

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00466/15**

Reserved on: 05.03.2019
Pronounced on: 07.03.2019

C O R A M

**HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER**

Kaushal Kumar, Son of Late Keshav Paswan, Resident of Quarter No. 87/A, Loco Colony, Khagaul, District- Patna (Bihar).

.... **Applicant.**

By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India through the General Manager, Eastern Railway, 17, Netaji Subhash Road, Kolkata- 700001.
2. The General Manager (Personnel), Eastern Railway, 17, Netaji Subhash Road, Kolkata- 700001.
3. The Senior Regional Manager, Eastern Railway, Howrah.
4. The Senior Divisional Signal & Telecom Engineer, Eastern railway, Howrah.
5. The Senior Divisional Personnel Officer, Eastern Railway, Howrah.

.... **Respondents.**

By Advocate: - Mr. S.K. Ravi

O R D E R

Per Dinesh Sharma, A.M:- The applicant has prayed for quashing the order dated 12.09.2014 by respondent no. 4 together with the order dated 07.01.2015 passed by respondent no. 3 whereby the applicant has been removed from service on the sole ground that he has submitted false declaration in the attestation form of Railway Recruitment Board, Kolkata regarding his intermediate qualification. He has claimed that this removal from service is wrong because it is by an order passed by an authority who

was junior to the authority which appointed him and thus is in violation of Article 311(1) of the Constitution of India. He has also alleged that he is not responsible for any mistake in the alleged forged marksheets and such removal, after he has been in service for a long period, is in violation of the decision of the Hon'ble Apex Court in **H.C. Putta Swamy and Others Vs. Hon'ble Chief Justice of Karnataka** reported in 1991(2) PLJR SC 77.

2. The respondents have denied the claim of the applicant. They have alleged that the applicant was initially appointed on 19.12.2007 and sent for requisite training by a letter issued by the competent authority, i.e. Dy. Chief Signal Telecom Engineer (HQ), Kolkata. This post is equivalent post of Senior Division Signal and Telecom Engineer in the zonal headquarter. Following a complaint, the certificates produced by the applicant were verified and during the course of verification it was found that the marks statement produced by the applicant was not genuine. Since the applicant admitted furnishing false declaration regarding his minimum required educational qualification a major chargesheet was issued against him by the competent authority who had appointed under its signature, i.e. Senior DSTE/Howrah-cum-Disciplinary Authority. Following applicant's representation, an enquiry officer was appointed. The enquiry officer found the applicant guilty. The Disciplinary Authority accepted the enquiry report and decided that he be removed from railway service with immediate effect by its order dated 12.09.2014 (Annexure A/6). The applicant preferred statutory appeal against his order which has also been rejected by the Appellate Authority (Annexure A/9). The respondents have categorically

stated that the disciplinary action has been taken by a competent authority and the applicant who was aware of his wrong doing and has admitted it in his own statement has been rightly removed from service.

3. The applicant, in its rejoinder, reiterated that he has been removed by an authority lower than the appointing authority. He also stated that his statement before the vigilance official was obtained through duress and therefore should not be taken as a ground for his removal.

4. We have gone through the pleadings and heard the learned counsels of both the parties. The main issue is whether the applicant has been removed by an authority lower than the authority which appointed him. Both the parties have not produced before us a clear appointment order. However, the applicant has produced a letter from Assistant Secretary, Railway Recruitment Board, Kolkata dated 30.09.2005 which mentions that "The offer of appointment will be sent to you by the General Manager (P), Eastern Railway." The applicant also brought to our notice the following position as mentioned in Bahri's Railway Servants (D&A) Rules, 1968: -

"G.M. as appointing authority – General Manager shall be considered to be the appointing authority for staff in class III and IV categories as also semi-skilled, skilled and artisan staff where records or appointment letters to show the actual appointing authority of such staff are not available. Accordingly, the punishment of dismissal/removal/compulsory retirement from service cannot be inflicted on such staff by an authority lower than the General Manager. [N. Rly. Letter No. 52-E/O/31 E(D&A) dt. 21.08.1964]."

They have also drawn our attention to the clarification issued by Board's letter No. (D&A) 63 RG 6-23 dated 21.02.1964 wherein the Board had

decided that in cases where records or appointment letters to show the actual appointing authority are not available, the General Manager should be treated as the 'appointing authority' and it would not be safe to follow any other course. In this case the RRB letter indicated that the letter of appointment will be issued by the GM. Hence, it is safe to assume that the General Manager is an appointing authority for the applicant. The respondents have produced Schedule-II (Schedule of Disciplinary powers in relation to Railway officers) where different levels of authorities are specified for different levels of staff. This rule also clearly mentions that appointing authority or an authority of equivalent rank or any higher authority is the authority competent to impose punishment of removal from service. Since in this case, admittedly, the punishment has been imposed by an authority lower than the General Manager, it is *prima facie* hit by the Constitutional provisions under Article 311(1) of the Constitution. That being so, we have no option but to quash the orders of the Disciplinary as well as the Appellate Authority which are passed by an officer of a rank lower than that of the General Manager (P). We are not expressing anything here about merits of other claims made by the applicant in this OA. The railway authorities will be free to initiate action against the applicant at an appropriate level if they still feel there are sufficient reasons to do so. The OA is disposed of accordingly. No order as to costs.

[Dinesh Sharma]
Administrative Member
Sr.k.

[Jayesh V. Bhairavia]
Judicial Member