

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

DATE OF ORDER: 14.5.2002

OA No. 488/1999

Tej Bahadur Saxena son of Shri Babu Lal Saxena, aged about 40 years at present working on the post of Khalasi in the office of the Senior Section Engineer (P.S.I.), Western Railway, Kota Division, Kota, resident of Rajendra Hotel, Dadwada, Kota.

....Applicant.

VERSUS

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. The Divisional Railway Manager, Western Railway, Kota Division, Kota.
3. Sr. Divisional Electrical Engineer, Western Railway, Kota Division, Kota.

....Respondents.

For the Applicant Mr. P.V. Calla
For the Respondents Mr. U.D. Sharma

CORAM

Hon'ble Mr. A.P. Nagrath, Member (Administrative)
Hon'ble Mr. J.K. Kaushik, Member (Judicial)

ORDER

PER HON'BLE MR. J.K. KAUSHIK, MEMBER (JUDICIAL)

Shri Tej Bahadur Saxena has filed this application u/s 19 of the Administrative Tribunal's Act, challenging the order dated 4.5.1998 (Annexure A/1), imposing the penalty of



reduction to the lower scale of pay in the time scale of Rs. 2550-3200 at initial pay of Rs. 2550 in the grade as Khallasi with future effect, the Appellate order dated 16.10.1988 (Annexure A/2) rejection of appeal and order dated 8.2.1999 (Annexure A/3) issued by Revising Authority rejecting the review petition, amongst consequential other reliefs.

2. The brief facts of the case are that the applicant was working on the post of Sr. Khallasi. One Shri Sudesh Pal, Sr. Section Engineer (TRD), Western Railway, Kota lodged a complaint against him and two others on 5.6.1997 alleging that on dated 10.5.1997, when Shri Sudesh Pal alongwith staff was busy with the work of unloading of a Booster Transformer between upline at Kota South Duknia Talab, one Shri Hari Om Singh, Electric Fitter Grade II, created obstacle in the work and started abusing loudly at him. It was further alleged that the applicant alongwith Ganga Singh also started abusing him and all of them were in intoxicated condition. Further, it has been said that they threatened the said Shri Sudesh Pal that if he made a report to the higher authority, he would be beaten. Because of this incident there was interference in the work due to which a Traffic block was burst by about 50 minutes. Complaint to that effect was also lodged by one Shri Sobran Singh, Jr. Engineer, also vide letter dated 13.5.1997. The applicant was placed under suspension by the said Sr. Section Engineer under orders of Sr. DEE(TRD) on 13.5.97.

3. The applicant was issued with a charge sheet vide Memo dated 10.6.1997 alleging that he was in the state of intoxication and he used abusing language and misbehaved. He denied the allegations and submitted the reply to the charge sheet. The inquiry was ordered in the matter and one Shri M.C. Yadav was appointed as Inquiry Officer. Though the similar charge sheets were issued to three persons but a joint inquiry was not conducted. The applicant has alleged



that after examination of some of the witnesses, Inquiry Officer concluded the inquiry in a peculiar manner by getting signatures of the applicant and also his Defence Assistant. The complete proceedings were noted down in Hindi, but the so called admission note was made in English. The applicant contends that he did not understand its contents. The inquiry Officer held the charges proved. The applicant submitted a representation against the findings of the Inquiry Officer and requested that his submissions should not be taken as an admission. Further the penalty of reduction to the lower stage in time scale of pay in the pay scale of Rs. 2550-3200 was imposed with future effect by one Shri R.K. Verma designated as DFE/TRD/S/KTT. The applicant is stated to have filed the detailed and exhaustive appeal to the Appellate Authority on dated 4.7.1998 (Annexure A/17) and specifically challenged the order of the Disciplinary Authority on the ground that the punishment order has been signed by Shri R.K. Verma on dated 4.5.1998 whereas the said Shri R.K. Verma stood relieved from the said post of DFE/TRD/S/Kota/KTT on 29.4.1998 and he had no competence/power to impose the penalty. The penalty order was ex-facie without jurisdiction.

4. The appeal of the applicant has been rejected. In respect of the contention of the applicant regarding Disciplinary Authority, Shri R.K. Verma, the Appellate Authority has observed that the penalty order was signed by the officer without putting the date and the date was not put at the time of signature before despatching the letter. It has also been said that it may be possible that Shri R.K. Verma might have signed the punishment order before his transfer and the date might have been put afterwards as 4.5.1998. He has also taken the view that since the applicant has accepted his guilt, no interference is called for. The applicant had also filed the revision petition and the same was rejected vide order dated 8.2.1999 (Annexure A/3).

5. The applicant has filed this OA on multiple grounds mentioned in the OA.

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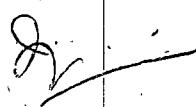
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6. The case was admitted on 20.10.99 and the show cause notices after admission were issued to the respondents for filing their reply. The respondents have filed their detailed reply to the OA and have controverted the facts and grounds taken in the OA. The respondents have also submitted an additional affidavit signed by one Assistant Electrical Engineer (C) stating therein that he was the Inquiry Officer in the matter and the delinquent employees have confessed/tendered apology without any pressure.

7. We have heard the learned counsel for the parties and have carefully perused the records of this case.

8. The learned counsel for the applicant has stressed on the ground No. 'A' wherein it has been said that Shri R.K. Verma has signed the penalty order on dated 4.5.1998, acting as Disciplinary Authority. Shri R.K. Verma was already relieved of his charge on 29.4.1998. He was not competent person to act as Disciplinary authoirity in the matter. The learned counsel for the applicant has argued that the applicant was not under administrative control of said Shri R.K. Verma on the date of penalty order. Thus he had no jurisdiction or competency to impose any penalty on the applicant. The applicant had also raised objection regarding competence of Shri R.K. Verma acting as Disciplinary authority but the same has not given any consideration and his appeal has been rejected without passing any speaking order. Further, the learned counsel for the applicant has argued that the very order of the penalty is void being without jurisdiction and the said order has no existence in the eye of law and the same cannot be legalised by the higher authorities as per the verdict of Hon'ble Supreme Court in AIR 1976 Page 1899 Baradakanta Mishra vs. High Court of Orissa & Another.

9. On the other hand, learned counsel for the



respondents has emphasised the stand of the Department as mentioned in the reply to the OA. It has been said that Shri R.K. Verma might have signed the penalty order earlier to his relieving from the post and the date, which is put in the punishment order, is the date of despatch of the letter and thus the impugned order suffer from no infirmity, least of all in regard to competence or jurisdiction.

10. We have given our careful consideration to the above rival contentions and the stand taken on behalf of the learned counsel for the applicant as well as on behalf of the learned counsel for the respondents. We have reached the inevitable conclusion that the penalty order has been signed only on 4.5.1998 by Shri R.K. Verma when he was not holding the post of DEE/TRD/D/Kota/KTT and he acted beyond his jurisdiction. It is a settled proposition of law that disciplinary action against an employee not under the administrative control of the authority is procedurally wrong and without jurisdiction. We are fortified in our view and find support from a judgement of the Tribunal by Ernakulam Bench in K.P. Prabhakaran vs. The Chief Operations Manager, Southern Railway reported in ATJ 2000(1) CAT 40. It was the case of the Railway Department where the penalty was imposed by ADRM on a Station Master. In that case, the charge sheet was issued by Sr. DOM under whose control the applicant was working at the time of the issuance of the charge sheet and conducting the inquiry. Subsequently the said Sr. DOM was transferred and an other officer was posted, who was not competent to impose the penalty. Thus, the papers of the case were put to the ADRM, who was the next higher officer in hierarchy and competent to impose the penalty. The Transportation Department to which the applicant belonged was not attached to the said ADRM. It was held that the ADRM, who issued the penalty order, had no authority or jurisdiction and thereby the penalty order was held to be without any legal foundation. Similarly is the case here as Shri R.K. Verma was already transferred and relieved from the post of DEE/TRD/S/Kota/KTT. He had absolutely no administrative control over the applicant at the time penalty

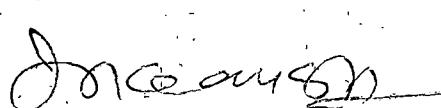
order was signed and thus he was not competent to impose any penalty on the applicant.

11. For the reasons stated above, we hold that Shri R.K. Verma had no authority or jurisdiction to issue the impugned penalty order and the penalty order is liable to be quashed on this ground alone.

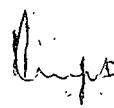
12. Having found that the impugned penalty order dated 4.5.1998 (Annexure A/1) imposing the penalty of reversion to the lowest time scale of pay at the initial pay of Rs. 2550/in the grade of Rs. 2550-3200 as Khallasi with future effect is liable to be quashed since the same has been issued by an authority who is not competent to issue the same, we are not going into the merit of the case.

13. Accordingly, we pass the order as under :-

The OA is allowed. The impugned order dated 4.5.1998 (Annexure A/1) is hereby quashed. Consequently order dated 16.10.1998 (Annexure A/2) and order dated 8.2.99 (Annexure A/3) also stand quashed. The applicant shall be entitled to all consequential benefits. However, it is made clear that it will not stand in the way of respondents from taking such action in the matter as they deemed fit in accordance with law. This order shall be complied with within a period of four months from the date of receipt of a copy of this order. There shall be no order as to costs.


(J.K. KAUSHIK)

MEMBER (J)


(A.P. NAGRATH)

MEMBER (A)