

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

O.A. No. 199  
T.A. No. 403/1994

DATE OF DECISION 29.08.2001

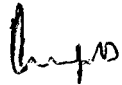
Krishan Kumer Sharma Petitioner  
Mr. M.S.Gupta Advocate for the Feticioner (s)  
Versus  
Union of India and ors. Respondent  
Mr. H.D.Sharma Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.K.AGARWAL, JUDICIAL MEMBER

The Hon'ble Mr. A.P.NAGRATH, ADMINISTRATIVE MEMBER

- ✓1. Whether Reporters of local papers may be allowed to see the Judgement ?
- ✓2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
- ✓4. Whether it needs to be circulated to other Benches of the Tribunal ?

  
(A.P.NAGRATH)  
Adm. Member

  
(S.K.AGARWAL)  
Judl. Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 24<sup>th</sup> August, 2001

OA No.403/1994

Krishan Kumar Sharma s/o Shri Suresh Chand Sharma r/o 85, Shivaji Nagar, Civil Lines- Ex-JTO O/c the GMTD, Jaipur.

..Applicant

Versus

1. Union of India through the Secretary to the Government, Ministry of Communications, Department of Telecommunications, Sanchar Bhawan, New Delhi.
2. The Director General (Telecom) Government of India, Sanchar Bhawan, New Delhi.
3. The Chief General Manager, Department of Telecommunications, Rajasthan Circle, Jaipur
4. The Director, Telecommunications (South), Department of Telecommunications, Government of India, Udaipur.
5. The General Manager, Telecommunications, Department of Telecommunications, Jaipur District, Jaipur.

.. Respondents

Mr. M.S.Gupta, counsel for the applicant

Mr. U.D.Sharma, counsel for respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr.A.P.Nagrath, Administrative Member

ORDER

Per Hon'ble Mr. A.P.Nagrath, Administrative Member

A chargesheet under Rule-14 of the CCS (CCA) Rules, 1965 was issued vide Memo dated 19.9.88 on the charge of un-authorized absence. On conclusion of proceedings including the departmental enquiry, the Disciplinary Authority, Director Telecom (South) Udaipur vide order dated 12.7.1989 (Ann.A7) imposed a penalty of dismissal from service. The applicant preferred an appeal dated 10.8.89



addressed to the Director General, Department of Telecommunications. This appeal came to be decided by the Chief General Manager, Telecom by an order dated 9.6.93, communicated to the applicant under letter dated 23.7.1993 (Ann.A1) and letter dated 23.8.93 (Ann.A2). By filing this OA, the applicant seeks quashing of the orders dated 12.7.1999 and 9.6.1993.

2. The main grounds, on which action of the Disciplinary Authority of imposing punishment of dismissal from service, has been assailed is that Director Telecommunications (South) Udaipur, who has passed this order is not competent to do so. The appointing authority of the applicant to the post of Junior Engineer in Scale Ps. 425-700 was District Manager Telephones, Jaipur who, as per notification of the Government of India dated 17.1.72 under the orders of the President, was declared as the Head of the Department. Contention of the applicant is that Director Telecommunications (South), Udaipur is not the Head of Department and thus not appropriate authority for passing the order of dismissal against the applicant. While raising this ground, the applicant has also given the background on which action was taken against him and stated that his transfer was not ordered by the competent authority and such a transfer order being void ab initio was required to be ignored by the authorities of the Department. It has also been submitted that the inquiry proceedings were initiated by an incompetent authority under which the applicant had never worked and were in contravention of CCS (CCA) Rules 1965 and principles of natural justice as enshrined under Article 311 of the Constitution. The stand of the applicant is that the disciplinary proceedings against him could have been initiated only by the District Manager Telephones, Jaipur and any punishment could only have been imposed by him. The instant proceedings initiated by Telephone District Engineer, Banswara and the order of punishment imposed by the Director



Telecommunication (South) Udaipur, who was not Head of the Department, are violative of Article 311 of the Constitution. The applicant has also taken a plea that order of the Appellate Authority dated 9th June, 95 was never delivered to him and the same also deserves to be quashed being without jurisdiction. Written statements have been filed on behalf of either side and these have been taken on record.

3. The learned counsel for the applicant Shri M.S.Gupta, in his arguments, stressed the point that the order of imposition of penalty was void ab initio, as the same was not issued by the competent authority. The learned counsel referred to Office order dated 21.6.1977 (Ann.A3) to contend that the applicant was appointed as Junior Engineer by the District Manager Telephones, Jaipur and under Article 311 of the Constitution, no authority lower than the appointing authority can impose a penalty of dismissal, removal or compulsory retirement on any delinquent employee. He referred to the Presidential notification dated 17th January, 1972 under which Jaipur Telephone District was created. Para 6 of the said notification states as under :-

"6. The President has further been pleased to decide that the District Manager Telephones, Jaipur will exercise all the powers of the Head of Circle. He will also function as the Head of Department under SF 2(10). The District Manager Telephones will function directly under the Directorator General".

He contended that it was only an officer declared as Head of the Department, who could impose a penalty of dismissal on the applicant. Director Telecommunications (South) Udaipur, who has imposed the penalty on the applicant, has not been declared as Head of



the Department and thus, is not competent to impose penalty of dismissal. The learned counsel also referred to Chaudri's Compilation of the Civil Service Regulations, Vol.II Part I, rule 34 (1) of the CCS (CCA) Rules, 1965, issued vide Notification of the Government of India dated 20.11.1965, which provides as under:-

**"34. Repeal and Saving**

(1) Subject to the provisions of Rule 33, the Central Civil Services (Classification, Control and Appeal) Rules, 1957, and the Civilians in Defence Services (Classification, Control and Appeal) Rules, 1952, and any notification or orders issued thereunder in so far as they are inconsistent with these rules, are hereby repealed:

Provided that-

(a) such repeal shall not affect the previous operation of the said rules, or any notification or order made, or anything done, or any action taken, thereunder;

(b) any proceedings under the said rules, pending at the commencement of these rules shall be continued and disposed of, as far as may be, in accordance with the provisions of these rules, as if such proceedings were proceeding under these rules."

and stated that with issue of this Notification dated 20.11.1965, the CCS (CCA) Rules, 1957 and any notification or orders issued thereunder in so far as these are inconsistent with CCS (CCA) Rules, 1965, stand repealed. Accordingly, SFO 620 of the Ministry of Communication (Post and Telegraph) dated 28th February, 57 and subsequent amendment thereon stood repealed. His contention was that after this notification and Rule 34, in case of Group 'C' staff to which the applicant belongs, only Head of Department could impose penalty of



dismissal. For this, the learned counsel placed reliance on the decision of this Tribunal in OA No.741/88 M.L.Sharma v. Union of India and ors. The learned counsel also placed reliance on Civil Service Regulations and the cases of the Hon'ble High Court of Rajasthan dated 7.8.1985 in Hanuman Prasad Sharma v. Union of India and the cases of the Apex Court in (1972) 2 SCC 744, The Management of D.T.U. v. Shri B.B.L.Hajelay and arr.; (1972) 2 SCC 749, Gurcharan Singh v. State of Haryana; AIR 1979 SC 1912, Erishna Kumar v. The Divisional Assistant Electrical Engineer, Central Railway and ors.; AIR 1979 SC 1914, Gujrat Steel Tubes Ltd., v. Gujrat Steel Tubes Majdoor Sabha; FLW 1971 386, State of Rajasthan v. Ashraf Khan as also the order of this Tribunal dated 28.1.94 in OA No.91/90 Ramji Das Maheshwari v. Union of India and ors. in support of his contentions that no authority lower than the appointing authority could impose the penalty of dismissal.

4. In the reply of the respondents and the written statement submitted by them as also the stand taken by the learned counsel on their behalf, the plea of the learned counsel for the applicant that SFO 620 stood repealed, has been contested. The learned counsel for the respondents argued that only such of the rules and notifications have been repealed which are inconsistent with the revised rules of 1955. This did not mean that SFO 620 has ceased to operate. The learned counsel has referred to a large number of amendments including the latest issued on 28th May, 1980 under Presidential powers wherein amendment to SFO 620 have been issued. The learned counsel contended that it was obvious that SFO 620 and rules made thereunder continued to survive and operate.

5. We have given our anxious consideration to the rival contentions. There is no dispute that under Article 311 (1) of the



constitution it is enshrined as under:-

"(1) No person who is a member of a civil service of the Union or an All India Service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed."

This means the authority which can impose penalty of dismissal, removal or compulsory retirement has to be the authority competent to appoint a charged official to the grade in which he was working or the authority which actually appointed the charged official to that grade or the authority which appointed the charged official in the initial grade, whichever of these is higher. In the instant case it is admitted that the applicant was appointed as Junior Engineer by the District Manager Telephones, Jaipur. The issue to be determined is whether the authority competent to impose this penalty has to be of the same rank and occupying the post in the same grade or he has necessarily to be the Head of the Department, as contended by the learned counsel for the applicant. We find from the notification dated 17<sup>th</sup> January, 1972 (Ann.A4), in Para 6 of which it has been specifically stated that District Manager Telephones will also function as Head of the Department under SE 2(10) (emphasis supplied). We have consulted Supplementary Rule 2(10) and find that these Supplementary Rules have no relation with CCS (CCA) Rules. Declaration as Head of Department under SE 2(10) is only for the purpose of item covered under Supplementary Rules only and does not extend to matters covered under Fundamental Rules or other statutory rules like CCS (CCA) Rules, 1965. Thus, we are not able to agree to the grounds raised by the applicant that Disciplinary Authority has necessarily to be Head of the Department. There is no force in the contention of the applicant that it is the authority in Jaipur District who should have taken action against him and not the Director Telecommunications



(South) Udaipur as he had not joined in Udaipur District. The applicant after having been transferred from Jaipur was released to report to the new office of posting and with this posting he ceased to be an employee of Jaipur District. It is in fact the authority in Udaipur District which is competent to take disciplinary action against the applicant.

6. The other plea taken by the learned counsel for the applicant is that SRO 620 stood repealed by CCS (CCA) Rules of 1965 under SRO 620 and thus, any order passed under the delegation of powers cannot be enforced as these have no legal sanction. The learned counsel contended that after repeal, the powers to remove or dismiss the delinquent employee are only vested in Head of Department. We have perused the Presidential notification dated 29th May, 1980 issued by the Ministry of Communications by which certain amendments have been made in SRO 620 dated 28th Feb. 1957. It is obvious that SRO 620 continues to survive and operate.

7. At this stage, we consider it necessary to refer to the judgment of Hon'ble the High Court of Rajasthan in the case of Hanuman Prasad Sharma v. Union of India, SE Civil 2nd Appeal No.213/1978 relied upon by the learned counsel for the applicant. In that case the following substantial questions of law were framed:-

"1. Whether the SRO-620, which was issued in pursuance of the powers conferred by sub-rule (2) of Rule II, Clause (b) of sub-rule (2) of rule 14 and sub-rule (i) of rule 23 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, still holds good after commencement of the CCS (C.C.S.A.) Rules, 1965, and inclusion of Rule 36(1) with effect from 25th September, 1971 ?



2. Whether the schedule attached to the C.C.S. (C.C. & A.) Rules, 1957, shall continue to govern the case of the petitioner in spite of the fact that a different schedule was brought into force after the re-engagement of the rule, 1965 and re-constitution of the Department by the Presidential Order dt. 17.1.1972 ?

3. Whether the D.E.P., J.T.D., or the Accounts Officer (T.A.) is the head of office who was competent to issue memo alongwith the statement of allegations, and was further competent to impose a penalty on the plaintiff-appellant ?

It was held by the Hon'ble Single Judge in that case that in view of coming into force of CCS (CCA) Rules, 1965, SRO 620 did not survive beyond 24th September, 1971 and that any delegation made under the said SRO 620 shall cease to have any effect beyond that date. But as we have stated above that SRO 620 continues to be in effect and operative even after coming into effect of CCS (CCA) Rules, 1965 and repeal of CCS (CCA) Rules of 1957. There have been Presidential notifications introducing amendments in SRO 620; the latest brought to our notice being of 1980. The reason why the Hon'ble High Court arrived at the conclusion, which is altogether different from the findings we have reached becomes obvious when we notice that the High Court in this case, did not have the benefit of any assistance from the side of the Union of India. It has specifically been mentioned by the Hon'ble Single Judge hearing that case that Union of India is un-represented and none has appeared to oppose this appeal (page 6 of that judgment refers). We find ourselves bound by the Presidential notifications relating to SRO 620 and we are guided by the statutory provisions made thereunder, including the attached schedules thereto.



8. The powers delegated under this SRO have legal sanction and action taken under such delegation cannot be questioned on the ground that such a delegation is nonest. It has also been brought to our notice that District Manager Telephones is an officer in Junior Administrative Grade and the Disciplinary Authority, Director Telecommunications (South) Udaipur is also an officer in JA Grade. We are of the view that Disciplinary Authority being of the same status as the appointing authority, there is no illegality in the action of the Director Telecommunication (South) Udaipur of imposing penalty of dismissal on the applicant, as Director Telecommunication (South) is the competent authority being an officer of the same rank and status as the appointing authority. The applicant has failed to establish the grounds of his grievance.

9. We, therefore, dismiss this application as devoid of any merits. No order as to costs.

  
(A.P.NAGRATH)

Adm. Member

  
(S.K.AGARWAL)

Judl. Member