

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 16 day of November, 2010

ORIGINAL APPLICATION No.278/2010

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMINISTRATIVE)

Surendra Singh Jangid
s/o Shri R.R.Jangid,
r/o Plot No.12-A,
New Gopal Vihar,
Baran Road, Kota,
Now a days HTTE, Railway Station,
Sawaimadhopur.

.. Applicant

(By Advocate: Shri S.K.Jain)

Versus

1. Union of India
through Geneal Manager,
West Central Railway,
Jabalpur.
2. Divisional Commercial Manager,
WC Railway,
Kota Division, Kota
3. Shri J.S.Kothari,
Sr. Enquiry Officer,
Vigilance Branch,
WC Railway, Kota.
4. Sr. Divisional Commercial Manager,
Kota WC Railway,
Kota.

.. Respondents

(Shri R.S.Meena, CLA, departmental rep. present)

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ORDER

Per Hon'ble Mr. M.L.Chauhan, M(J)

The applicant has initially filed OA before this Tribunal for quashing the chargesheet dated 30.6.2008 (Ann.A/1) with further prayer that the order of appointment of Enquiry Office be quashed and set-aside and independent person should be appointed as Enquiry Officer for conducting fresh enquiry. By way of interim relief, it was prayed that the respondents may be restrained from passing any order on the enquiry report of respondent No.3 dated 27.5.2009 (Ann.A/9).

When the matter was listed on 9.6.2010, while issuing notices, this Tribunal has passed the following order:-

“....

The grievance of the applicant is that chargesheet has not been issued by the appointing authority, as such, it was not permissible for the Divisional Commercial Manager (respondent No.2) to issue chargesheet that too in violation of the instructions of the Railway Board dated 29.11.69 which stipulate that chargesheet for major penalty in respect of non-gazetted staff can be issued by the authority who can impose any of the major penalties on railway servants.

I have given due consideration to the submissions made by the learned counsel for the applicant.

The authority who can institute disciplinary proceedings has been stipulated under Rule 8 of the Railway Servants (Discipline and Appeal) Rules, 1968 which is in two parts. The said rule does not stipulate that it is only the appointing authority who can issue chargesheet. The said rule stipulates that disciplinary proceedings can be instituted by (i) the President or any other authority empowered by him by general or special order or (ii) by the disciplinary authority who is competent to impose any of the minor penalties in respect of the chargesheet for major penalties. However, the later part of the rule has been made subject to Clause-C of sub-rule (1) of Rule 2. Rule 2, sub-

rule (1)(c) defines the disciplinary authority. I am concerned with item no. (iii), clause (c) of sub-rule (1) of Rule 2, which is in the following terms:-

"(i)

(ii)

(iii) in relation to Rule 9 in the case of any non-gazetted railway servant, an authority competent to impose any of the major penalties specified in Rule 6;"

Since the applicant is non-gazette railway servant and he has been issued chargesheet under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, as such, *prima facie* I am of the view that the Divisional Commercial Manager, who is not competent to impose major penalty on the applicant could not have issued chargesheet in terms of second part of Rule 8. From the material placed on record, it is not evident whether the Divisional Commercial Manager has been authorized by the President or any other authority to institute disciplinary proceedings in terms of Rule 8(1). Before any interim relief is granted to the applicant, I am of the view that the respondents shall file affidavit thereby specifically stating whether the Divisional Commercial Manager was competent to issue chargesheet and was authorized by the competent authority in terms of Rule 8(1) to issue such chargesheet or the chargesheet has been issued by the Divisional Commercial Manager in complete disregard to the provisions contained in Rule 8. At this stage, I wish to mention that in case no final order is passed by the competent authority pursuant to the enquiry report submitted by the Enquiry Officer on 24.6.2009, the competent authority shall proceed in the matter in the light of the observations made hereinabove.

Let the matter be listed on 6.7.2010.

CC to the learned counsel for the applicant."

Subsequently, when the matter was listed on 6.7.2010, it was brought to the notice of the Bench that Disciplinary Authority has inflicted penalty on the applicant pursuant to the findings given by the Enquiry Officer and under these circumstances, the learned counsel for the applicant prayed for amending the OA thereby challenging the validity of the order whereby penalty has been

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imposed. It was further argued by the learned counsel for the applicant that the penalty has been imposed by the Disciplinary Authority ignoring the observations made by this Tribunal. This Tribunal while noticing the aforesaid contentions of the learned counsel for the applicant further observed that 'Be that as it may, learned counsel for the applicant may file Amended OA within a period of ten days' and the matter was adjourned to 20.7.2010. Subsequently, vide order dated 20.7.2010 a separate application for carrying out amendment as incorporated in the Misc. Application was allowed and the applicant was permitted to file amended OA within a period of three days and the respondents were granted two weeks time to file reply to the amended OA. The applicant has filed amended OA thereby making the following reliefs:-

- "i) That by an Appropriate order or direction the impugned chargesheet Ann.A/1 dated 30.6.2008 be quashed and set aside and the applicant be declared to be absolved from the charge.
- ii) That the impugned order of imposing penalty of compulsory retirement be quashed and set aside along with the enquiry proceedings.
- iii) Any other relief this Hon'ble Tribunal deems fit may also be granted."

2. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, the respondents have categorically stated that the order dated 9.6.2010 passed by this Tribunal has been complied with by the respondents, since the Hon'ble Tribunal has observed that the applicant is non-gazetted railway servant and he has been issued charge sheet under Rule 9

of the Railway Servants (Discipline and Appeal) Rules, 1968, as such prima facie I am of the opinion that the Divisional Commercial Manager, who is not competent to impose major penalty on applicant could not have issued charge sheet in terms of second para of Rule 8. It is stated that the Hon'ble Tribunal has further observed that the competent authority shall proceed in the matter in the light of the observations made by the Tribunal. The respondents in the reply have stated that the competent authority has passed the orders keeping in view the observations dated 9.6.2010 as well as keeping in view the competence of the Divisional Commercial Manager while issuing the charge sheet to the applicant. Thus, according to the respondents, it cannot be construed by any stretch of imagination that the order of this Tribunal has not been complied with. The respondents have further stated that the present OA is not maintainable in view of the statutory bar imposed by Section 20 of the Administrative Tribunals Act, 1985 which stipulates that an application shall not ordinarily be admitted unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules. In order to show that the Divisional Commercial Manager was competent to issue charge sheet, the respondents have specifically stated that Schedule-II of Railway Servants (Discipline and Appeal) Rules, 1968 has been amended vide notification dated 10.3.2003 wherein the President in exercise of powers of proviso to Article 309 of the Constitution was pleased to amend the schedule and after amendment the aforesaid Rules, they are known as Railway Servants

(Discipline and Appeal) Second Amendment Rules, 2003. The respondents have also placed on record copy of the communication dated 25.3.2003 incorporating the notification dated 10.3.2003 and amended schedule as Ann.R/3 in order to show that Divisional Commercial Manager, Kota was fully empowered to initiate proceedings for major penalty on the applicant. Besides this, the respondents have also defended the case on merit.

3. In the rejoinder, the applicant has stated that order of this Tribunal has not been complied with. So far competency of the Divisional Commercial Manager to issue chargesheet is concerned, the applicant has stated that the applicant who was in the grade of Rs. 5000-8000 and the said pay scale was revised on the recommendations of the Sixth Pay Commission w.e.f. 1.1.2006 and the pay scales of Rs. 5000-8000, Rs. 5500-9000 and Rs. 6000-9800 have been merged in the scale of Rs. 9300-34800. Thus, so long as the Schedule to Ann.R/3 is not amended further, the chargesheet could not have been issued by the Divisional Commercial Manager, Kota.

4. It may be stated here that as per the amended schedule-II dated 10.3.2003 one of the major penalties of reduction to lower stage in the time scale of pay for a period exceeding three years with cumulative effect or adversely affecting pension in respect of Group-D and Group-C staff upto and including the scale of Rs. 5500-9000 could have been awarded by the Senior Scale Officers and Assistant Officers (junior scale and Group-B holding

independent charge) whereas as per the provision which was in vogue prior to the second amendment of the Schedule-II of the Railway Servants (Discipline and Appeal) Rules, 1968, such a penalty could not have been passed by the aforesaid authority. As already stated above, the applicant was in the scale of Rs. 5000-8000 and as per the amended Schedule such a penalty could have been imposed by the Assistant Officers (junior scale and Group-B) whereas the major penalty of reduction to a lower stage of an employee in the pay scale upto and including Rs. 5500-9000 could have been passed by the Senior Scale Officers and Assistant Officers. Admittedly, the Divisional Commercial Manager who has issued the chargesheet is a Senior Scale Officer, thus he could have issued the chargesheet in respect of the applicant which was in the pay scale of Rs. 5000-8000. Thus, the contention raised by the learned counsel for the applicant that now the scales of Rs. 5000-8000, and Rs. 5500-9000 have been revised to Rs. 9300-34800 restorspectively w.e.f. 1.1.2006, as such, the Divisional Commercial Manager was not competent authority to issue charge sheet is required to be rejected.

5. It may be stated that in order to decide the question regarding competency to issue chargesheet and how the disciplinary proceedings should be conducted, the Railway Servants (Discipline and Appeal) Rules, 1968 are attracted and provisions regarding revision of pay scale has nothing to do with the competency to issue the chargesheet or to proceed with the enquiry proceedings and pass ultimate order. Suffice it to say that

the rules regarding revision of pay scale deals with only revision of pay, although for the purpose of fixation of pay and grant of pay scale, the same has been given retrospective effect w.e.f. 1.1.2006. It may further be stated that when the chargesheet was issued to the applicant on 30th June, 2008, the revised pay rules were not notified. The Central Civil Services (Revised Pay) Rules, 2008 came into effect w.e.f. 29th August, 2008, although it has been given retrospective operation w.e.f. 1.1.2006 whereas in the instant case, chargesheet was issued to the applicant on 30th June, 2008 when the Revised Pay Rules were not notified. It may be relevant to state here that similar notification based on the CCS (Revised Pay) Rules, 2008 must have also been issued by the railway authorities in respect of their employees. The judicial notice can be taken of the fact that pursuant to coming into force the CCS (Revised Pay) Rules, the previous provisions contained in Fundamental Rules and CCS (Pay) Rules shall cease to operate and over riding effect of the revised pay rules, 2008 is confined to that extent and provisions contained in Disciplinary and Appeal Rules which operate in entirely different field have not been superseded. It may further be noticed that by way of CCS (Revised Pay) Rules, 2008 the present scale of the post/grade has been substituted by revised pay structure mentioned against that post or the pay scale. Thus, in view of what has been stated above, we are of the view that for the purpose of determining whether the Divisional Commercial Manager is competent authority to impose penalty, it is the status of a person at the relevant time which is to be looked into i.e. whether the

person is Senior Administrative Grade Officer or Junior Administrative Grade Officer etc. and in order to determine whether a person can be said to be Disciplinary Authority in terms of Railway Servants (Discipline and Appeal) Rules and could have imposed one of the major penalties, the factum of holding the post by a person in a particular pay scale which has been subsequently revised should also be taken into account. Thus, the fact remains that the applicant was in the pay scale of Rs. 5000-8000 when chargesheet was issued on 30.6.2008 and Revised Pay Rules, 2008 were neither notified nor Pay Rules of 1997 repealed. As such, in order to determine whether the Divisional Commercial Manager could have imposed one of the major penalties, the corresponding pre-revised pay scale of the applicant cannot be ignored. Even otherwise also, such repeals of Pay Rules of 1997 by Revised Pay Rules of 2008 effective from 1.1.2006 shall not affect any action validly done when such repeal was not in force and such action are saved in view of provisions contained in Section 6 of the General Clauses Act, 1897.

6. Thus, we are of the view that the Divisional Commercial Manager, who is senior scale officer was competent to impose one of the major penalties i.e. reduction to a lower stage, as such, was competent to issue chargesheet.

7. The observations made by this Tribunal in the order dated 9.6.2010 that Divisional Commercial Manager was not competent to impose major penalty on the applicant and could not have issued chargesheet in terms of second part of Rule 8 was of

tentative nature as is evident from the order when the Tribunal has specifically stated that it is of a prima-facie view. It may be stated that such prima-facie view was made on the basis of rules which were in existence prior to 2003 and the amendment carried out in 2003 was not brought to the notice of the Bench. Thus, we are of the view that the order of the Tribunal dated 9.6.2010 has been complied with.

8. The next question which requires our consideration is whether the OA is maintainable in view of the statutory bar stipulated under Section 20 of the Administrative Tribunals Act, 1985. Admittedly, the applicant has not exhausted the remedy by way of appeal. It may be stated that when the OA was filed no final order was passed. The final order of compulsory retirement was passed by the Disciplinary Authority on 21.6.2010. When this fact was brought to the notice of the Bench, the learned counsel for the applicant was permitted to challenge that order by carrying out amendment and the contention of the learned counsel for the applicant was also noticed that observations made by the Tribunal vide order dated 9.6.2010 have not been complied with by the respondents. The Tribunal permitted the applicant to file amended OA as the question of competency of the Divisional Commercial Manager to issue major penalty chargesheet was in question. In case competency to issue chargesheet by the Divisional Commercial Manager was not in issue, in that eventuality, this Tribunal would have declined to issue notices to the respondents and also to permit the applicant to file amended OA, in view of the statutory

bar contained in Section 20 of the Administrative Tribunals Act. Thus, the OA was entertained and amendment was allowed and the applicant was permitted to file amended OA as prima-facie the question regarding jurisdiction/competency to issue chargesheet was involved. Now the respondents in the reply have categorically stated that the prima-facie view taken by this Tribunal which was based on unamended rules is not correct in view of the statutory provisions and amendment carried out in the notification dated 10.3.2003 (Ann.R/3). Thus, we are of the view that the present OA cannot be entertained at this stage in view of the decision of the Constitution Bench of the Apex Court in the case of S.S.Rathore vs. State of M.P., AIR 1990 SC 10 whereby the Hon'ble Apex Court has held that cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of a six months period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. Thus, in view of the decision of the Constitution Bench based upon the provisions contained under Section 20 of the Administrative Tribunals Act, we are of the firm view that the present OA cannot be entertained at this stage.

9. The contention raised by the learned counsel for the applicant on the merit of the case that the chargesheet has been issued at the instance of the Vigilance Department while drawing



our attention to Ann.A/13 and that there is violation of Rule 9(21) of the Railway Servants (Discipline and Appeal) Rules and also that neither the Enquiry Officer nor the Disciplinary Authority has taken into consideration the written arguments/objections filed to the enquiry report and also that amended chargesheet could not have been issued but it was permissible for the respondents to withdraw the original chargesheet in case the same was defective and the case laws cited by the learned counsel for the applicant, need not be noticed at this stage as these points and other points can be raised by the applicant in the appeal to be filed by the applicant before the Appellate Authority which appeal the Appellate Authority is required to dispose of taking into consideration the provisions mentioned in Rule 22 of the Railway Servants (Discipline and Appeal) Rules.

10. The further contention raised by the applicant that since this Tribunal has permitted the applicant to file amended OA and has issued notices to the respondents, as such, he cannot be relegated to alternative remedy, cannot be accepted in view of the law laid down by the Apex Court in the case of State of U.P. and Anr. vs. U.P.Rajay Khanij Vikas Nigam, JT 2008 (6) SC 489 whereby the Apex Court has held that petition admitted and stay granted can be dismissed on the ground of alternative remedy. As already stated above, in this case the OA has not been admitted so far. Only notices were issued, which notices were issued in view of the circumstances explained above i.e. the applicant has raised the question of competency to issue the chargesheet. Further, we are

of the view that admission of lis only shows that matter need be examined in depth. Admission of lis does not preclude a litigant from raising legal submissions including maintainability of OA at the time of hearing. Thus, the applicant has been relegated to the statutory remedy at the initial stage of the hearing that too in the light of the law laid down by the Constitution Bench in the case of S.S.Rathore (*supra*).

11. The learned counsel for the applicant has placed reliance upon the decision of the Apex Court in the case of L.K.Verma vs. HMT Ltd. and Anr., (2006) 2 SCC 269 to contend that the OA is maintainable even if alternative remedy is available. We fail to understand how the applicant can take assistance from this judgment. That was a case where in exercise of its jurisdiction under Article 226 of the Constitution, the High Court has entertained the writ petition although alternative remedy was available. Not only that, after entertaining the writ petition, the matter was decided on merit. It was under these circumstances, the Apex Court held that once the matter has been decided by the High Court on merit, the appellate court except in rare cases, would not interfere with on the ground of alternative remedy. At this stage, it will be useful to quote para 20 and 21 of the judgment, which thus reads:-

"20. The High Court in exercise of its jurisdiction under Article 226 of the Constitution, in a given case although may not entertain a writ petition *inter alia* on the ground of availability of an alternative remedy, but the said rule cannot be said to be universal application. Despite existence of an alternative remedy, a writ court may exercise its discretionary jurisdiction of judicial review *inter alia* in cases where the court or the tribunal lacks inherent jurisdiction or for enforcement of a

fundamental right or if there has been a violation of principle of natural justice or where vires of the Act is in question. In the aforementioned circumstances, the alternative remedy has been held not to operate as a bar.

21. In any event, once a writ petition has been entertained and determined on merit of the matter, the appellate court, except in rare cases would not interfere therewith only on the ground of existence of alternative remedy. We, therefore, do not see any justification to hold that the High Court wrongly entertained the writ petition filed by the respondents."

(emphasis our).

Thus, from the reading of Para 20 and 21 above, it is evident that the writ court may in exercise of its discretionary jurisdiction of judicial review entertain a matter where the court or the Tribunal lacks inherent jurisdiction or for enforcement of a fundamental right or if there has been a violation of a principle of natural justice or where vires of the Act is in question. This is not a case of such nature, inasmuch as, the Disciplinary Authority as well as the Appointing Authority has powers to issue chargesheet and pass punishment order. Further, neither the present case involve enforcement of fundamental right nor vires of the Act is under challenge. No doubt, the applicant has raised contention that the Disciplinary Authority has acted at the instance of the Vigilance Department and that the Enquiry Officer has not followed the provisions of Rule 9(21) of the Railway Servants (Discipline and Appeal) Rules and also that the Enquiry Officer and the Disciplinary Authority has not taken into consideration the written arguments/objections filed to the enquiry report while submitting the enquiry report and while passing the impugned order of punishment etc. but these are the matters which are required to be gone into in the statutory appeal where the

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Appellate Authority is bound to consider such plea of violation of principles of natural justice as well as quantum of punishment in terms of Provisions contained under Rule 22 of the Railway Servants (Discipline and Appeal) Rules. Thus, we are of the view that the applicant cannot take any assistance from the aforesaid judgment, more particularly, in the light of the provisions contained under Section 20 of the Administrative Tribunals Act, mandating exhausting of statutory remedy before filing of the OA, which provision has been considered by the Constitution Bench in the case of S.S.Rathore (supra) and held that without availing statutory remedy, the OA cannot be entertained. Further, it may be stated that in the case of L.K.Verma, the Apex Court was not required to consider implication of Section 20 of the Administrative Tribunals Act but the said finding has been recorded in the light of the provisions contained under Article 226 of the Constitution of India where there is no specific bar to entertain a writ petition on the ground of availability of statutory/alternative remedy.

12. For the foregoing reasons, the present OA is disposed of with direction to the applicant to file statutory appeal before the Appellate Authority within a period of 4 weeks from today. In case the statutory appeal is filed by the applicant within the aforesaid period, the Appellate Authority shall entertain and decide the same on merit, keeping in view the requirement as stipulated under Rule 22 of the Railway Servants (Discipline and Appeal) Rules.

13. With these observations, the OA stands disposed of with no order as to costs.

14. In view of disposal of the OA, no order is requires to be passed in MA Nos.195/2010 & 284/2010, which are accordingly disposed of.

Anil Kumar
(ANIL KUMAR)
Admv. Member



(M.L.CHAUHAN)
Judl. Member

R/