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CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH ::: GUWAHATI-5.

O.A. NO. 29/94  
T.A. NO.

DATE OF DECISION 7-9-1995.

Shri Monojit Chakraborty,

(PETITIONER(S))

Mr. B. Das and Mr. T. R. Dey.

ADVOCATE FOR THE  
PETITIONER (S)

VERSUS

Union of India & Ors.

RESPONDENT (S)

Mr. S. Ali, Sr. C. G. S. C.

ADVOCATE FOR THE  
RESPONDENT (S)

THE HON'BLE JUSTICE SHRI M.G. CHAUDHARI, VICE-CHAIRMAN

THE HON'BLE SHRI G.L. SANGLYINE, MEMBER (ADMN)

1. Whether Reporters of local papers may be allowed to see the Judgment ? YES
2. To be referred to the Reporter or not ? YES
3. Whether their Lordships wish to see the fair copy of the judgment ? NO
4. Whether the Judgment is to be circulated to the other Benches ? NO

*M. G. Chaudhari*  
Judgment delivered by Hon'ble VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No.29/94

Date of Order: This the 7th Day of September 1995.

JUSTICE SHRI M.G.CHAUDHARI, VICE-CHAIRMAN  
SHRI G.L.SANGLYINE, MEMBER (ADMN)

Shri Manojit Chakraborty, Son of Sri Sukumar Chakraborty  
Resident of Village & P.O. Gakulpur, P.S. Radhakishorepur,  
District-South Tripura.

.. Applicant.

Mr. B. Das and Mr. T. R. Dey.

-vs-

1. The Union of India, New Delhi (represented by the Secretary to the Government of India, Ministry of Information & Broadcasting, New Delhi).
  2. The Chief Engineer (East Zone), All India Radio, Akashvani Bhavan, 4th Floor, Calcutta-700001.
  3. The Station Engineer, Television Maintenance Centre, Purnea, Bihar;
  4. The Assistant Station Engineer, All India Radio, Tawang. Arunachal Pradesh.
- By Advocate Mr. S. Ali, Sr. C.G.S.C.

O R D E R.

CHAUDHARI J(VC):

1. The applicant challenges the order dated 12-3-93 passed by the Assistant Station Engineer, All India Radio, Tawang which reads as passed under Rule 19(1) removing the applicant from service w.e.f. 11-12-92. According to para 9 of written statement the order has really been passed under Cl.(ii) of Rule 19 of the Central Civil Services (Classification, Control and Appeal) Rules 1965.

The applicant was working as Engineering Assistant, AIR, when he was removed from service. The ground on which his service was terminated is prolonged unauthorised

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absence from duties attracting Rule 11 of CCS(CCA) Rules 1965. The applicant prays that the said order may be quashed and he may be reinstated with consequential benefits and continuity of service.

3. Although several contentions have been raised in the application to challenge the legality and correctness of the order on merits, the learned counsel for the applicant, Mr. B. Das confined his submission only to the legal ground namely that the order is illegal and invalid since it has been passed by an authority who was not competent to do so.

4. In paragraph 4(xi) of O.A. the applicant has contended that as he was appointed by Station Engineer the Assistant Engineer being subordinate to the appointing authority could not remove him from service and it is without jurisdiction.

5. In answer to the above contention it is stated by the respondents in para 7 of the written statement that the Assistant Engineer, All India Radio is the Head of office and controlling officer in respect of the staff working at that Station vide orders issued by the Directorate General, AIR, New Delhi from time to time and the Station being the appointing and disciplinary authority in respect of Engineering Assistant the Station is competent to take action. They place reliance upon the office letter No. TWG-1(3)92-S/245-47 dated 5-2-93 (Annexure J) issued by the Chief Engineer (EZ) and a Telegram (Annexure K) received from the Chief Engineer (M) AIR and TV, Calcutta dated 23-2-93.

6. Article 311 of the Constitution of India provides that no person who is a member of a Civil Service of

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of the Union and or an All India Service or a Civil Services of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. It has therefore to be examined as to whether the authority who passed the impugned order was subordinate to the appointing authority and was not competent to pass it as contended by the learned counsel of the applicant.

7. At Annexure A is the letter of offer dated 10-11-89 issued by the office of Station Engineer, Television Maintenance Centre, Purnia and signed by Assistant Engineer "for Station Engineer". It was addressed to the applicant and the opening recital reads as follows:

"with reference to your interview in the office of the CE(EZ), AIR & TV, Calcutta, the Station Engineer, Television, Maintenance, Centre, Purnia is pleased to offer you a temporary appointment on the above post on the following terms and conditions (emphasis supplied)

If therefore, admits of no doubt that the offer of appointment was made <sup>by</sup> "Station Engineer".

8. By order dated 4-12-89(Annexure B) the applicant was appointed to the post of Engineering Assistant (in pursuance of the offer of appointment) on probation for a period of two years w.e.f. 4-12-89. This order was signed by the Assistant Engineer "for Station Engineer". That means that the appointment was made by the Station Engineer and not by the Assistant Engineer but the order was only

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signed by him for and on behalf of the Station Engineer. The Station Engineer was thus the appointing authority.

9. At Annexure C is the order of general transfers of Engineering Assistants in the Eastern zone issued by the office of the Chief Engineer (EZ) AIR and TV, Calcutta under which the applicant was transferred from Jamui to Tawang. A reference to the notes below the order forwarding the copies of the order to concerned parties for information and necessary action may be usefully made. The note at Sl.No.3 shows that it was sent to the Assistant Engineers at different Stations including Jamui which indicates that Assistant Engineer is different from the engineering head of the Station. The impugned order dated 12-3-93 mentions at the top as "Government of India, All India Radio: Tawang." It is not signed by the Assistant Engineer "for Station Engineer" like the order of appointment. The order also is not an order conveying a decision of the Station Engineer because para 2 of the order states that "and whereas undersigned is satisfied....." Similar phraseology is employed in paragraph 5 which reads "And whereas the undersigned is satisfied....."

10. In order to hold that the Assistant Station Engineer who has passed the order of removal was competent to do so it has to be shown by the respondents that the powers of Station Engineer have been conferred upon him. In that respect it is merely stated that the Assistant Station Engineer is the head of office and Controlling Officer. That however does not imply that he could also exercise the powers of appointment and removal exercisable by the

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by the Station Engineer where employees are appointed by the Station Engineer. The very fact that the order of appointment was issued by the Station Engineer obviously <sup>was</sup> the Assistant Station Engineer even if he may have been the head of office and Controlling Officer could not exercise that power. The respondents have not shown that such power was conferred upon the Assistant Engineer at any time till the impugned order was passed by him. Annexure J to the written statement is not helpful in that respect. It is a copy of the communication addressed by the Station Director, Tawang to the Chief Engineer (EZ) Calcutta reporting about the unauthorised absence of the applicant and proposing to do away with his service w.e.f. 11-12-92. That also goes to show that the Assistant Engineer was not authorised or directed to issue the order. We are also unable to understand the impact of the copy of the telegram produced at annexure K to the written statement sent by the Chief Engineer (M), AIR & TV Calcutta to Akashwani Tawang stating thus:

"Station being appointing and disciplinary authority in respect of Engineering Assistants they are competent to take action in the matter as per rules(.) This office takes serious note of the Station unilaterally directing Shri Monjit Chakraborty EA to report CE(EZ)."

Even though the telegram refers to the Station as ~~of~~ appointing and disciplinary authority still that is of no avail as it was subsequent to the issuance of order of removal while no material is produced to show that

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the station was vested with that status since prior to the date of appointment or even prior to the date of removal. We fail to understand as to what prevented the respondents from producing the relevant material to show that the station was invested with the powers as appointing and disciplinary authority and the Assistant Station Engineer could exercise those powers or that the Assistant Station Engineer was invested with the powers which otherwise were exercisable by the Station Engineer. The respondents have not denied the averment of the applicant in para 4.11. of the O.A. that the Assistant Engineer is subordinate to the appointing authority. In the absence therefore of the respondents having shown that the Assistant Station Engineer was competent to exercise the powers of Station Engineer it must be held that the Assistant Engineer was not competent to remove the applicant from service and thus the impugned order is bad in law being violative of Article 311(1) of the Constitution of India.

11. For the aforesaid reasons we accept the contention urged by Mr. B. Das on behalf of the applicant and hold that the impugned order is unconstitutional, illegal and of no effect it having been passed without jurisdiction by an authority who was not competent to remove the applicant from service and therefore it cannot be sustained and must be quashed.

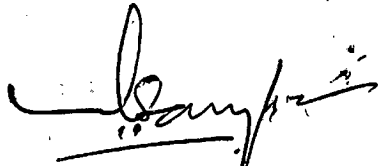
12. The consequence of setting aside the order will be to deem the applicant to have been continuing in service. The impugned order purported to effect the removal of the applicant from service retrospective from 11-12-92. It is


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not clear as to how the order giving retrospective effect to the removal could have been passed. However it is not necessary to go into that question as that has not been raised before us.

13. In the result the impugned order dated 12-3-93 passed by the Assistant Station Engineer, AIR Tawang removing the applicant from service w.e.f. 11-12-92 is quashed, and set aside. The applicant is deemed to have been continuing in service and will be entitled to continue until if so advised the respondents take appropriate steps to bring the service to an end. The incidental and consequential questions as may arise shall be decided by the respondents in accordance with the law. Respondents are directed to allow the applicant to resume duty immediately. The O.A. is allowed. No order as to costs.

  
(G.L. SANGLYINE)  
MEMBER (ADMN)

  
(M.G. CHAUDHARI)  
VICE-CHAIRMAN