

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.655/93

Date of order: 30-11-1993-

K.G.Sharma

: Applicant

Vs.

Union of India & Ors.

: Respondents

Mr.J.K.Kaushik

: Counsel for applicant

Mr.M.Rafiq

: Counsel for respondents

CORAM:

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

Hon'ble Mr.Ratan 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 K.G.Sharma has prayed that the charge sheet for minor penalty, Annx.A1, issued to the applicant, the order dated 11.12.92 (Annx.A2) imposing penalty of with-holding of increment for six months without future effect issued by respondent No.3 and the order dated 31.5.93 (Annx.A3) issued by respondent No.2, dismissing the appeal of the applicant against the order imposing penalty may all be quashed with all consequential benefits.

2. The applicant's case is that a charge sheet initiating minor penalty proceedings (Annx.A1) was served on the applicant on 29.9.92 alleging that he had been careless and had disobeyed the orders of his superior. Vide his reply dated 6.10.92 (Annx.A5) he denied the charges. Respondent No.3, Shri Balbir Singh, Divisional Safety Officer, Jaipur Division, vide order dated 11.12.92 imposed on the applicant the penalty of with-holding annual increment for a period of six months without future effect. The applicant preferred an appeal dated 20/23.1.93 to respondent No.2 (Annx.A7). However, the appeal was rejected vide order dated 31.5.93 (Annx.A3), which is not a speaking order.

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India Station Masters Association, Jaipur and respondent No.3 is against the Trade Union movement. Respondent No.3 was prejudiced against the applicant and had threatened that he would ruin his career. The applicant had made a complaint dated 29.10.92 (Annx.A6) against respondent No.3 to the Additional Divisional Railway Manager, Jaipur. Respondent No.3, being the Divisional Safety Officer, could not be the disciplinary authority for the applicant as the applicant belonged to the Operating Department of the Railways. Vide Annx.A4 dated 19.1.74, being the instructions issued by the Railway Board, Asstt.Station Masters belong to the Operating Department and therefore, disciplinary proceedings against them can be initiated only by officers of the Operating Department. Therefore, respondent No.3, the Divisional Safety Officer had no authority to initiate and finalise disciplinary proceedings against the applicant. The applicant has been held guilty on the basis of conjectures and surmises and on extraneous grounds when in fact there is no evidence in support of the charges. The defence version has been totally overlooked and the charge sheet and the order of penalty are tainted with malice of respondent No.3. The appellate authority has abruptly rejected the appeal without passing a speaking order and without any cogent reasons.

4. The respondents in their reply have stated that the challenge to the charge sheet issued on 29.9.92 (Annx.A1) is barred by limitation in as much as the O.A was filed on 18.11.93. They have denied that the applicant is the office bearer of any Association. The allegation of bias against respondent No.3 has also been denied. Further according to them respondent No.3 has been authorised by the Chief Operating Supdt. vide his D.O. letter dated 21.9/17.10.87 to act as disciplinary authority, also with regard to the Station Masters and the Asstt.Station Masters (These instructions marked as Annx.F4 have however not been presented alongwith the reply).

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The Railway Board's circular Annx.A4 dated 19.1.74 is no longer applicable to the applicant's case. Charge sheet to the applicant was issued on account of his lapse in the smooth and safe running of trains. Penalty was imposed after giving him due opportunity to defend himself. According to them there is no infirmity in the proceedings taken against the applicant on any ground. The appellate authority had duly considered the defence of the applicant and the submission made in the memorandum of appeal and thereafter rejected it by a speaking order. They have also stated that the applicant has preferred a revision application which is still pending and therefore, the application is premature.

5. During the arguments the learned counsel for the applicant stated that the main thrust of his argument would be that the Divisional Safety Officer Shri Balbir Singh, who had initiated and finalised the disciplinary proceedings against the applicant was not competent to do so, inasmuch as the applicant belonged to the Operating Department and only an officer from the Operating Department could initiate and finalise disciplinary proceedings against him in view of the contents of circular dated 19.1.74 issued by the Railway Board. He also relied upon two judgments of the Tribunal, one in the case of G.M.Tripathi Vs. Union of India & Ors. 1991 (2) (CAT) 528 and the other in the case of R.Palanikumar Vs. Union of India & Anr. delivered by the Madras Bench of the Tribunal in O.A.No.941/91 on 1.7.92. A copy of the latter judgment was made available by the learned counsel for the applicant. In both these judgments, according to him, it had been held that disciplinary action could be taken against a delinquent employee only by officers from the same Branch. In the judgment in Palanikumar's case, the Tribunal had held that a Divisional Safety Officer was not competent to initiate proceedings against an Asstt. Station Master, who belonged to the Operating Branch. He also alleged bias on the

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part of Shri Balbir Singh who had initiated and finalised the disciplinary proceedings against the applicant and added that an incident had occurred prior to the date of issue of the charge sheet about which the applicant had made a complaint on 29.10.92(Annx.A1). Shri Balbir Singh should therefore not have associated himself with the disciplinary proceedings any further. Also the allegations of bias alleged against Shri Balbir Singh, Divisional Safety Officer, respondent No.3, had not been denied by him by filing an affidavit personally. For all these reasons he submitted that the proceedings initiated against the applicant and the penalty imposed and affirmed by the appellate authority are all liable to be quashed.

6. The learned counsel for the respondents stated that the applicant's counsel's interpretation of Annx.A4 dated 19.1.74 is not at all correct. Annx.P4 also provides that disciplinary action should be initiated and finalised by the authorities under whose administrative control the delinquent employee may be working. The applicant was in fact under the direct administrative control of the Divisional Safety Officer, in as much as his transfers, postings, sanction of leave, etc. had all been done by the Divisional Safety Officer. Although supporting documentary evidence in this regard was not filed by the respondents yet in view of such evidence having been filed in another case O.A.No.37/93 Chandra Kant Chaturvedi Vs. Union of India & Ors. heard by us today. Wherein also the competence of a Divisional Safety Officer to issue a charge sheet to and impose penalty upon an Assistant Station Master was questioned, the learned counsel for the respondents argued that the Divisional Safety Officer had rightly functioned as Disciplinary Authority for the applicant. The fact that the Divisional Safety Officer exercised administrative control over the applicant was not disputed by the learned counsel for the applicant. The judgments cited by the learned counsel for the applicant have no

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application inasmuch as in neither of these judgments had this fact brought out that the applicant concerned had actually been working under the administrative control of the authorities who had initiated disciplinary proceedings against them regardless of the Department to which such disciplinary authority actually belonged. In the present case since the Divisional Safety Officer had exercised all administrative control over the applicant, he was competent to initiate and finalise disciplinary proceedings against him. He added that the complaint against respondent No.3 had been made after the charge sheet Annx.A1 had been issued to the applicant in Sept. 1992 and therefore, the complaint itself was motivated. The allegation of bias against respondent No.3 had been denied by the officer who filed the reply on behalf of the respondents and if the Tribunal had so directed respondent No.3, Shri Balbir Singh could have also filed an affidavit with regard to the allegations of bias, malice, etc. made against him. He added that the disciplinary proceedings had been correctly initiated and finalised thereafter on merit after considering the defence of the applicant and the appellate authority had also applied its mind and thereafter passed a speaking order.

7. We have heard the learned counsel for the parties and have gone through the records and the judgments cited before us. The plea that bar of limitation is applicable in this case does not have force because what is challenged is not merely the charge sheet but also the final order passed by the disciplinary authority as also the order passed by the appellate authority, in regard to which the question of limitation does not arise. The charge sheet has been impugned only as part of the challenge to the orders of the disciplinary authority and the appellate authority and not independently. Therefore, the plea of limitation raised by the respondents is rejected.

8. The applicant could have waited for the result of the

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revision petition filed by him. But since the O.A. has already been admitted by us, we do not propose to dismiss the O.A. on the ground of its premature, on the ground of penalty of the revision petition.

9. The challenge to the disciplinary proceedings on merits does not have much force, because all the averments in this regard are vague. The allegation of bias against Shri Balbir Singh, Divisional Safety Officer, respondent No.3, is also untenable. Complaint against respondent No.3 was made on 29.10.92 (Annx.A6) after the charge sheet was issued to the applicant in Sept. 1992. If the incident revealing malice on the part of respondent No.3 had in fact occurred prior to the date of issue of charge sheet, there was nothing to prevent the applicant from making a complaint with regard to it immediately on the happening of such incident. Therefore, the allegation of bias against respondent No.3 is untenable.

10. The order passed by the disciplinary authority is also fairly detailed and we do not see any apparent infirmity in it. This Tribunal does not act as an appellate authority and if there is some evidence to support a charge, the Tribunal is not expected to interfere with the disciplinary proceedings or to vary the penalty imposed.

11. The ground that respondent No.3, who is the Divisional Safety Officer was not competent to initiate and finalise the disciplinary proceedings against the applicant who belonged to the Operating Department, however, merits consideration.

12. The applicant has mainly placed reliance on para 3 of the circular dated 19.1.74 (Annx.A4) issued by the Railway Board, which 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

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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 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. This factual position is not disputed by the learned counsel for the applicant. 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

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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 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 R.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 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.

13, In the result the O.A. is dismissed with no order as to costs.



(Ratan Prakash)

Member(Judl).



(O.P.Sharma)

Member(Adm.).