

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.20/14/2013

Date of CAV: 22.01.2019

Date of Pronouncement: 22.02.2019

Between:

K. Satyanarayana, S/o. K. Nageswara Rao,
Aged 45 years, Ex. Senior Ticket Examiner (Sleeper),
O/o. The Chief Ticket Inspector,
Kazipet, South Central Railway,
R/o. D. No. 21-3-19, Muthalampadu,
Government Press Centre, Vijayawada.

... Applicant

And

1. Union of India, represented by
The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
2. The Senior Divisional Commercial Manager,
South Central Railway,
Secunderabad Division, Secunderabad.
3. The Divisional Commercial Manager,
South Central Railway,
Secunderabad Division, Secunderabad.
4. The Divisional Commercial Manager,
South Central Railway, Vijayawada Division,
Vijayawada.

... Respondents

Counsel for the Applicant	...	Mr. KRKV Prasad
Counsel for the Respondents	...	Mr. N. Srinatha Rao, SC for Rlys

CORAM:

Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORDER**{Pper Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }**

2. The Applicant filed the OA against the order of compulsory retirement imposed by the 3rd respondent vide order dt 2.5.2011 and confirmed by the 2nd respondent vide order dt 29.5.2012 on appeal.

3. One of the main grounds set out in the OA is that the penalty order has been passed by an incompetent authority viz., the DCM, whereas the appointing authority is the Sr. Divisional Commercial Manager. The respondents took the stand in their reply statement that the order dt 19.3.1996 promoting the applicant as Sr. Ticket Examiner was signed by the APO and hence, by inference, APO has to be construed as the appointing authority. However, the said order of promotion contained the approval of the Sr DCM at para 10. In this context, it would be proper and just to extract para 2 of the Railway Board order RBE 119/2015 which reads as under:

“2. It was clarified in the above referred instructions that the intention of rule 2 (1) (a) of RS (D&A) rules ,1968 is that the penalties of dismissal, removal or compulsory retirement from service should be imposed on a Railway servant only by the higher to the following authorities viz, the authority which actually appointed the railway servant to the relevant grade or post, or the authority which is empowered to make appointment to that grade or post at the time of imposition of penalty. It was further emphasized that the penalty of dismissal, removal or compulsory retirement from service should not be imposed by an authority which has merely issued the offer of appointment or order of promotion with regard to the appointment or promotion ordered by a competent authority higher to that authority.”

The Sr. DCM is the appointing authority and not the APO as claimed by the respondents. Penalty was imposed by the DCM, who is not the competent authority. It is surprising that the respondents are violating their own instructions. If they do not follow, who has to!

4. Now if we look at the legal aspect of the case, we find that a mirror image of the same issue was dealt by the Apex court ***Union of India vs Hasmukhbhai Hirabhai Rana (2006) 12 SCC 373***, wherein the ways and means in dealing with an order issued by an incompetent authority in matters of dismissal or removal or compulsory retirement were made explicit. Details are extracted as under:

“ Leave granted.

2. The appellants call in question legality of the judgment rendered by a Division Bench of the Gujarat High Court dismissing the writ petition filed by the appellant Union of India and its functionaries. The orders passed by the Central Administrative Tribunal, Ahmedabad Bench (in short “CAT”) in Original Application No. 170 of 1997 and Review Application No. 32 of 2003 were upheld. The only issue which was raised by the Union of India was that CAT was not justified in holding that the order of dismissal was passed by an authority lower in rank than the appointing authority.

3. The factual position in a nutshell is as follows:

On 1-1-1990 a letter was issued to the respondent informing him that on successful completion of the course which included successful completion of practical training on division and on the respondent passing the prescribed Hindi test he may be offered an appointment in the temporary cadre on the regular scales of pay. Subsequently, after the completion of training, on 13-6-1990 a letter was issued by the Divisional Commercial Manager (in short “the DCM”) Vadodara. A charge-sheet was issued on 1-6-1993 making allegations like misappropriation. Liberty was granted to the respondent to make submissions in respect of the charges and after an enquiry the DCM passed an order of penalty of removal from service. The respondent filed an appeal before the Appellate Authority. The Senior Divisional Commercial Manager, Vadodara, the Appellate Authority dismissed the appeal. A revision petition was filed. The revisional authority i.e. the ADRM also dismissed the revision. A petition was filed before CAT praying to set aside and for quashing the order of removal. A reply was submitted by the present appellants. It was stated that the respondent has been rightly removed from service. The Tribunal held that an authority lower than the appointing authority passed the order for removal from service. The DCM and Senior DCM who had acted as disciplinary authority as well as the Appellate Authority were lower in rank than the appointing authority. Accordingly, the order was quashed. As noted above the writ petition filed before the High Court was dismissed.

4. In support of the appeal, learned counsel for the appellants submitted that the order dated 1-1-1990 was the selection order and in

fact the appointment order is dated 13-6-1990 which was passed by the DCM. Selection order was passed by the DRM while the appointment order was passed by the DCM who had acted as the disciplinary authority.

5. Learned counsel for the respondent supported the orders of CAT and the High Court.

6. It appears that before CAT and the High Court the controversy was whether the DCM was the appointing authority. There was no plea taken regarding the distinction now projected i.e. 1-1-1990 is the selection order and 13-6-1990 was the appointment order.

7. There is no dispute that the departmental proceeding can be initiated by a person lower in rank than the appointing authority. But the final order can be passed only by the appointing authority or an authority higher than it. The law relating to initiation (sic of disciplinary proceeding) by a person lower in rank than the authority competent to pass final order has been the subject-matter of adjudication in many cases. (See State of M.P. v. Shardul Singh¹ and State of U.P. v. Chandrapal Singh.)

8 It is not in dispute that the respondent has been reinstated in the meantime but what appears not to have been done is to grant an opportunity to the appellants so that the appropriate authority can pass the final order in the departmental proceeding. The distinction now sought to be made between the orders dated 1-1-1990 and 13-6-1990 does not appear to have been highlighted either before CAT or the High Court. It is only before this Court that such a plea has been raised.

9. In the aforesaid background we modify orders of CAT and the High Court to the extent that the DRM can consider all relevant aspects after granting opportunity to the respondent on the basis of the enquiry report submitted. The departmental enquiry shall be concluded as early as practicable. Needless to say that the respondent has to cooperate in the departmental proceedings”

5. The above decision of the Hon’ble Supreme Court applies in all the four to the instant case inasmuch as the order of compulsory retirement was passed by the DCM while the appointing authority is the Sr.DCM. This vitiates the order of compulsory retirement and the order of dismissal of appeal. Therefore the Sr. DCM shall consider all relevant aspects after granting opportunity to the applicant on the basis of enquiry report submitted. On the basis of his decision, if the applicant is aggrieved, he may file an appeal before the

appropriate appellate authority who will consider the appeal in accordance with law.

6. The OA thus is partly allowed with the following directions:

(a) The impugned orders dated 2.5.2011 and 29.5.2012 are quashed and set aside. The applicant shall be reinstated within a period of 30 days from the date of receipt of a copy of this order.

(b) The Sr DCM who was expected to deal with the disciplinary case shall pass suitable orders after considering all relevant documents and after giving an opportunity to the applicant of being heard. Time calendared for this purpose is three months from the date of reinstatement of the applicant.

(c) In case the applicant is aggrieved, he is at liberty to file an appeal in accordance with the Rules on the subject, against the order of the appointing authority before the competent authority who would function as the appellate authority and decide the appeal in accordance with the extant Rules on the subject. Time scheduled for this purpose is six weeks from the date of submission of the appeal.

(d) The period from the date of compulsory retirement till the date of reinstatement shall be treated as period of suspension. In case the proceedings end in exoneration of the applicant, the said period shall be treated as duty as well as qualifying service and the applicant is entitled to payment of salary for the said period including annual increment. If the case results in imposition of any kind of penalty, the period of suspension shall be treated as such and the applicant shall be entitled only to the grant of subsistence allowance which would be quantified by the competent authority designated to deal with the issue. As the minimum that the applicant would get is the subsistence

allowance till his date of reinstatement as per this order, the same may be released to the applicant within three months.

(e) No opinion on the merit of the case is expressed by the Tribunal.

7. There shall be no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated, the 22nd day of February, 2019

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