

Central Administrative Tribunal  
Jabalpur Bench

OA No.135/1998

Jabalpur this the 31st day of October, 2003.

Hon'ble Mr. Shanker Raju, Member (J)

Hon'ble Mr. Sarveshwar Jha, Member (A)

Surendra Singh Chandel

-Applicant

(By Advocate Shri S. Nagu)

-Versus-

Union of India & two others

-Respondents

(By Advocate Sh. P. Sankaran)

ORDER (ORAL)

Mr. Shanker Raju, Member (J):

Applicant impugns respondents' order dated 18.5.94, imposing upon him a penalty of compulsory retirement as well as order dated 29.5.97 passed by the appellate authority, upholding the punishment. Quashment of the aforesaid orders has been sought with all consequential benefits.

2. Applicant while posted as Chargeman Grade-I on being promoted on 19.8.1994 was to superannuate on 31.5.1994. A proceeding under Rule 14 of the CCS (CCA) Rules, 1965 was initiated against applicant, inter alia on the ground of indulging in running a racket of bogus LTC claim.

3. On the basis of the report of the Enquiry Officer (EO) holding applicant guilty of the charge and on an opportunity to represent vide order dated 18.5.94 aforesaid punishment has been imposed. Applicant preferred an appeal against this order which was forwarded to OFB and was ultimately returned to the Vehicle Factory. Applicant preferred OA-62/95, which was disposed of on 22.4.1996, wherein respondent No.2 was directed to consider appeal of applicant, which ultimately was rejected, giving rise to the present OA.

4. Learned counsel for applicant Sh. S. Nagu has assailed the impugned order only on the ground of competence of the disciplinary

authority. No other grounds have been raised in the OA. According to him applicant who was promoted as Chargeman Grade-I the appointment was made by Director General, Ordnance Factory (DGOF) whereas the punishment has been inflicted upon by an inferior authority, i.e., Dy.DGOF. It is contended that under Article 311 and Rule 12 (4) (a) of the CCS (CCA) Rules, 1965 which is an exception to sub rule (2) and (3) of the Rules *ibid*, no penalty specified in clauses (5) (9) of Rule 11 which includes a punishment of compulsory retirement appointing authority has been defined as whichever authority is the highest. Accordingly, DDGOF is an authority subordinate in rank and scale to the appointing authority. As such he cannot assume the role of the disciplinary authority.

5. Sh. Nagu further contends that as per CCS (CCA) Rules DDGOF has been authorized and delegated powers of appointment by the DGOF but this does not include delegation of power to inflict punishment or to assume the role of disciplinary authority. The notification dated 2.3.1972 was to this effect. However, it is only by notification dated 26.11.86 that power of imposing penalty upon class III employees of OF was delegated to subordinate authority to be DDGOF by the President of India. In this conspectus it is stated that as the competence has come to the appropriate authority to act as a disciplinary authority only on 26.11.86 by virtue of his appointment by DGOF in 1984 the authorisation cannot be made effective retrospectively. He places reliance on a DECISION of the Apex Court in *Kishore Kumar v. DAE*, AIR 1979 SC 912 to substantiate his plea. As the applicant was actually appointed by DGOF he cannot be punished by an authority subordinate in rank to the appointing authority.

6. On the other hand, respondents have vehemently opposed the contentions and stated that there is no violation of Article 311 of the Constitution of India. In fact the protection is available only in case of punishment of dismissal, removal or reduction in rank. So the mandate would not apply in the case of compulsory retirement. However, it is contended that the informal delegation by DGOF was followed by the formal delegation and this Bench of the Tribunal in a common judgment dated 25.6.97 in OA-859/91 upheld the validity of this delegation as well as competence of DDGOF to act as a disciplinary authority for the post held by applicant. As the decision has been affirmed by the High Court of Madhya Pradesh at Jabalpur the issue having attained finality is no more res integra and this would on all fours cover the present issue.

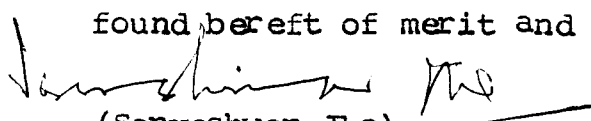
7. We have carefully considered the rival contentions of the parties and perused the material on record. As per the amendment to Schedule 5 in CCS (CCA) Rules, 1965 the appellate authority in respect of Chargeman Grade-I is Member WV&E OFB. Moreover, by an amendment to the schedule DDGOF has been formally delegated powers to act as disciplinary authority. As there has been a formal delegation of the powers by the DGOF the DDGOF is the disciplinary authority in respect of Chargeman Grade-I as well.

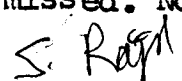
8. As the issue in all fours covered by the decision of the High Court affirming the decision of the Jabalpur Bench, we respectfully follow the same and hold that <sup>the punishment of</sup> compulsory retirement of applicant has been inflicted upon applicant <sup>by a competent disciplinary authority.</sup>

9. The claim of applicant is also liable to be rejected on the ground that though in 1982 the delegation has been effected in so far as power of appointment to DDGOF is concerned, but by a subsequent amendment in 1986 authorising the DDGOF to delegation and to act as a disciplinary authority, which includes power to punish and inflict upon any punishment envisaged under Rules ibid the aforesaid action relates back to the date of appointment by DDGOF in 1984 as well. We are fortified in this view of ours by the decision of the Apex Court in State Bank of India v. S. Vijay Kumar, AIR 1991 SC 79 wherein competent authority has authorized delegation from the retrospective date and it has been held that though on the date of appointment the power to inflict punishment had not been vested with the authority who appointed applicant but subsequently by delegation when the punishment has been inflicted rules which were in vogue stood amended and the authority imposing punishment has been validly delegated and was designated as an appointing authority. This notification has ratified the authority of DDGOF to act as a disciplinary authority and as DDGOF is not an authority subordinate to the appointing authority the mandate of Article 311 has not been violated.

10. In so far as the contention put-forth that it is the actual authority who has appointed when inflicted punishment upon applicant, i.e., DDGOF is concerned, it is settled principle of law that valid delegation of powers of appointing authority cannot be questioned and would be a valid compliance of the principles of infliction of punishment by the appointing authority.

11. As the ground raised by applicant fails and no other ground has been raised to assail the punishment, the OA is found bereft of merit and is accordingly dismissed. No costs.

  
(Sarveshwar Jha)  
Member (A)

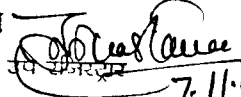
  
(Shanker Raju)  
Member (J)

पृष्ठंकन सं ओ/व्या.....जवलपुर, दि.....

पतिलिपि अवधि:-

- (1) सचिव, उच्च न्यायालय बार एसोसिएशन, जवलपुर
- (2) आवेदक श्री/श्रीमती/कु.....के काउंसल S. Nagu, Adv
- (3) प्रत्यक्षी श्री/श्रीमती/कु.....के काउंसल P. Shukla, Adv.
- (4) जज, उच्च न्यायालय, जवलपुर न्यायपीठ  
रूपाभा एवं आवेदक कार्यवाही हेतु

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