

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 19 of 2003

Jabalpur, this the 23rd day of March, 2004

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. G. Shanthappa, Judicial Member

Shri Narayan Kumar Shrivastava,
S/o Shri B.P. Shrivastava,
aged about 40 years,
Law Assistant,
O/o Divisional Railway Manager (P)
Central Railway,
Jabalpur.

APPLICANT

(By Advocate - Smt. S. Menon)

VERSUS

1. Union of India,
Through: The General Manager
West Central Railway Jabalpur

2. Sr. Deputy General Manager,
West Central Railway,
Jabalpur.

3. Additional Divisional Railway
Manager Central Railway,
Jabalpur.

4. Sr. Divisional Personnel Officer,
Central Railway,
Jabalpur.

RESPONDENTS

(By Advocate - Shri H.B. Shrivastava)

ORDER

By G. Shanthappa, Judicial Member -

By filing this Original Application the applicant has claimed the following main reliefs :

"(ii) set aside the order dated 5.7.2002/Annexure A-4 passed by respondent No. 4 as also the order dated 30.10.2002/Annexure A-6 passed by respondent No. 3 and hold the orders as ab initio void and nonest."

2. The brief facts of the case are that the applicant is working as Law Assistant in the office of the respondents at Jabalpur. The appointing authority of the applicant is the Senior Dy. General Manager. The applicant submitted that the Railway Board recommended that so far as the legal cadre is concerned, the entire legal set up should be under the

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administrative control of AGM, instead of SDGM of Zonal Railways. The respondent No. 4 has no authority to issue any memo, whatsoever, in regard to any lapses. This is amplified by the order dated 12.5.1997. The respondent No. 4 has issued a memo dated 3.4.2002 under Rule 11 of Railway Servants (Discipline & Appeal) Rules, 1968, as the applicant failed to obey the orders of APO (HQ) by not bringing the service record of one Shri Ashok Prasad, JE. The applicant has submitted his objection about the competency of the said authority in issuing the memorandum of charge sheet. The respondent No. 2 without any due application of mind, issued the order dated 5.7.2002 whereby the said authority imposed the penalty, alleged to be under Rule 6 (iii) (b) of the said rules, of reduction to a lower stage in the time scale of pay for a period of not exceeding three years, without cumulative effect and not adversely affecting his pension. Since the said charge was a minor one no enquiry has been ordered. As there is no finding in the impugned order, the same itself is illegal on both grounds i.e. regarding competency and its being non-speaking order. The proper authority to issue the impugned order of penalty is the SDGM who is the appointing authority of the applicant. Aggrieved by the said order of the disciplinary authority the applicant preferred an appeal and the appellate authority has confirmed the orders of the disciplinary authority. The applicant challenges the impugned orders on the ground that though it is a minor penalty the authority who had issued the orders is not the disciplinary authority and only on that ground itself the impugned order is illegal and the same is liable to be quashed. The appellate authority has also not considered the legal ground. In a similar circumstance this Tribunal has considered the case regarding legality of the orders in OA No. 368/1992, decided on 26th March, 1996 and also in OA No. 829/1995

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dated 28th February, 2002. In another case of the Hon'ble High Court of Madhya Pradesh in Jaideep Neema and others vs. Collector, Distt. Mandsaur and others, 2001(2) MPLJ 246, the Hon'ble High Court has held that Order passed without legitimate authority and jurisdiction is illegal ab initio - must be quashed in exercise of powers under Article 226 at the earliest to protect justice. Accordingly, the Original Application is liable to be allowed by setting aside the orders of the disciplinary authority and the appellate authority.

3. The respondents have filed their reply denying the averments made in the Original Application. Under the Discipline and Appeal Rules, 1968 the disciplinary authority means i) in relation to rule 9, in the case of non-gazetted railway servant, an authority competent to impose any of the major penalties specified in rule 6, ii) in relation to clauses (a) and (b) of sub-clause (1) of rule 11 in the case of non-gazetted railway servant, an authority competent to impose any of the penalties specified in rule 6. In simple words, for non-gazetted staff, an authority competent to impose the penalty of reduction can issue charge sheet and appoint enquiry officer etc. for imposing any of the major penalties and an authority competent to impose any of the minor or major penalty can issue charge sheet and hold enquiry, if necessary, for all the minor penalties. The schedule II of the Discipline and Appeal Rules, 1968 provides that an officer of junior administrative rank can impose the punishment of reduction to a lower stage in time scale of pay for a period not exceeding three years, without cumulative effect and not affecting pension. In the instant case Senior Divisional Personnel Officer who holds a junior administrative rank has initiated and imposed the punishment

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with effect of reduction in pay for three years/non-cumulative/and thus it would be clear that the punishment has been imposed by a competent authority. It is submitted that the question for determining the proper appointing authority arises only when the delinquent railway servant is to be imposed any of the major penalties mentioned in rule 6/(vii), (viii) & (ix) of Discipline and Appeal Rules, 1968. In the instant case the disciplinary case of the applicant is only for imposing minor penalty under rule 11 of the rules. The legal cadre of the Railways works under the overall control of Senior Dy. GM, GM, AGM and SDGM are the highest administrative posts under whose administrative control, the entire man power of the Railway zone of all departments work. Schedule II of the Discipline and Appeal Rules, 1968 has been framed to determine the exact and appropriate disciplinary authority of Railway servants, providing for appropriate authorities for appeals and revisions rules. There exists a further provision of revision after orders have been passed by the appellate authority. The applicant in the instant OA did not avail the said provision of revision. The document dated 12.5.1997 is the panel position of selected candidate for the post of Law Assistant, and has no relevance with the instant case. It is specifically denied that the Sr. Dy. General Manager is the appointing authority in the case of the applicant. The relevant document/posting order signed by a senior scale officer and nowhere the said document indicates that the Sr. Dy. General Manager is the appointing authority in the case of the applicant as alleged. The respondents submitted that the other allegations such as legal setup should be under the control of Additional General Manager instead of Sr. Dy. General Manager at zonal level, it is clear that the respondent No. 4 holds the rank of junior administrative



grade officer and is competent to take up the applicant for his misconduct and impose appropriate penalty as prescribed under the discipline and appeal rules, 1968. The respondents have produced Annexure R-1 that is Schedule II to Rule 4 and sub rule (2) of Rule 7 of Central Railway, Schedule of Powers on Establishment matters. According to the said schedule 4 relates to Junior Administrative grade officers and Senior scale officers holding independent charge/incharge of Deptt. on the division. The note to the said schedule is that the appellate authorities in the case of authorities mentioned in this schedule shall be as shown in the next column, whereas in the case of the authority specified in the last column, the appellate authority shall be the President, provided that, if post of the rank shown in any particular column does not exist, the appellate authority shall be that shown in the next column. The appointing authority or an authority of equivalent rank or any higher authority who is competent to impose the penalties of dismissal, removal or compulsory retirement from service, may also impose any lower penalties. The judgment cited by the applicant is not relevant to the facts of this case. Hence the Original Application is liable to be dismissed.

4. We have heard the learned counsel for the applicant and the respondents and perused the judgments and the records.

5. We find that the grounds urged by the applicant is that an incompetent authority has issued the charge memorandum as the appointing authority is SDGM and the charge memo has been issued by the administrative control of AGM. Hence the charge itself is illegal which violates the principles of natural justice. The applicant has relied on the provision of Railway



Servants (Discipline & Appeal) Rules, 1968, wherein the disciplinary authority, appellate authority, revisional authority and enquiry officer has been mentioned for handling disciplinary cases. Under the said rules the charge sheet should be issued by the proper disciplinary authority prescribed in the schedule. It is also essential that the charge sheet is signed by the disciplinary authority himself and not by any lower authority. In the instant case a lower authority i.e. below the SDGM has issued the charge sheet. Hence the authority who has issued the memo of charges has no authority to issue the same. The applicant has relied on the OA No.

judgment of this Tribunal in/368/1992 and OA 829/1995. The of OA No. 368/1992^{ex} facts in the said case/are that the applicant working as a Stenographer in the scale of Rs. 1600-2660/- with Sr. Divisional Engineer committed misconduct for which he was issued memorandum of charge and was punished by the Sr. Divisional Engineer vide order dated 14.3.1991 with the penalty of withholding of two increments for a period of two years without cumulative effect. The submission of the applicant in that case was that he was promoted to officiate as Stenographer vide order dated 25.6.1987 by the Sr. Divl. Personnel Officer, (P), Jabalpur and was directly under his administrative control. He was however attached with the Senior Divisional Engineer. The contention of the applicant was that any disciplinary action to be taken against him had to be taken by the Sr. Divisional Personnel Officer and not by the Sr. Divisional Engineer under whom he was working. The Sr. Divisional Engineer had issued the memorandum of charges and he was not the competent person to issue the orders. Hence the OA was allowed and the charges framed against the applicant was quashed. In O.A. No. 829/1995 the applicant was working as Assistant Station Master. The applicant was suspended by the Divisional Safety Officer,

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Jabalpur. The Divisional Safety Officer was not the competent authority to issue the orders. On that ground the application was allowed. The applicant has also relied on the judgment of the Hon'ble High Court of Madhya Pradesh in the case of Jaideep Neema (supra). The facts of this case of the Hon'ble High Court are not applicable to the facts of the present case.

6. According to the submission made by the respondents they have submitted Annexure R-1 which is schedule-II of Rule 4 and sub rule (2) of Rule 7 of Central Railway, Schedule of Powers on establishment matters. According to the said schedule the incharge of the Department on the division is the competent authority to issue the charge memo. Accordingly the administrative control of AGM is the administrative control of the applicant as issued in the charge memo. Accordingly he is the competent authority to issue the charge memo. In the judgments of this Tribunal referred to above the issue regarding powers vested to the incharge of the Department on the Division under Schedule-II of Rule 4 and sub-rule (2) of Rule 7 of Central Railway, Schedule of Powers on Establishment Matters is not dealt with. Hence we hold that the incharge of Department on the Division i.e. the administrative control of AGM is the competent authority to impose penalty on the non-gazetted staff. Admittedly the applicant is a non-gazetted staff and he is working under the administrative control of the AGM. Since the said issue was not decided by this Tribunal the judgments referred to by the applicant are not applicable to this case. Since the administrative control of the applicant is the competent authority and the authorities have imposed minor penalty without conducting the proceedings, we find that there is no illegality or irregularity in the orders passed by the



respondents. Accordingly, we are of the considered view that the competent authority has issued the memo of charges to the applicant. The applicant himself has produced Annexure A-7 regarding provisions in Railway Servants (Discipline and Circular Appeal) Rules, 1968. Para 2d of the Masters/ is regarding functions of the disciplinary authority can be none other than the one under whose administrative control the delinquent employee works. Even according to the applicant, he himself has produced Annexure A-7 which shows that the administrative control of the delinquent officer/the competent authority to issue the memorandum of charges. The DRM, Jabalpur has issued impugned order of punishment on 5.7.2002 and he has assigned reasons and exercised his powers while passing the impugned order. There is no violation of principles of natural justice.

7. We have perused the orders of the appellate authority and we find that the appellate authority has also decided the matter by passing a speaking, detailed and considered order.

8. After careful consideration of the facts of the case, provisions of law referred by either parties and also the orders referred by the applicant, we are of the considered view that the competent authority has issued the charge memo, the competent authority has imposed the penalty and the appellate authority has considered all aspects of the case while deciding the appeal. Since the penalty was minor no enquiry is required.

9. Accordingly, we find that the applicant has failed to prove his case. Original Application is dismissed. No costs.

G. Shanthappa
(G. SHANTHAPPA)
JUDICIAL MEMBER

"SAM"

M. P. Singh
(M. P. SINGH)
VICE CHAIRMAN