

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.37/93

Date of order: 16-11-1995

Chandra Kant Chaturvedi : Applicant

Vs.

Union of India & Ors. : Respondents

Mr.J.K.Kaushik : Counsel for applicant

Mr.Manish Bhandari : Counsel for respondents

CORAM:

Hon'ble Mr.O.P.Sharma, Administrative Member

Hon'ble Mr.Patan Prakash, Judicial Member

PER HON'BLE MR.O.P.SHARMA, MEMBER(ADM.)

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Chandra Kant Chaturvedi has prayed that charge sheet SF-5 dated June 1992 (Annx.A1) and all subsequent proceedings in consequence thereof may be declared illegal, without jurisdiction, etc. and may be quashed with all consequential benefits.

2. It may be stated at the outset that by order dated 4.2.93, the Tribunal had directed the respondents that they should not pass any final order in the departmental proceedings till further orders, but the disciplinary proceedings could be continued. Thus, in view of the interim direction issued by the Tribunal on 4.2.93, no final order in pursuance of the charge sheet Annx.A1, which has been impugned, has been passed.

3. The facts of the case as stated by the applicant are that he, while functioning as Assistant Station Master at Chomu Samod Railway Station of Jaipur Division of Western Railway, was served with charge sheet Annx.A1 dated " 6.92" under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 (for short the Rules), in which the charge framed against the applicant was that he was found sleeping while on duty on 12.5.92 in the night shift. This fact was discovered during inspection by AOS(II) who was accompanied by the Safety

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Counsellor (S&T). According to the applicant the charge framed against him was a false one. When he was on duty on 12.5.92 in the night shift, AOS(II) had entered his office but there was no such misconduct on the basis of which charge sheet was issued to him. None had accompanied the AOS(II), contrary to what has been alleged in the charge sheet. The applicant denied the charge vide letter dated 30.7.92 (Annx.A2). However, Inquiry Officer has been appointed to hold enquiry. The Inquiry Officer is in grade Rs.2000-3200(FP), and the main witness i.e. AOS(II) is also in the same scale. All the witnesses are senior to the applicant. The applicant pointed out these facts to respondent No.4 vide communication dated 10.9.92 (Annx.A3). On 19.10.92, the enquiry proceedings were adjourned pending decision on the applicant's representation dated 10.9.92. For one reason or the other, the disciplinary proceedings have not proceeded further.

4. Further according to the applicant, he is an office bearer of the All India Station Masters Association and respondent No.2 the Divisional Safety Officer, seems to have been annoyed with him due to the applicant's Trade Union activities.

5. Also according to the applicant, he belongs to the Operating Branch and is under the administrative control of Sr. Divisional Operating Manager, Jaipur. The Railway Board have laid down a specific rule that disciplinary action can be taken only by the authorities under whose administrative control the delinquent employee may be working (Annx.A4). Respondent No.2, the Divisional Safety Officer, who has issued the charge sheet to the applicant is not from the Operating Branch.

6. Thus, the action against the applicant has been assailed on the ground that respondent No.2 had no authority to initiate disciplinary proceedings against him, the Inquiry Officer is junior to the witnesses and is not expected to take an independent decision and the applicant has been falsely

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implicated in disciplinary action due to the official bias of respondent No.2.

7. The respondents in their reply have stated that the applicant was in fact found sleeping on duty on 12.5.92 during duty hours. Since AOS(II) was accompanied by Safety Counsellor (S&T) during his inspection tour during which the applicant was found sleeping on duty, both these officers have been cited as witnesses in the disciplinary proceedings. Merely because the officers who will appear as witnesses are equivalent in rank or senior to the Inquiry Officer does not mean that enquiry proceedings will be vitiated on this ground. There is no relationship between the disciplinary action taken against the applicant and his Trade Union activities. The respondents have stated however that it is not within their knowledge that the applicant is an office bearer of any Association. They have further stated that the applicant is under the administrative control of the Divisional Safety Officer, Jaipur, and therefore, disciplinary proceedings have been initiated against him by the competent authority. They have denied the interpretation placed by the applicant on the Railway Board's circular dated 19.1.1974 (Annx.A4) on which reliance has been placed by the applicant for stating that he belongs to the Operating Branch and therefore, disciplinary action cannot be taken against him by an authority belonging to any other Branch. They have added that as per the duty list of Divisional Safety Officer (Annx.E1), he was competent to initiate disciplinary proceedings against Asstt. Station Master, the post held by the applicant.

8. During the arguments, the learned counsel for the applicant stated that the main thrust of the case of the applicant is that the Divisional Safety Officer, respondent No.2, who initiated disciplinary proceedings against the applicant was not competent to initiate these proceedings because the applicant as Asstt. Station Master belonged to the Operating Department and as

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per para 3 of the circular dated 19.1.74, only an officer belonging to the Operating Department could take disciplinary action against him. He also cited before us two judgments to support the above view. One is G.M.Tripathi Vs. Union of India & Ors, SLJ 1991(2) (CAT) 528, delivered by the Allahabad Bench of the Tribunal and the other is P.Palanikumar Vs. Union of India & Ors. delivered by the Madras Bench of the Tribunal on 1.7.92 in O.A.No.941/91. A copy of this latter judgment which does not appear to have been reported, was made available by the learned counsel for the applicant. In the first judgment cited before us the charge sheet was issued by the Sr.DCS and the Tribunal held that the applicant, an ASM, being a member of Operating Staff could be issued charge sheet only by the Operating Branch Officer. For coming to this conclusion, the Tribunal relied upon the circular dated 19.1.74 which has also been relied upon by the applicant and placed on record as Annx.A4. In the second judgment, more or less the same view has been reiterated. In this latter case, charge sheet was issued to a Station Master by the Divisional Safety Officer. The Tribunal held that the Divisional Safety Officer was not competent to issue any charge sheet to the applicant as he is belonged to Operating Department only.

9. The learned counsel for the respondents, during the arguments, stated that the interpretation placed by the applicant on Annx.A4 dated 19.1.74 was not correct and it could not be inferred therefrom that an Asstt.Station Master could be charge sheeted only by an officer belonging to the Operating Branch. In fact, according to him, the main stress in the circular was on the point that disciplinary action should be taken against an official by the authorities under whose administrative control the delinquent employee may be working. He added that as a matter of fact the applicant was working under

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the administrative control of the Divisional Safety Officer. Certain documents in support of this averment had been sought to be presented by the learned counsel for the respondents during one of the earlier hearings in this case, but he was directed to file these alongwith an M.A. These documents were duly filed with an M.A and a copy thereof has also given to the counsel for the applicant. Now, according to the learned counsel for the respondents, the documents have been placed on record alongwith the M.A as Annxs.P2 to P11. All these annexures show that the applicant was actually working under the administrative control of the Divisional Safety Officer. Annx.P2 dated 6.3/4.1974 is an order of transfer/posting of the applicant. Annx.P3 is an application for grant of leave by the Divisional Safety Officer. Annx.P7 dated -10-87 shows that the applicant was promoted to grade Ps.1400-2300 by the Divisional Safety Officer. A penalty on the applicant was imposed vide order Annx.P9 by the Divisional Safety Officer and some more penalties were imposed on him subsequently by the Divisional Safety Officer. All these actions show that the Divisional Safety Officer exercised entire administrative control over the applicant. Duty sheet presented as Annx.P1 with the reply to the O.A, showed that as per item 8 of the list of duties assigned to Divisional Safety Officer, he is competent to take action such as transfer, posting, promotions of the operating staff. He also cited the judgment of Hon'ble Supreme Court in the case of Transport Commissioner, Madras -5 Vs. A.Padhakrishnan Murthy, 1995 SCC (L&S) 313, in which the Hon'ble Supreme Court held that initiation of disciplinary proceedings by an officer subordinate to the appointing authority was unobjectionable. He, therefore, stated that there is no merit in the application.

10. We have heard the learned counsel for the parties and have gone through the material on record including the additional

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documents filed alongwith the M.A. The objections to the contents of the charge sheet mentioned in the O.A, cannot be looked into by us at this stage. After the charge sheet has been issued and an Inquiry Officer has been appointed, it is for the Inquiry Officer to enquire into the charges and give his findings on the basis of which the disciplinary authority would pass an appropriate order. Even the final order passed by the disciplinary authority can be assailed only if the procedure relating to holding of enquiries has not been properly followed, or if there is no evidence whatsoever in support of the charges and still the charges have been held as established and penalty imposed. Merely because some witnesses may be senior to the Inquiry Officer would not vitiate the enquiry proceedings. We do not find any merit in any other grounds urged by the applicant for quashing the charge sheet but we are of the view that the ground regarding the Divisional Safety Officer, being not competent to initiate disciplinary proceedings against the applicant merits further consideration.

11. The applicant has mainly placed reliance on para 3 of the circular dated 19.1.74 (Annx.A4) issued by the Railway Board. Para 3 reads as under:

"3. The matter has been carefully considered by the Board and in consultation with their Legal Adviser, it is clarified that Railway Servant essentially belongs to only one department even though in the course of the performance of his day to day duties, he may violate certain rules/regulations administered by some other department. The Assistant Station Masters and Station Master belong to the Operating Department even though they may have to perform the duties pertaining to the Commercial Department also from time to time. The disciplinary authorities, in their cases, would thus belong only to the Operating Department and none else. If any other practice is being

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followed, that is irregular and should be stopped forthwith. Disciplinary action should be initiated and finalised by the authorities under whose administrative control the delinquent employee may be working as any other procedure would not be in keeping with the instructions referred to in para 1 above."

While the above circular states that the Asstt. Station Masters belong to the Operating Branch and therefore, disciplinary authority in their cases would belong only to the Operating Branch, the factual position that has emerged in so far as the present applicant is concerned, is quite different. Although, the applicant as an Asstt. Station Master may technically belong to the Operating Branch, the position in this case is that the Divisional Safety Officer has been exercising administrative control over the applicant from the stage of his posting, transfer to promotion, sanctioning leave, imposing penalties, etc. The Railway Board's circular cited above also lays down that disciplinary action should be initiated and finalised by the authorities under whose administrative control the delinquent employee may be working. This direction of the Railway Board is extremely important. It would be a very anomalous situation if the applicant were actually working under a Divisional Safety Officer and the disciplinary proceedings were to be initiated and finalised against him by an officer belonging to the Operating Branch merely on the ground that he belongs to the Operating Branch. As has been stated above, the entire administrative control over the applicant was exercised by the Divisional Safety Officer. Therefore, even as per the circular relied upon by the applicant, the Divisional Safety Officer was fully competent to initiate disciplinary proceedings against the applicant. As far as the Tribunal's judgment in G.M. Tripathi's case is concerned, it will have no application to the present case, because, the factual position that has emerged in the

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present O.A. is different in as much as the applicant was in fact functioning under the administrative control of the Divisional Safety Officer. For the same reason, the judgment of the Madras Bench of the Tribunal in F.Palanikumar's case will have also no application. In fact, in this latter judgment of the Tribunal, the Tribunal has repeatedly stated that the applicant in that case was directly and hierarchically only in the Operating Branch and was not a subordinate of the DSO. What counts in the matter of disciplinary proceedings is whether the disciplinary authority is in administrative charge of the subordinate official. In principle also it is only the person in administrative charge of a Railway servant who could appropriately function as a disciplinary authority. The factual position that emerges in this case is that the applicant was functioning under the direct administrative control of the Divisional Safety Officer. The applicant or his counsel did not produce any document to show that the applicant was in fact working under the administrative control of any authority in the Operating Branch. In these circumstances, we hold that the Divisional Safety Officer had rightly initiated disciplinary proceedings against the applicant.

12. The judgment in Transport Commissioner's case has no applicability to the present O.A, because it is not a subordinate of the disciplinary authority who has initiated disciplinary proceedings. We are also not inclined to place much reliance of the duty sheet of the Divisional Safety Officer because what we are primarily concerned with is whether the disciplinary proceedings have been initiated by an authority directly in administrative control of the applicant. We do not also consider it necessary to consider any of the other grounds urged before us by the counsel for the parties because we are basing our decision in regard to the question of competence of the Divisional Safety Officer to initiate disciplinary





proceedings on the ground that the Railway Board's circular dated 19.1.74 (Annx.A4) does not debar an authority exercising administrative control over an official from initiating disciplinary proceedings against him and that the disciplinary proceedings were in fact initiated by an authority which exercised direct administrative control over the applicant.

13. The interim stay order passed on 4.2.93 is vacated. The O.A. is dismissed with no order as to costs.

(Ratan Prakash)

Member(Judl)

(O.P. Sharma)

Member (Adm)