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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

* * *

Date of Decision: 15.11.2000

OA 262/98

D.N.Singh, Driver O/o Sub Divisional Officer Telegraph,
Bharatpur.

... Applicant

v/s

1. Union of India through Secretary, Deptt. of Telecommunication, Min. of Communication, Sanchar Bhawan, New Delhi.
2. Chief General Manager, Telecommunications, Rajasthan Circle, Jaipur.
3. Telecom District Manager, Telecommunications, Bharatpur.

... Respondents

CORAM:

HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

For the Applicant

... Mr.C.B.Sharma

For the Respondents

... Mr.V.S.Gurjar

O R D E R

PER HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

In this application u/s 19 of the Administrative Tribunals Act, 1985, applicant D.N.Singh has prayed that the impugned order dated 16.3.98 (Ann.A/1), order dated

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27.5.96 (Ann.A/2), charge memo dated 22.10.90 (Ann.A/5) and the inquiry report dated 22.3.96/3.1.96 (Ann.A/18) be quashed with all consequential benefits and the respondents be directed to release the withheld increment.

2. Applicant's case is that he was served with a charge-sheet under Rule-14 of the CCS (CCA) Rules, 1965 vide respondents' memo dated 22.10.90 (Ann.A/5) and on conclusion of the departmental inquiry, a penalty of stoppage of one grade increment for three years was imposed upon the applicant vide respondents' order dated 27.5.96 (Ann.A/2). Revision Petition filed by the applicant was rejected by the revisionary authority vide order dated 16.3.98 (Ann.A/1). The main contention of the applicant is that since the disciplinary authority was himself involved in the incident for which the applicant has been charge-sheeted, the appellate authority took up on himself the power of disciplinary authority and issued the charge-sheet dated 22.10.90 (Ann.A/5) and the same appellate authority also imposed the penalty upon the applicant vide Ann.A/2. It is contended by the applicant that in the circumstances an ad hoc disciplinary authority

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should have been appointed as per ~~rules~~ rules. Since the appellate authority had assumed the powers of the disciplinary ~~authority~~ authority, the applicant has been deprived of his right to file an appeal. Feeling aggrieved, this application has been filed.

3. In the counter the respondents have not contested the argument of the applicant that the appellate authority had assumed the powers of a disciplinary authority and imposed punishment upon the applicant. In the ~~circum~~ circumstances, we have to rely upon the statement made by the applicant. In this connection, our attention has been drawn by the learned counsel for the applicant to Government of India order No.(6) below Rule-12 of CCS (CCA) Rules, 1965. We consider it appropriate to extract below the said Government of India decision :-

"(6) Powers of prescribed punishing authority -- A penalty can be imposed only ~~by~~ by the prescribed punishing authority, and an appellate ~~authority~~ authority or any other authority higher than the appropriate punishing authority cannot exercise any concurrent original disciplinary jurisdiction. In no circumstances should an authority higher than the punishing authority issue any direction in regard to the penalty to be imposed. Neither

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should a punishing authority obtain the guidance or comment of any superior authority ~~in~~ in this respect. Nothing in this rule shall affect the authority of the President to impose any of the penalties on any Government servant.

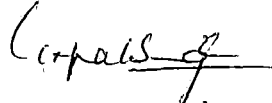
(Para.156 of P.& T. Manual, Vol.III)"

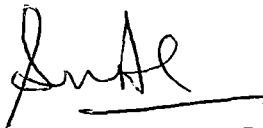
It is very clear from the Government of India orders, reproduced above, that an appellate authority or any other authority higher than the appropriate authority cannot exercise any concurrent original disciplinary jurisdiction. In the face of above Government Of India orders, respondents' order dated 27.5.96 (Ann.A/2) and consequential orders thereof cannot be sustained in law. The learned counsel for the applicant has also cited case of Surjit Ghosh V/s Chairman & M.D., United Commercial Bank, AIR 1995 SC 1053, in support of his contention, wherein Hon'ble the Supreme Court has held that where an authority higher than disciplinary authority passes an order imposing punishment, the right of appeal against the order of disciplinary authority conferred on employee gets lost and proceedings become arbitrary. In the light of settled law in this regard, as mentioned above, we are of the view that the application

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deserves to be allowed and orders Ann.A/1 and A/2 deserve to be quashed.

4. The OA is accordingly allowed and orders dated 16.3.98 and 27.5.96 (at Annexures A/1 and A/2 respectively) are quashed and set aside. The respondents will, however, be free to proceed with the disciplinary case against the applicant as per rules. Parties are left to bear their own costs.


(GOPAL SINGH)
MEMBER (A)


(S.K.AGARWAL)
MEMBER (J)