

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 1127 of 2000

Jabalpur, this the 10th day of September, 2003

Hon'ble Shri D.C. Verma, Vice Chairman (Judicial)
Hon'ble Shri Anand Kumar Bhatt, Administrative Member

Dinesh Kumar Sharma, aged about
33 years, S/o. Late Shri Ghan
Shyam Sharma, Ex-Head-Trains Clerk
Itarsi Jn. Central Railway, resident
of Village Pagara, District Guna (M.P.). ... Applicant

(By Advocate - Shri L.S. Rajput)

V e r s u s

Union of India, Through

1. General Manager,
Central Railway,
Mumbai CST,
(Maharashtra).
2. Divisional Railway Manager,
Central Railway,
Habibganj,
Bhopal (M.P.) 462024.

(By Advocate - Shri S.P. Sinha)

O R D E R (Oral)

By Anand Kumar Bhatt, Administrative Member -

This Original Application is against the major penalty charge sheet dated 21.08.1998 (Annexure A-1), the punishment order of removal from service dated 07/11.01.2000 (Annexure A-2), the appellate order dated 22.04.2000 (Annexure A-3) and revision order passed on 02.11.2000 (Annexure A-4).

2. The facts of the case in brief as per the applicant are that the applicant was working as Head Trains Clerk at Control Office, Bhopal when he was placed under suspension on 05.08.1998 by the Assistant Operating Manager, Bhopal was and a major penalty charge sheet/served to him on 21.08.1998 (Annexure A-1). The suspension order was latter revoked on 29.09.1998. Reply was submitted by the applicant to the

charge sheet. Thereafter an enquiry officer was appointed on 03.11.1998. The applicant stated that he remained under treatment of the Chief Medical Superintendent (in short C.M.S.), Central Railway, Bhopal from 21.12.1998 to 28.04.1999. During this period he was transferred to Itarsi on 16.12.1998 under the Chief Yard Master, Itarsi. By another transfer order dated 12.01.1999 his place of posting were changed from Chief Yard Master, Itarsi to Station Manager, Itarsi. The applicant was given fitness certificate ^{on 28.4.99.} by the C.M.S., Bhopal. However after that the applicant was under treatment in the Government Jai Prakash Hospital at Bhopal from 29.04.1999 to 28.07.1999. Notices issued by the enquiry officer were not received by him and on the basis of the enquiry report the punishment order (Annexure A-2) was passed by the disciplinary authority i.e. Divisional Operating Manager (DOM), Bhopal on 07/11.01.2000, removing the applicant from service with immediate effect.

3. The grounds taken by the applicant and submitted by the learned counsel for the applicant Shri Rajput are that the charge sheet for major penalty has been signed by the ^{is an} Assistant Operating Manager who Assistant Officer Group 'B' and not competent to sign a major penalty charge sheet. Thus the entire proceedings and the orders thereafter are vitiated. The charges are vague and in any case the punishment meted out is not commensurate with the misconduct mentioned in the charge sheet. The enquiry was not conducted as per the procedure laid down under Rule 9 of the R.S.(D&A)Rules, 1968. The applicant did not receive the notice of enquiry with date and place and the proceedings were drawn as ex parte. No prosecution witnesses were examined to establish the charges and the enquiry report is incomplete. The punishment order has been passed by the disciplinary authority without application of mind and also

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the appellate authority and the revisional authority have over-looked the provisions of Rule 22(2) of R.S.(D&A) Rules, 1968 by rejecting the appeal and revision petition.

4. The learned counsel for the applicant has drawn our attention towards the instructions issued in clarification of Rule 2 of D & A Rules, which is as under :

"(7) Authority competent to impose major penalty - It is clarified that there is no contradiction in the provision of Rule 2(1)(c)(iii) and that of Rule 8(2). The words 'subject to provision of Clause (c) of Sub-rule (1) of Rule 2' used in Rule 8(2) simply mean that only an authority competent to impose any of the major penalties can initiate disciplinary proceedings for imposition of a major penalty in relation to Rule 9, in respect to non-gazetted staff.

2. It may be mentioned that while framing the Railway Servants (Discipline and Appeal) Rules, 1968, a deliberate decision was taken to the effect that only an authority competent to impose any of the major penalties should initiate disciplinary proceedings for imposition of such a penalty on non-gazetted staff. As such the authority for all purposes of institution of disciplinary proceedings and issue of charge memorandum for imposition of major penalty is the authority competent to impose any of the major penalties."

He has also drawn our attention towards a Government of India, Ministry of Home Affairs Memorandum No. F.7.14.61 Ests(A), dated 24th January, 1963, which is as follows :

"Officers performing current duties of a post cannot exercise statutory powers under the rules -- An officer appointed to perform the current duties of an appointment can exercise administrative or financial powers vested in the full-fledged incumbent of the post, but he cannot exercise statutory powers, whether those powers are derived direct from an Act of Parliament (i.e., Income-Tax Act) or Rules, Regulations and Bye-Laws made under various Articles of the Constitution (e.g., Fundamental Rules, Classification Control and Appeal Rules, Civil Service Regulations, Delegation of Financial Powers, Rules, etc.)."

In view of this the learned counsel asserted that an official who is merely looking after the current duties of the higher office is not competent to exercise disciplinary or appellate powers of the latter, if he himself is not vested with such concurrent powers.

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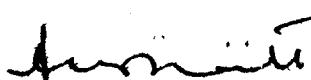
5. The respondents have stated that as the post of DOM was vacant and his work was being looked after by the Senior DOM who have authorised the Assistant Operations Manager to issue and sign the charge sheet. They have denied that the notice regarding enquiry was not sent. Three letters were sent, however they were returned undelivered and therefore the enquiry was proceeded ex parte. The enquiry was commenced only after he was declared fit by the CMS, Bhopal and even on becoming fit he did not join at Itarsi, where he was transferred from Bhopal. The applicant on learning of the transfer order, reported sick on 21.12.1998. He did not follow the rules before taking treatment at the Government Jai Prakash Hospital.

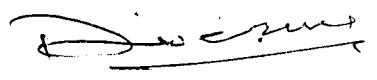
6. We have heard the learned counsel on both the sides at length and have perused the pleadings carefully.

7. So far as the enquiry report is concerned it is seen that no witnesses have been examined. No records in relation to the charges have been proved. ^{Even} Although ex parte enquiry was conducted, the charges should have been proved by proper documentary and oral evidence which has not been done in this case. As far as the signing of the charge sheet by the Assistant Operating Manager is concerned this is a major lacuna in the disciplinary proceedings against the applicant. The applicant has been able to show us the various instructions which proved beyond doubt that the charge sheet was not signed by the authority competent to impose the major ^{and therefore was not legal} penalty on the applicant. The applicant has also submitted a copy of the DO letter issued by the Deputy ^{CPO(T)} Secretary dated 01.04.1996 (Annexure A-16) where it has been pointed out that the major penalty charge sheet should be signed by the authority competent to impose major penalty. The AOM was not competent to impose major penalty on the applicant who was

a Head Trains Clerk in the scale of Rs. 1400-2300 (RPS). In addition the punishment meted out are harsh as compared to the charges. It is established principle that the punishment meted out should be commensurate with the gravity of the mis-conduct so as to exclude the element of arbitrariness. Taking all things into consideration we do not think that the charge sheet, the enquiry report, the order of punishment, the appellate and revisional orders thereof are valid and in order and they are accordingly quashed. The applicant shall be taken back in service by the respondents within a month of receipt of copy of this order. However the disciplinary authority is free to start de-novo proceedings after issuing a fresh charge sheet for minor penalty. The period from the date of removal to the date of joining will be regularised as per rules by sanctioning him leave due to him.

8. In the result the Original Application is allowed. No costs.


(Anand Kumar Bhatt)
Administrative Member

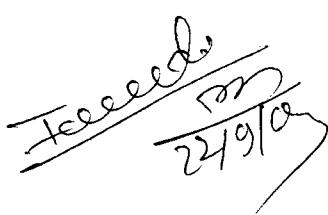

(D.C. Verma)
Vice Chairman (J)

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पृष्ठांकन से ओ/व्या.....जबलपुर, दि.....
प्रतिलिपि अवृत्तिः—

(1) सचिव, उच्च न्यायालय भार एस्प्रेइशन, जबलपुर Shri L.S. Rajput Adm.
(2) आकेश्व श्री/श्रीमती/कु.....के घाउंसल H.C. of M.P. JBP.
(3) छत्यरी श्री/श्रीमती/कु.....के घाउंसल Shri S.P. Sinha Adm.
(4) दंयपाल, कोपां, जबलपुर न्यायपीठ H.C. of M.P. JBP.

सूचना एवं आदरण्ड घार्मार्गी द्वारा
अद्य 19/03
द्वारा दिनांक


24/9/03