

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

OA 296/2002

DATE OF ORDER: 17.2.2004

Kuldeep Kumar son of Shri Shrichand (Lattiwal), Ex. Diesel Assistant, Gangapurcity, aged about 28 years, resident of Village and Post Lukhi, Tehsil Kosli, District Rawadi, Haryana.

.... Applicant

VERSUS

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Kota (Raj.)
3. Sr. Divisional Electrical Engineer (TED), Western Railway, Kota.

.... Respondents

Mr. Nand Kishore, Counsel for the applicant.

Mr. S.S. Hassan, Counsel for the respondents.

CORAM:

Hon'ble Mr. J.K. Kaushik, Member (Judicial)

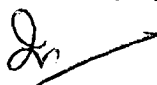
Hon'ble Mr. A.K. Bhandari, Member (Administrative)

ORDER

PER HON'BLE MR. J.K. KAUSHIK

Shri Kuldeep Kumar has filed this OA u/s 19 of the Administrative Tribunal's Act and has sought for the following reliefs:-

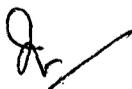
- "
- By an appropriate order or direction the Hon'ble Tribunal may kindly called for the entire records and after examination of the same, be pleased to quash and set aside:
- (i) The memorandum of charges for imposing major penalty vide respondent No. 3 under his number E/L/308/20/539 dated 16.9.1997 Annexure A/1 and an appointing I.O. vide even of 16.9.1997 Annexure A/2 an enquiry report submitted by E.O. dt. 20.12.1997 (Annexure A/3) and orders for dismissal from service dt. 2.2.1998, Annex A/4 and appellate authorities order dt. 30.5.1998 Annexure A/5 vide which appeal of the applicant was rejected and Revision Petition not considered by the respondent No. 1 vide his speaking order dated 30.7.2001 communicated through respondent No. 2's letter dated 27.8.2001 marked as Annexure A/12.



- (ii) That the respondents may be directed to take the applicant on duty treating the period from date of dismissal till the applicant is taken ~~on duty~~ and arrears of the salary may also be paid.
- (iii) That any other beneficial orders or directions which this Hon'ble Tribunal deems just and proper in the facts and circumstances of the case be kindly passed in favour of the applicant.
- (iv) Costs be quantified in favour of the applicant."

2. The factual scenario of the case is that the applicant while working on the post of Assistant Driver at Gangapur City, was faced with pecularity in as much as an accident has taken place. He was issued a charge sheet. He was issued the charge sheet on the basis of the report of an Accident Committee CRS. The charges against him were violation of SR & GR. In the inquiry, all the charges have been held as proved. On the basis of the inquiry report, the applicant was dismissed from service vide order dated 2.2.1998 (Annexure A/4) passed by the Sr. Divisional Electrical Engineer (TFD). The applicant also preferred an appeal to the Divisional Railway Manager, Western Railway, Kota but the same came to be rejected.

3. The further case of the applicant is that the impugned order has been assailed on diverse grounds. We are deliberately not narrating the same in view of the order we propose to pass. We are only examining the ground relating to the competence of the Disciplinary Authority. It has been averred in the OA that the applicant was appointed vide order dated 28.10.1995 under the signature of Divisional Railway Manager and corresponding grounds have been made to this effect as ground 'H' at page 13 of the OA. The order of the penalty has been passed by Sr. Divisional Electrical Engineer (TFD), Kota. It has been averred that the Divisional Railway Manager was the appointing authority of the applicant and order of penalty passed by the subordinate officer is without jurisdiction.



4. A detail and exhaustive reply has been filed. The respondents have filed the following reply to the ground 'H' of the applicant:-

"That the contents of para 5(H) of the grounds are denied. The disciplinary authority has rightly passed the order dismissing the applicant. It was within the competence of the disciplinary authority to dismiss the applicant from the railway servant."

5. We have heard the learned counsel for the parties and have very carefully perused the records of the case.

6. The learned counsel for the applicant has made us to travel through the appointment letter of the applicant at Annexure A/6 as well as the the penalty order dated 2.2.1998 (Annexure A/4) at page No. 39 of the Paper Book and has submitted that the Divisional Railway Manager is the Superior authority than the Sr. Divisional Electrical Engineer (TFD). As per Article 311(1), the dismissal order cannot be passed by the subordinate authority to the appointing authority. Thus the same is without jurisdiction and void-ab initio. In this view of the matter, the subsequent orders become nullity. Since if the initial order is bad that would mean it is honest in the eye of law and the same cannot be legalised by any higher authority like the Appellate Authority by legalising such non-est orders.

7. On the contrary, the learned counsel for the respondents has strenuously countered the averment made by the learned counsel for the applicant and has submitted that the Sr. Divisional Electrical Engineer is equivalent to the Divisional Railway Manager and thus was competent to pass the impugned order.

8. We are not impressed with the submissions of the learned counsel for the respondents as Sr. Divisional Electrical Engineer (TFD) comes under Jr. Administrative Grade whereas

Divisional Railway Manager comes under Sr. Administrative Grade. Thus the Divisional Railway Manager is of higher rank than that of the Sr. Divisional Electrical Engineer.

9. As regards the passing of the removal order vide of the Constitution, it Article 311(1) is clear that it is only the Appointing Authority who can pass the removal/dismissal order. Now ascertaining the position in the instant case, the applicant was appointed by the Divisional Railway Manager. As per the Railway Servants (Discipline & Appeal) Rules, 1968, Rule 2(1)(a) and sub paras, the Appointing Authority has been defined as under:-

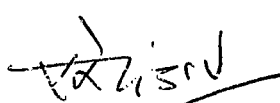
- "(1) In these rules, unless the context other requires-
- (a) 'appointing authority' in relation to a Railway servant means-
- (i) the authority empowered to make appointments to the Service--or which the Railway Servant, is for the time being, a member or to the grade of the Service in which the Railway servant is, for the time being, included, or
 - (ii) the authority empowered to make appointments to the post which the Railway servant, for the time being holds, or
 - (iii) the authority which appointed the Railway Servants to such Service, grade or post, as the case may be, or
 - (iv) where the Railway servant having been a permanent member of any other Service or having substantively held any other permanent post, has been in continuous employment under the Ministry of Railways, the authority which appointed him to that Service or to any grade in that Service or to that post.

whichever authority is the highest authority."

10. From the perusal of the aforesaid definition, it is clear that the highest authority in the present case was the Divisional Railway Manager and, therefore, there is ample force in the contention of the learned counsel for the applicant. The penalty order has not been passed by the competent authority and, therefore, the OA deserves to be allowed on this ground alone. Since we have come to the conclusion that the penalty order has not been passed by the competent authority and the same is without jurisdiction, the examining of other points

and the grounds raised in the QA would be only an academic exercising which we are refraining to debate. Since the very penalty order is without jurisdiction, the Appellate order as well as the order passed by the Revising Authority cannot stand.

11. The upshoot of the above is that the QA deserves to be partly allowed and the same is accordingly allowed. The impugned orders ~~20.5.1998~~ 13.5.1998 (Annexure A/5), ^{penalty} order dated 2.2.1998 (Annexure A/4) and order dated 27.8.2001 (Annexure A/12) are hereby quashed. The applicant shall be entitled to all consequential benefits. This order shall be complied with within a period of three months from the date of receipt of a copy of this order. However, this order shall not preclude the competent authority to pass fresh order in accordance with law. No costs.


(A.K. BHANDARI)
MEMBER (A)


(J.K. KALSHIK)
MEMBER (J)

AHQ