

**CENTRAL ADMINISTRATIVE TRIBUNAL
AMHEDABAD BENCH, AHMEDABAD**

Original Application Nos.53/2019

Dated the 3rd day of September , 2019

Reserved on: 26.07.19

Pronounced on: 03.09.19

CORAM :

Hon'ble Shri Pradeep Kumar, Member(Administrative)
Hon'ble Shri M.C.Verma, Member (Judicial)

Ajmer Singh,
Aged 40 years (DoB being 08.07.1978)
Son of Shri Shugan Chand,
Travelling Ticket Examiner (TTE) (presently under suspension),
At Ahmedabad Railway Station in Ahmedabad Railway Division of
Western Railway and Presently residing at House No.203, Block 'D'
Sai Shardha Residency, Opp. Uma Party Plot,
Motera, Ahmedabad – 380 005. ... Applicant.

By Advocate Shri M S Rao

v/s

- 1 Union of India,
(Notice to be served through the Special Secretary
To the Government of India & Ex. Officio Chairman,
Railway Board, Ministry of Railways, Govt. of India,
Rail Bhavan, New Delhi – 110 001.
- 2 Western Railway,
(Notice to be served through its General Manager,
Western Railway, HQ Office,
Churchgate, Mumbai – 400 020.)
- 3 The Divisional Railway Manager(E),
Ahmedabad Railway Division,
Western Railway, O/o DRM, ADI,
Near Chamunda Mata Bridge, Naroda Road,
Ahmedabad – 380 025.
- 4 The Senior Divl. Commercial Manager,
Ahmedabad Railway Division,
Western Railway, O/o. Sr.DCM, ADI,
Near Chamunda Mata Bridge, Naroda Road,
Ahmedabad – 380 025. ... Respondents

By Advocate Shri A L Sharma

(ORDER)**Per : Shri Pradeep Kumar, Administrative Member**

1 The applicant has been working as TTE at Ahmedabad Division of Western Railway. The applicant was initially given an offer of appointment to Ahmedabad Division as Ticket Collector on 29.02.2016 and after completion of formalities (medical exam and verification), he joined on 03.06.2016. In due course he was promoted to the post of TTE in Grade Pay of Rs.2800/- vide order issued by APO on behalf of Sr.DCM-ADI on 23.02.2018. The applicant had been issued a show cause notice dated 06.12.2018 by Sr. DCM, Ahmedabad under Rule 14(1) of Railway Services (D&A) Rules, 1968, as to why the penalty of "Dismissal from Railway Service" should not be imposed. It is this show cause notice with which the applicant is aggrieved and he has filed the instant OA with a prayer to quash this Memorandum, and pending decision by the Tribunal, to restrain the respondent Railways from proceeding further against the applicant in pursuance of this show cause notice.

The ground raised in the OA is "How the Sr. DCM, Ahmedabad who had issued the show cause notice, is empowered and competent to issue such a notice?"

2 The said memorandum dated 06.12.2018 reads as under:-

"Sub: DAR action against Shri Ajmer Singh, TTE/ADI under Rule 14(1) of Railway Servants (D&A) Rules, 1968.

Ref: CBI/TVC's Order No.Pairvi/CC/31/11/CBI/SCB/TVM/2016/1260 dated 09.05.2016.

In reference to above it is stated that Shri Ajmer Singh, TTE/ADI while working as Commercial Clerk under SrDCM/TVC/Southern Railway a CBI case was registered against him vide CBI Case No.CC No.31/2001 arising out of RC 23(A)/2008 and after the conclusion of the trial, the Special Court for CBI/SPE-Thiruvananthapuram convicted and sentenced Shri Ajmer Singh, former Commercial Clerk/Alappuzha Railway Station for falsifying the accounts of Railway and misappropriated the sum of Rs.2.5 Lakhs collected from the passengers as ticket fare. The Hon'ble Court sentenced him to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs.2,00,000/- (Rupees two lakhs) and in default to undergo simple imprisonment of one year for his conviction under section 13(2) r/w 13 (1)(c) of the Prevention of Corruption Act, 1988. He was also sentenced to undergo rigorous imprisonment for a period of four years and also to pay a fine of Rs.2,00,000/- (Rupees two lakhs) and in default to undergo simple imprisonment of one year for his conviction under section 409 IPC. Further, he was also sentenced to undergo rigorous imprisonment for period of three years for his conviction under section 477 of the IPC by CBI Court.

It is also learnt that Shri Ajmer Singh, while working as Commercial Clerk/ALLP was dismissed from service vide Penalty Advice NO. V/VO/Con./64 dated 16.03.2012 by DA& Sr DCM-TVC thus he was not eligible for further government service.

As such, looking to the gravity of the misconduct committed by Shri Ajmer Singh, TTE/ADI as mentioned above which led to his conviction by CBI/TVC, the undersigned while exercising the power conferred under Rule 14 (1) of Railway Service (D&A) Rules, 1968, hereby propose to impose the penalty of "Dismissal from railway service" on Shri Ajmer Singh, TTE/ADI.

As such, Shri Ajmer Singh, TTE/ADI is hereby given an opportunity to explain as to why the above proposed action should not be taken against him. In this connection, he may submit his representation, if he desires, to the undersigned, in writing within a period of 15 days from the date of receipt of this show cause notice/memorandum, which will be considered by the undersigned before passing the final orders. The receipt of this memorandum/show cause notice should be acknowledged."

3 The applicant has pleaded that the said show cause notice exhibits that even though it can be said to be only a show cause notice, but the same has not been issued by an authority who is competent to dismiss or terminate the service of applicant. It was contended that questioning of a show cause notice, which is issued without jurisdiction is permissible.

The applicant further pleaded that the Appointing Authority of the applicant is General Manager of Western Railway who is respondent no.2, in view of the fact that offer of appointment to his posting in Ahmedabad Division of Western Railway was sent to the applicant only after he was allocated firstly to Western Railway by Railway Recruitment Board (RRB) and thereafter to Ahmedabad Division by the General Manager. On this basis, appointing authority has to be General Manager and not Sr. DCM.

4 The applicant pleaded that advertisement for recruitment to the post of Ticket Collector was issued by Railway Recruitment Board who conducted the examination and list of selected candidates was sent to Office of General Manager from where he was allocated to Ahmedabad Division and accordingly the appointment letter was issued by Ahmedabad Division which is signed by APO of Division, but by virtue of his allocation to Ahmedabad Division by General Manager, it is the General Manager who is to be treated

as his appointing authority. Accordingly, the Sr.DCM who had issued the instant show cause notice is not his appointing authority and does not have jurisdiction.

Applicant also pleaded that there is nothing to substantiate that the General Manager has delegated the power of appointment to a lower authority, much less to a Sr. DCM who is only a Junior Administrative Officer and further added that even if for the sake of argument it is agreed that delegation of the power of appointment is assumed, but this delegation of power of appointment neither would include delegation of power of termination nor such delegation would include the delegation of power of dismissal and termination. In this connection, the applicant drew attention to clause (c) of Para 215 of IREC Vol.I 6th edition as well as Circular issued by Railway Board vide No.E(D&A)2002 RG 6-36 dated 25.11.2002. It was also brought out that provisions of this letter, have been reiterated again on 30.09.2015. Attention was drawn to operative para of letter dated 25.11.2002 which reads as under:-

"It has been brought to the notice of the Board by the NFIR, that on the railways disciplinary powers as appointing authority for the purpose of imposing the penalties of dismissal, removal or compulsory retirement are even exercised by the authorities who have merely issued the offer of appointment or order of promotion.

The contents of Rule 2(1)(a) of RS (D&A) Rules, 1968 relating to definition of 'Appointing Authority' as elaborated vide Board's letter No.E(D&A) 88 RG 6-12 dated 7.5.1990 are reiterated. The gist of the rule and the said instructions is also explained below for easy understanding.

As the railways are aware, in terms of Rule 2(1)(a) of RS(D&A) Rules, appointing authority in relation to a railway servant means the authority empowered to make appointment to the service of which the railway servant is, for the time being a member or to the grade of the service in which the railway servant is, for the time being included or the authority empowered to make appointment to the post which the railway servant for the time being holds or the authority which actually appointed the railway servant to such service, grade or post as the case may be, whichever is the highest authority. It is advised that the authority empowered to make appointment, referred to in Rule 2(1)(a) above, means the authority empowered to make appointment to the grade or post which the railway servant is holding at the time of imposition of penalty. This authority may be higher or lower in rank than the authority which was empowered to make appointment at the time of induction of the railway servant to the relevant grade or post or the authority which actually appointed him to that grade or post. The intention of the rule is that the penalties of dismissal, removal or compulsory retirement from service on a railway servant should be imposed only by the highest of these authorities i.e. either by 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, whichever is the highest authority. The penalty of dismissal, removal or compulsory retirement from service should obviously not be imposed by an authority which have merely issued the offers of appointment or order of promotion with regard to the appointment or promotion ordered by a competent authority higher to that authority."

The letter dated 30.09.2015 reads as under:

“Attention is invited to Railway Board’s letter no. E(D&A) 2002 RG6-36 dated 25.11.2002 on the above subject relating to determination of appointing authority for the purpose of imposition of the penalties of dismissal, removal or compulsory retirement on a Railway servant.

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 highest of 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.

3. In a PNM meeting with the NFIR, the Federation has stated that inspite of the above mentioned instructions, in some instances, the penalties of dismissal, removal or compulsory retirement were imposed on a Railway servant by an authority lower than the authority which had actually ordered the appointment/promotion of the Railway servant. It is therefore reiterated that a lower authority who has merely issued/signed the order regarding appointment/promotion which has been ordered by a higher authority, is not competent to impose the penalty or dismissal, removal or compulsory retirement from service on such Railway servant. Such action is not only violative of the RS(D&A) Rules but also unlikely to withstand judicial scrutiny. Railways may therefore impress upon all concerned to adhere to the provisions of Railway Board’s letter no. E(D&A) 2002 RG6-36 dated 25.11.2002, as brought out in para 2 above.

4. Hindi version will follow. Please acknowledge receipt.”

5 The applicant also buttressed his submission by placing reliance on judgment of CAT, Full Bench, Hyderabad Bench dated 04.12.1987 delivered in batch matter of TA Nos.470, 486 etc of 1986 and TA Nos. 85, 102 of 1987 (**Gafoor Mia & Ors. vs. Director, DMRL**). In this judgment the Tribunal has held as under:-

“.....In regard to initiation of departmental action, it cannot be said that the Senior Divisional Commercial Superintendent was not competent to initiate action. The Senior Divisional Commercial Superintendent is an officer of the rank of Junior Administrative Officer in the South Central Railway. According to the Column-IV of Schedule II to the Railway Servants (Discipline & Appeal) Rules, the Senior Divisional Commercial Superintendent was competent to impose one of the major penalties viz. Reduction to a lower stage in ran or in the time-scale upon a Class III or Class IV employee. Hence, he was competent under Rule 8(2) to initiate action for a major penalty. However, in view of our conclusion that the delegate of the General Manager is not an appointing authority, it would follow that the impugned orders on removal passed by the Divisional Railway Managers are illegal and they are accordingly quashed.....”

6 In view of the above, applicant concluded that it is only the General Manager who is the Appointing Authority and the authority issuing the show cause notice i.e. Sr.DCM,,

being not competent, the show cause notice is non est and no further action on the basis of that show cause notice can be taken. Applicant also relied upon the judgment by CAT, Mumbai Bench in OA 170/2006 delivered on 18.11.2010.

7 In the hearing of 12.04.2019 interim directions were issued and respondents were directed not to proceed further against the applicant in pursuance of the impugned show cause notice dated 6.12.2018 till further orders. Respondents have preferred MA No.267/19 seeking vacation of interim stay. Since OA itself has been heard, separate orders are not being passed on MA.

8 Respondents opposed the OA. Respondents drew attention to Railway Servants (D&A) Rules, 1968 and attention was drawn to Rule 14 of the same. This reads as under:-

“14. Special procedure in certain cases – Notwithstanding anything contained in Rules 9 to 13 -

- (i) *where any penalty is imposed on a Railway servant on the ground of conduct which has led to his conviction on a criminal charge; or*
- (ii) *where the disciplinary authority is satisfied, for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or*
- (iii) *where the President is satisfied that in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules;*

the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:

Provided that the Railway servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case falling under clause (i) above:

Provided further that the Commission shall be consulted where such consultation is necessary, before any orders are made in any case under this rule.”

It was brought out that reference to commission here, means UPSC.

9 The Disciplinary Authority are also defined by Rule-7 of the same Rules, which reads as under:-

“7 Disciplinary Authorities:

- (1) The President may impose any of the penalties specified in Rule 6 on any Railway servant.
- (2) Without prejudice to the provisions of sub-rule (1), any of the penalties specified in Rule 6 may be imposed on a Railway servant by the authorities specified in Schedules I, II and III.
- (3) The disciplinary authority in the case of a Railway servant officiating in a higher post, shall be determined with reference to the officiating post held by him at the time of taking action.”

The Schedule II quoted above, is part of same Rules and specifies various levels of authorities and the powers which can be exercised by those officers for different levels of staff. In respect of Junior Administrative Grade, the grade where Sr. DCM is working, following powers are specified:-

Sl No	Authority empowered to place a Railway servant under suspension or to impose penalties under rule 6	Class of Railway Servants over whom disciplinary powers can be exercised.	Nature of penalties mentioned in rule 6 which the authority in column 2 is empowered to impose on Railway Servants mentioned in corresponding entries in column 3 and powers of that authority to place them under suspension.	Appellate Authority.
1	2	3	4	5
4	Junior Administrative Grade Officers and Senior Scale Officers holding independent Charge on In-charge of a Department in the Division	All classes of non-gazetted staff.	Penalties specified in Clauses (i) to (vi) and Suspension.	Additional Divisional Railway Managers in relation to the Departments attached to them or Divisional Railway Managers.

Note:

- (1) An appointing authority or an authority of equivalent rank or any higher authority shall be competent to impose penalties specified in clauses (vii), (viii) and (ix) of rule 6.
- (2) Where the post of appellate authority as shown in column 5 is vacant, then, in that case, the next higher authority shown in the row just below that authority shall be the appellate authority.
- (3) The appointing authority or an authority of equivalent rank or any higher authority who is competent to impose the penalty of dismissal or removal or compulsory retirement from service, may also impose any lower penalty."

9.1 The Rule 6 referred above has defined the penalties that can be imposed. The sub paras (vii), (viii), and (ix), of this Rule read as under:-

- “(vii) Compulsory retirement;
- (viii) Removal from service which shall not be a disqualification for future employment under the Government or Railway Administration;
- (ix) Dismissal from service which shall ordinarily be a disqualification for future employment under the Government or Railway Administration.”

10 The applicant, while pleading his case, has also drawn attention to para 215 of IREC Vol. I 1985. It was brought out by respondents that this code is statutory and following provisions has been made under Rule 215 of the same.

“Recruitment, Training and Promotions of Group ‘C’ & ‘D’ Railway Servants

215. Authorities competent to make first appointment. – The authorities competent to make first appointments to Group C & D posts in the offices detailed below shall be as shown against each –

- | | |
|--|---|
| (a) Office of the Railway Board. | Secretary to the Railway Board. |
| (b) Other Office/Project/Organisation directly under the control of the Railway Board. | Head of Office/Project/Organisation. |
| (c) Indian Railway and other Railway Administration e.g. Chittaranjan Locomotive works, Integral Coach Factory, etc. | The General Manager or lower authority to whom he may delegate the power. |

Provided that –

- (i) No appointment shall be made unless a sanctioned post exists against which it can be made;
- (ii) The authorities empowered by or under this rule to make first appointments, may, subject to such condition as they may impose, re-delegate to a lower authority the power to appoint Grade D railway servants.”

11 It was further brought out by applicant that the provisions of these rules of the Railway Servants (D&A) Rules and IREC have also been summarised and issued as a compendium under the nomenclature Indian Railway Model Schedule of Powers of 2018. In respect of nature of powers for “ to make initial posting to non-gazetted post”, Divisional Officers have been delegated certain powers, as per column 5 therein. The same reads as under:-

“JAG/Senior Scale (in independent charge) – Full Powers in respect of posts controlled by them.

Sr. Scale : Full Powers for posts up to level 5 (GP 2800) of 7 CPC under their control.

Jr. Scale/Asst. Officer: Full Powers in respect of posts upto Level 1 and Artisan in level 2 of 7 CPC.”

And this delegation is based upon the original provision of Rule 215 of IREC, Vol.I 1985 which is already reproduced in para 10 above.

11.1 It was pleaded that the subsequent clarifications issued by the Railway Board vide letter dated 25.11.2002 and which were again reiterated on 30.09.2015, are in conformity to these powers which stand delegated by General Manager and specify the Disciplinary Authority in respect of a Railway Servant shall be the higher out of one who is competent to issue the initial appointment letter and who is competent to issue punishment when it was being imposed.

12 Keeping in view the above, it was pleaded by respondent that Sr. DCM, who is a Junior Administrative Grade Officer, has full delegation in respect of making appointment to the posts in grade pay Rs.2800/-. Since in the instant case the applicant was convicted while he was earlier working as Commercial Clerk in Southern Railway (para 2 supra), an action was proposed under Rule 14(1) and as per procedure for invoking this Rule, issuing a show cause notice was needed and Sr. DCM being the appointing authority, it is very much within the competency of Sr. DCM and this action is in terms of proviso under Rule 14 (1) (para 8 supra). The same cannot be said to be without authority. Accordingly, the OA is required to be dismissed being devoid of merits.

13 The respondents also pleaded that while the applicant was already serving as Commercial Clerk i.e. a Railway Servant in Southern Railway, he applied for vacancy notification issued by Railway Recruitment Board, Mumbai as a fresh candidate and not through proper channel. Thereafter, as per the said written examination, he was short listed amongst the successful candidates, he had also submitted a verification proforma, to indicate his personal details. These personal details include a column 11 in respect of past conviction, etc. In the said attestation form, which was filled on date 28.04.2016 under his signatures, he has given the following answers (in italicised) in respect of para-11:-

- | | |
|--|-----------|
| “(a) Have you ever been arrested?” | <i>No</i> |
| (b) Have you ever been prosecuted? | <i>No</i> |
| (c) Have you ever been kept under detention? | <i>No</i> |
| (f) Have you ever been convicted by a court | |

of law for any offence?

No

- (k) If the answer to any of the above mentioned Question is 'Yes' give full particulars of the Case/arrest/detention/fine/conviction/sentence/punishment/etc., and/or the nature of the case pending in the Court/University/educational authority. etc. At the time of filling up this form.

It was brought that for para 'k' above, reply was left blank on the right side and NA was written on left side of this item.

14 It was pleaded by respondents that since by this time the said criminal case was already initiated, it was necessary that he indicates the details in a truthful manner. However, it was not done. It was further pleaded that being a departmental candidate as he was already working in Southern Railway when he applied to RRB, Mumbai, he ought to have applied through proper channel but he applied as a fresh candidate.

By way of applying as a fresh candidate and by replying as above in attestation form, he has made effort to hide the truth.

14.1 This was contradicted by the applicant. It was pleaded that the said conviction had occurred only after attestation form was already filled up. Thereafter, once he joined as Ticket Examiner, at Gandhi Dham station on 27.07.2016, after his selection by RRB, Mumbai, he made a written application addressed to DRM (Estt.) very next day i.e. on 28.07.2016, bringing out all facts and this was acknowledged by the office of Station Manager, Gandhi Dham. He has thus not hidden any information. This letter dt. 28.7.2016 reads as under:

"Prior to my joining Western Railway Zone as Ticket Examiner at Gandhidham w.e.f. 27.07.2016, I was serving as Commercial clerk in Alleppy Station, Trivandrum Division, Southern Railway, since 7.5.2007.

While serving there, a criminal charge was instituted against me by the CBI, Trivandrum, in the year 2008 before the Learned CBI Court, Trivandrum Division and the said case I have recently been convicted and sentenced, vide judgment and Order dated 09.05.2016 passed by the Special Judge (SPE/CBI), Thiruvananthapuram (copy enclosed). I may also draw your kind attention to the fact that in the Criminal Appeal No.435/2016 with Cr. MA No.2810/2016, preferred by me before the Hon'ble High Court of Kerala at Ernakulam, the sentence awarded against me in the aforesaid judgment and order dated 09.05.2016 come to

be suspended, vide Order dated 13.05.2016 passed by the Hon'ble High Court of Kerala (copy enclosed).

I am submitting this formal communication in compliance with the duty imposed on a railway servant to disclose his conviction to the authority concerned in the railway administration."

15 Matter has been heard at length. Applicant was represented by Shri M S Rao and Respondents were represented by Shri A L Sharma.

16 It is admitted that applicant was posted as Commercial Clerk at Southern Railway and for an offence committed there, he was prosecuted and convicted by a Court of Law on 09.05.2016, which includes four years jail term. He challenged this conviction in Hon'ble High Court, wherein during pendency of case, interim stay by way of suspension of jail sentence has been granted on 13.05.2016 and the applicant is on bail. Therefore, conviction continues to be in force.

While working at Southern Railway since 2007, CBI case was registered against him on 12.11.2008 and the conviction order was passed by the relevant court on 09.05.2016. It was thus expected that when he filled the attestation form on 28.04.2016, he should have indicated these details truthfully at least to the extent that case is going on. Thereafter, he joined on 27.07.2016 at Gandhi Dham, but the factum of conviction that took place on 09.05.2016 and that he was on bail, was not brought out to the notice of Station Manager before joining.

It is true that subsequently he informed Station Manager, Gandhidham the very next day on 28.07.2016. This is however belated. It does not absolve him from not reporting these details in the attestation form which was signed by him on 28.04.2016 and seen in the context that he applied as a fresh candidate instead of applying through proper channel, and did not disclose on the date of joining but a day later, is indicative of efforts to hide the relevant information at relevant point of time.

17 The Railway Administration on a Zonal Railway is administered by General Managers and powers have been delegated to various lower authorities in respect of various matters. The same emanate from Railway Servants (D&A) Rules 1968 and from

IREC Vol.I, 1985 and both these are statutory in nature. The clause 215 of IREC specifically delegates powers of appointments to Junior Administrative Grade Officers in respect of non gazetted staff on a Division and the relevant DAR also specifies the powers available with JAG level officers. The procedure to be followed in respect of action under Rule 14(1), includes for issuing show cause notice. This show cause notice was issued to applicant by the Sr. DCM on 06.12.2018 and he was a Junior Administrative Grade Officer. On the date show cause notice was issued, applicant was working in Grade pay Rs.2800/- and his promotion to this grade pay was issued under the competency of Sr. DCM.

In view of these details and standing delegation, the plea of applicant that Sr. DCM acted without jurisdiction as competent authority is General Manager, is not acceptable.

18 In this regard Respondents had also drawn attention to the fact that the Full Bench judgment of CAT Hyderabad Bench which is relied upon by the applicant (para-5 supra) had come up under scrutiny of Hon'ble Supreme court in Civil Appeal Nos.1210-1217 of 1980 and Ors wherein judgment was delivered on 10.04.1990. The CAT judgment was not upheld and matter was remitted back to CAT in light of decision by Hon'ble Apex Court. The question as framed by Hon'ble Apex Court and the observations and decision thereupon are reproduced as under:-

"2 The short common question arising in this large batch of appeals is: who is the authority competent to initiate disciplinary proceedings against the government servants who are the parties here (hereinafter referred to, for convenience, as 'the respondents')? There are two sets of appeals before us, one arising out of proceedings in the Ministry of Defence, and the other is in the Ministry of Railways. The rules governing the former are the Central Civil Services (Classification, Control and Appeal) Rules (hereinafter referred to as "the Civil Service Rules") and those governing the latter are the Railway Servants (Discipline and Appeal) rules (hereinafter referred to as "the Railway Rules").

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8 To turn, next, to the railway cases, we are concerned with appointees to Group C and Group D of the services, which correspond to class III and class IV of the Civil Services. In respect of these persons, the relevant provisions are as follows:

"2(1)(a) 'Appointing Authority', in relation to railway servant, means:

Xxx xxx xxx

Schedule II referred to in rule 7(2) lays down that an order of compulsory retirement, removal or dismissal from service may be ordered, in the case of a Group C or Group D Railway servant by the appointing authority or authority equivalent in rank or any higher authority and Note 2 to the Schedule mentions that such an authority may also impose any tower penalty. Under rule 275 of the Railway Establishment Code (Vol. I), which deals with the recruitment, training and promotion of Group C and Group D railway servants, the authority competent to make a first appointment is the General Manager or any lower authority to whom he may dele- gate the power. **The General Manager of each Railway has delegated his powers under several heads. One set of the Schedule of Delegation of Powers by the General Manager of the Southern Railway in Establishment Matters has been set out in some detail in the order of the Central Administra- tive Tribunal (CAT) in the case of Gafoor Mia and Ors. v. Director, DMRL, [1988] 2 CAT 277, (which is one of the orders in appeal before us.)**

.....It is, therefore, submitted that the disciplinary proceedings, in the cases under this batch, initiated by the Divisional Superintendent and like officers were without jurisdiction and were rightly quashed by the CAT in Gafoor Mia case, already referred to, and the decisions in the other matters before us following the said decisions.

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15. *.....The provisions of the Schedule II in the case of the railways which specify the appointing authority or an authority of equivalent rank or any higher authority as the disciplinary authority are also consistent with this interpretation. Fourthly, the interpretation sought to be placed by the respondents on Rule 2(a) is artificial and strained. It amounts to saying that a person who is empowered to appoint a government servant (as the Director, DERL, for example, undoubtedly is) and who has also appointed him will not be the appointing authority, because, theoretically, even a more superior authority could have appointed him despite having delegated his authority in this regard to a subordinate. On the contrary, the interpretation urged by the Union will not adversely affect the few employees, if any, who may be appointed by a superior scheduled authority despite delegation of such power to a subordinate authority. For, in such a case, the superior authority would be the person who has factually appointed such an employee and he will clearly be the "appointing authority" by virtue of Rule 2(a). Lastly, the interpretation sought for by the Union is consistent with practical consideration. **The appointing authority under the Schedule is a high-ranking authority and, in an organisation like the railways for instance, it will be virtually impossible for him to consider each and every case of appointment of, or disciplinary action against all the Class III or Class IV employees in the organisation. It is indeed this realisation that has rendered necessary delegation of the power of appointment and cannot be ignored, in the absence of compelling reasons, in the matter of disciplinary powers.***

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18 *As the cases before us are many and were decided principally on the point of law discussed earlier, we have not touched upon the facts or merits of individual cases. **We set aside the orders of the CAT in all cases – except C.A. No. 1443, 1444 and 4340 of 1988 which stand dismissed as mentioned above – and direct the Tribunal/High Court to pass fresh orders disposing of the application filed before them in the light of our judgment.** Where disciplinary proceedings have been stayed at the stage of initiation or later because of the view taken by the Tribunal, they should now be continued and finished without delay in accordance with law. The appeals are disposed of accordingly."*

(Emphasis supplied).

19 Respondents had pleaded that in view of the foregoing judgment, the Full Bench Judgment of CAT Hyderabad Bench relied upon by the applicant has already been quashed. This Tribunal has considered the rival pleadings and is of the view that the CAT, Hyderabad judgment is of no help to applicant.

20 The Tribunal has considered the submissions made by the respondents and it is the view of this Tribunal that the powers to appoint and to punish various level of officials are emanating from Railway Servants (D&A) Rules and IREC and already stand delegated also to different levels of officers. The Junior Administrative Grade Officer is having full powers of appointment and for exercising powers in respect of DAR in respect of non gazetted staff of his Division. It is admitted that applicant was in Grade Pay Rs.2800/- which is a Group-C non-gazetted level post. In fact, Applicant was promoted to this grade pay by orders of Sr. DCM only. Thus by virtue of statutory rules and delegation, Sr. DCM is the competent Authority to initiate action under DAR Rule 14 (1), if in his assessment conditions so warranted. Accordingly the pleadings by the applicant are not finding acceptability.

21 In view of the foregoing, the OA is without merit and the same is dismissed. The stay stands vacated and MAs stand disposed of. No order as to costs.

(M C Verma)
Member(J)

(Pradeep Kumar)
Member(A)

abp