

(45)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

O.A.No.979/94

Dated: 6th December, 1996

Between:

G. Satyanarayana
Station Superintendent,
S.C. Railway
Ginigere Rly. Station. ... Applicant

and

1. Union of India rep. by
General Manager,
S.C. Railway,
Secunderabad.
2. The Divisional Railway Manager,
S.C. Railway, Hubli.
3. The Senior Divisional
Operating Manager,
S.C. Railway, Hubli.
4. The Divisional Safety Officer,
S.C. Railway, Hubli.
5. Shri N.D.Venkata Subbu,
Inquiry Officer &
Station Supdt.,
Hubli, now working at Akola,
Maharashtra State.
6. Shri Nirikshana Rao,
Stn. Supdt.,
Papinayakanahalli,
Hospet Taluk, Bellary Dt.,
Karnataka. ... Respondents

Mr. N. Raman ... Counsel for applicant
Mr. J.R.Gopala Rao ... Counsel for Railways

CORAM

HON'BLE MR. JUSTICE M.G. CHAUDHARI, VICE CHAIRMAN *Redd*
HON'BLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.) *Redd*

O R D E R

46

Oral order (per Hon'ble Mr. Justice M.G.Chaudhari, VC)

Mr. N. Raman for the applicant. Mr. JR Gopala Rao for the Railways.

2. By order dated 29.11.93 the disciplinary authority (Senior DOM/UBL) has imposed the penalty of reduction of pay by one stage lower below in time scale of pay for 24 months (recurring) with immediate effect upon the applicant and his pay has been reduced from Rs. 2975/- to Rs. 2900/- in the time scale of Rs. 2000-3200 (RSRP) for a period of 24 months (recurring) with immediate effect from the date of the said order. The appeal preferred by the applicant against the said order has been dismissed by the appellate authority by order dated 21.4.94 and the penalty has been confirmed. The applicant has challenged these two orders in this O.A. and prays that the same may be quashed and set aside and he should be directed to be promoted to the next higher grade. The prayer for seeking relief for promotion is misconceived in the proceeding which is directed to challenge the order of punishment in a disciplinary proceeding.

3. Two contentions are raised by Mr. N.Raman, learned counsel for the applicant. Firstly it is submitted that the authority who issued the charge memorandum had no jurisdiction to institute the proceedings as he was lower in rank to the disciplinary authority and therefore the entire proceedings of the disciplinary enquiry and the impugned orders are vitiated. The second point urged is that it is wrongly held that the charges levelled against the applicant have been proved inasmuch as the guilty persons were some others and the guilt has been wrongly foisted upon the applicant.

4. The respondents resisted the application. However, they do not dispute that at the material time, the applicant was working as Deputy Superintendent at Gadag Railway Station.

W.D.

They further do not dispute that the chargesheet was issued by the Divisional Safety Officer.

5. It is common ground that the Senior Divisional Operations Manager was the appointing authority of the applicant. The question is as to whether the charge-memorandum having been issued by the Divisional Safety Officer who was lower in rank than the appointing authority and also not being the disciplinary authority, was competent to issue the same. The learned counsel for the applicant sought to rely on instructions of the Railway Board issued from time to time defining the authority competent to impose major penalty and to submit that the Divisional Safety Officer who issued the charge-memo was not the competent authority, more so as he belonged to Safety Department, whereas the applicant was working in operating Department. In this connection it is stated in the reply of the respondents that the Senior Divisional Operations Manager and the Divisional Safety Officer were empowered to exercise the powers of the disciplinary authority in respect of operating staff in a Division upto 16.6.93. Thus the charge-memo could be issued by the Divisional Safety Officer. However, the order of penalty was imposed by the disciplinary authority himself, i.e. the Senior Divisional Operations Manager.

6. The learned counsel for the respondents has shown us letter No. P-90(D&A)/Misc./ dated 28.8.84 issued by the Chief Personnel Officer, SC Railway which clarifies that Senior Divisional Safety Officer/Divisional Safety Officer in a divisional set-up forms a part of the operating department and he could exercise ~~the~~ powers of disciplinary authority in respect of operating staff in a Division. However, the said letter does not refer to any authority conferred on the Chief Personnel Officer to issue the said circular to a lower authority. The clarification has also not been issued by the General Manager of South Central Railway. The respondents have not in their re

W.W

explained as to how the C.P.O. was competent to issue this circular. We may assume for the sake of argument that he may be but so competent, in the absence of any material shown to that effect, we cannot act on that assumption. The respondents have not explained in the counter as to what is the status and extent of powers of Divisional Safety Officer, whether he is connected with the operating Department and whether he could discharge the functions of Senior Divisional Operations Manager.

The necessity to expect such explanation in the reply which is not offered also becomes relevant in the context of the further instructions issued by the C.P.O. on 16.6.93 to which reference has been made in para 4 of the reply. That circular, in terms of Railway Board letter dated 16.10.73, ^{states} ~~needs~~ that disciplinary action should be initiated and finalised by the authorities under whose administrative control the delinquent employee may be working and that the Board have also stated that it would be procedurally wrong for an authority to initiate and finalise disciplinary proceedings against the employee who is not under its administrative control. It was mentioned that the Board after citing an example have stated that disciplinary authorities in case of SMS/ASMs could be only an operating department officer, even though SMS/ASMs are entrusted with commercial duties as well. The circular also states that in respect of one staff of operating department both the Divisional Safety Officer and Divisional Operating Manager cannot function as disciplinary authority as it will vitiate the basic concept of 'one servant one master' principle. It further clarifies that only Senior DOS and DOS can function as disciplinary authority in respect of staff of operating department with regard to all offences committed by the staff--whether operation, commercial or safety, etc. That clearly goes to show that unless it was shown that the DSO in the instant case was functioning as disciplinary authority in respect of staff of operating department, he could not initiate the proceedings by

hch

issuance of charge memo in respect of a staff in operating department. Unfortunately the respondents have not given necessary particulars in their reply on this aspect. That precisely is the contention of the learned counsel for the applicant.

7. In IGP and another Vs. Thavasiappan, (1996) 2 SCC 145, the Hon'ble Supreme Court has laid down that initiation of a departmental proceeding and conducting an enquiry can be by an authority other than the authority competent to impose the proposed penalty. The said principle has been reiterated by following the said decision in Joint Secretary to the Home Department, Madras and Others Vs. R. Ramalingam 1996 (6) SCALE where their Lordships were pleased to negative the contention that the DSP who had issued the charge memo had no jurisdiction to issue the same since he was not the appointing authority. On the strength of these decisions there should be no difficulty if the matter had stood only with the issuance of the charge-memo and initiation of proceedings by the DSO instead of the appointing authority, namely, the Sr. Divisional Operations Manager. If that were the only basis, then, with respect, in view of the decisions of the Supreme Court, we have to negative that contention. However, the facts in the instant case permit us to distinguish it on facts from the decisions in the Supreme Court, with the result their ratio would not apply. The distinguishing feature as discussed above is it has not been shown by the respondents firstly that the Sr. Divisional Operating Manager had specifically authorised the Divisional Safety Officer, Hubli to issue the charge-sheet or initiate the proceedings against the applicant in respect of the subject matter of the enquiry. It has also not been shown that the DSO was concerned with the operating Section and if he were not, whether the Divisional Sr. Operations Manager could have authorised him at all to

will

initiate the disciplinary proceedings. In other words, it is not shown that the DSO was a competent authority, although below the rank of the DSO, to institute the enquiry in which case only the ratio laid down by the Supreme Court would have been applicable. Since the position is rendered doubtful about the competency of the DSO to issue the charge-sheet in the above mentioned circumstances, we have no alternative but to quash the impugned orders.

8. Mr. J.R. Gopala Rao, Standing counsel for the Railways strenuously urged that the safety department is inextricably connected with the operating department and therefore the DSO could not be said to be a person thoroughly unconnected with the operating section in which the applicant was working. In that sense, according to the learned counsel, there was nothing illegal if the General Delegation of Powers made in the year 1984 the charge-memo was issued by the DSO and not by the Sr. DOM who was the disciplinary authority. The difficulty in accepting this argument is that it is not shown that the Sr. DOM had specifically authorised the DSO to act in the instant case or had even subsequently ratified the issuance of charge-memo. The charge-memo obviously should have recited that 'as authorised by the Sr. DOM the charge-memo was being issued.' Although it purports to be issued by a competent authority whose designation is stated as DSO/Hubli, simply because it was issued from the office of DRM, Trans-
that does not automatically spell out the authority of the DSO, nor spells out the authority given to him by the Sr. Divisional Operating Manager. May be this is only a technical aspect and in the routine way under which the different wings of the Division may be functioning everybody concerned may be knowing that the Safety and the Operations Sections under the same Operating Manager would be part of the same establishment. That is not sufficient to

full

clothe a person with jurisdiction to institute disciplinary proceedings. In the absence of that ~~fact~~ being established by the respondents we are constrained to hold that we are not satisfied that the Divisional Safety Officer was competent to institute the proceedings. There can be no quarrel on the proposition that under Rule 8 of the Railway Service (D&A) Rules, it is only the disciplinary authority who can institute a disciplinary proceeding and that can be expanded only to the extent that a lower authority who issues the charge-sheet has been authorised to do so by the disciplinary authority or has been acting under the authority given by the disciplinary authority. Since that element lacks in the instant case, the infirmity must go to the root of the competency of the enquiry proceedings. We hold accordingly.

With the aforesaid finding it is not necessary to examine the second point.

9. We, however, find that the allegations made against the applicant and which were held proved were of a serious nature, particularly alteration of material records was alleged. Having regard to the same, since we are giving benefit of technical ground to the applicant, we leave it open to the respondents to initiate a fresh proceeding against the applicant, if so advised, and to deal with ^{it} strictly in accordance with law. In the result the following order is passed:

O R D E R

- (1) The impugned orders are hereby set aside and the penalty imposed upon the applicant thereunder is hereby quashed and set aside.
- (2) The respondents, however, will be at liberty to

W.M.

O.A.979/94.

To

1. The General Manager,
Union of India, SC Rly,
Secunderabad.
2. The Divisional Railway Manager,
SC Rly, Hubli.
3. The Senior Divisional Operating Manager,
SC Rly, Hubli.
4. The Divisional Safety Officer, SC Rly,
Hubli.
5. One copy to Advocate, CAT.Hyd.
6. One copy to Mr.J.R.Gopal Rao, SC Rly.
7. One copy to Library, CAT.Hyd.
8. One spare copy.

pvm.

21/1/97
I COURT

TYPED BY

CHECHED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE M.G.CHAUDHARI
VICE-CHAIRMAN

AND

THE HON'BLE MR.H.RAJENDRA PRASAD
MEMBER(ADMN)

Dated: 6-12-1996

~~ORDER~~ JUDGMENT

M.A./R.A/C.A. No.

in

O.A.No. 979/94.

T.A.No. (W.P.)

Admitted and Interim Directions
Issued.

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

Ordered/Rejected.

No order as to costs.

p.v.m.

