing the applicants from the service are set aside. The competent authority is free to order common proceedings against these applicants, if so advised on the basis of the charge memos. issued to them. GAs are ordered accordingly.

10. As the OAs are disposed of, the MAs ^{had} ^{Accordingly they are dismissed} in these OAs become infructuous. No costs.



(R. RANGARAJAN)



(V. NEELADRI RAO)
Vice-Chairman

Dated the 26th April, 1994

Open court dictation

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Deputy Registrar

Copy to:-

1. General Manager, South Central Railway, Railnilayam, Secunderabad.
2. The Chief Works Engineer, South Central Railway, Railnilayam, Secunderabad.
3. Deputy Chief Mechanical Engineer, South Central Railway, Carriage Repair Shop, Tirupathi.
4. Sr. Divisional Mechanical Engineer, Diesel Shed, S.C. Railway Gooty-RS-Anantapur District.
5. Divisional Railway Manager, S.C. Railway, Guntakal, Anantapur District.
6. One copy to Sri. K.K. Chakravarthy, advocate, CAT, Hyd.
7. One copy to Q.R.No.108F, East colony, Renigunta, Chennai Railway.
8. One copy to Sri. N.V. Ramana, SC for Railways, CAT, Hyd.
9. One copy to Library, CAT, Hyd.
10. One spare copy.

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