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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.2997/2003

This the 18th day of May, 2005.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI K. B. S. RAJAN, MEMBER (J)

H.D. Sharma S/O Mangal Sain Sharma,
J.E. (P.Way)-I, Northern Railway,
Moradabad Division,
Bareilly.

... Applicant

(By Shri B.S.Mainee, Advocate)

Versus

1. Union of India through
General Manager,
Northern Railway,
Baroda House, New Delhi.
2. Chief Track Engineer,
Northern Railway Headquarters Office,
Baroda House, New Delhi.
3. Divisional Superintending Engineer-III,
Northern Railway.
Moradabad.

... Respondents

(By Shri R.L.Dhawan, Advocate)

O R D E R (ORAL)

Hon'ble Shri V.K.Majotra, Vice-Chairman (J):

Applicant while working as JE-II/RMU was charged vide Annexure A-5 dated 29.12.1998 that 20% ballast was being retained on the 40 mm square mesh, for one out of the three samples taken from Zone No.1, while the permissible limit was 55% to 70%, and that while loading the DMT from the BTO depot, he had failed to provide adequate supervision in not allowing the small size ballast to be loaded into the DMT. Vide order dated 19.12.2002 (Annexure A-1) applicant was removed from service w.e.f. 19.12.2002. These orders were upheld vide

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appellate orders dated 11.3.2003 (Annexure A-2). However, vide Annexure A-3 dated 13.10.2003 the punishment of removal from service was reduced by the revisional authority as follows:

“I have, therefore, concluded to reduce the punishment of “Removal from Service” to reduction in the grade from Rs.6500-10500/- to the grade Rs.5500-9000/- with a basic pay of Rs.5500/- and at the bottom of seniority of JE-I/P-WAY in the grade Rs.5500-9000/- for a minimum period of three years and until you are found fit for promotion in normal channel of promotion. The period between the date of removal from service and date of joining back on duty shall be treated as DIES-NON.”

Applicant has assailed the aforesaid orders Annexures A-1, A-2 and A-3.

2. The learned counsel of applicant has taken exception to the above orders and contended as follows:

(1) That the enquiry officer had held the charge proved in his report Annexure A-12 on taking into consideration extraneous material such as MB No.58172 in the case of Munna Lal, XEN/C as also the inability of V.K.Duggal in obtaining details from Bhanu Prakash and Rajiv Saxena.

(2) Orders dated 19.12.2002 (Annexure A-1) removing applicant from service were passed by an incompetent authority, as applicant had been promoted as PWI Grade-I under the orders of the Divisional Railway Manager (DRM), Moradabad who is a higher authority than the Divisional Superintending Engineer-II (DSE-II), and as such DSE-II was not competent to pass impugned orders, Annexure A-1 as disciplinary authority. In this connection, the learned counsel relied upon order dated 18.11.2002 passed in OA No.3321/2001 – *Deva Ram v Union of India & Ors.*, wherein, placing reliance on the decision of the Hon’ble Apex Court in the case of *Ram Krishan Prajapati v State of Himachal Pradesh* in Criminal Appeal No.648/1986 decided on 10.3.1999, it was held as follows:

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“...The appointment letter had the approval of the ADRM. It does not indicate that only the Senior Scale Officer or Divisional Personnel Manager had issued the appointment letter to claim himself to be the appointing authority. Once the approval has been taken, it conveys that the appointing authority of the person appointed is the person who had approved the same. Since the ADRM is a Senior Scale Officer, therefore, we have no hesitation in concluding that the impugned order had not been passed by the person competent to appoint because he had been appointed by a senior person. In this regard, a clear distinction must be drawn between the person who has appointed the officer though he may be senior to the appointing authorities contemplated under the Rules. In that event, he will be taken to be the appointing authority for the purpose of the abovesaid rule...”

In the case of *Prajapati* (supra) where the appointing authority was District Magistrate but the order had been passed by Commissioner, it was held that the Commissioner must be taken to be the appointing authority.

- (3) Annexure A-1 dated 19.12.2002 has been passed without application of mind and is a non-speaking and non-reasoned order.
- (4) Vide the revisional orders applicant, in addition to reduction in the punishment, has been placed at the bottom seniority of JE-I/P-Way in grade Rs.5500-9000, and also the period from the date of removal from service to the date of joining back in service has been treated as *dies non*. It is argued that placement at the bottom of seniority as also treatment of the aforesaid period as *dies non* are illegal.
- (5) There is no evidence in support of the charges. The only witness produced by the disciplinary authority in support of the charges is Rajiv Saxena, AE/Budget who has clearly stated that applicant was not guilty of the charges leveled against him and that the loading of the ballast was supervised by Sushil Kumar, Material Checking Clerk.

3. On the other hand, the learned counsel of respondents strongly opposed the contentions raised on behalf of applicant. As regards the issue whether the

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enquiry officer had taken into consideration extraneous matters in proving the charge against applicant, to our specific query as to the relevance of the case of Munna Lal and inability of V.K.Duggal in securing details from Bhanu Prakash or Rajiv Saxena, the learned counsel could not provide any satisfactory explanation and merely stated that no prejudice has been caused to applicant on consideration of these matters by the enquiry officer. In this connection, the learned counsel relied on *State Bank of Patiala & Ors. v S.K.Sharma*, JT 1996 (3) SC 722, stating that in disciplinary proceeding no exception can be taken to even violation of principles of natural justice or procedural provisions not causing any prejudice to the defence of the delinquent.

4. On the question of competence of the disciplinary authority who passed the impugned orders Annexure A-1, the learned counsel of respondents stated that DSE-II is the appointing authority in the case of JE-II grade Rs.6500-10500. He stated that both DSE/C and DSE-II are branch officers in Junior Administrative Grade and they have equal powers under Discipline and Appeal Rules. Both report to DRM and as the charged officer was in grade Rs.6500-10500 at the time of major penalty chargesheet, the chargesheet had to be signed by DSE/C and not senior scale officer, and as such DSE-II who passed the impugned orders Annexure A-1, cannot be held to be incompetent authority. He also submitted that Senior Personnel Officer, though had the approval of DRM for issuing the appointment letter Annexure A-4 on placement of applicant in grade Rs.6500-10500, is indeed the appointing authority of applicant. He further stated that act of obtaining approval for appointment from a superior authority by the appointing authority does not change the position of the appointing authority and the status of the disciplinary authority has to be related to the actual appointing authority alone and not to the authority who had approved the appointment. In this connection, the learned counsel sought to draw support from *Kanta Devi v Union of India & Anr.*, (2003) 4 SCC 753.

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5. As to the objection regarding non-application of mind and impugned orders Annexure A-1 being non-speaking and non-reasoned, the learned counsel of respondents contended that in the absence of any dissent with the enquiry officer's report and conclusions, it is not obligatory on the part of the disciplinary authority, particularly when no representation has been made against the enquiry report by the charged officer, to incorporate detailed reasoning in the impugned orders.

6. As respects placement of the charged officer at the bottom seniority in the lower grade of Rs.5500-9000 by the revisional authority and also treating the period from the date of removal from service to joining back on duty as *dies non*, the learned counsel drew our attention to rule 6 (vi) of the Railway Servants (Discipline & Appeal) Rules, 1968 and contended that specific orders as to seniority can be passed while imposing a penalty of reduction to a lower time scale of pay, grade, post or service. As regards treatment of the period from the date of removal till reinstatement in service, the learned counsel referred to rule 18 (v) (f) *ibid* stating that applicant could have appealed against this portion of the order and not having availed of this remedy, no objection can be raised in this connection at this stage.

7. In regard to the contention of applicant that it is a case of no evidence, the learned counsel stated that some evidence is available in the enquiry and as a matter of fact the charged officer himself in his statement has stated that though he had instructed Sushil Kumar, his subordinate, not to load "3 chatte" which had been identified in red colour, yet when he returned later on after a few hours, he found that the identified ballast had been loaded. The learned counsel in this regard relied on *R.S.Saini v State of Punjab & Ors.*, (1999) 8 SCC 90.

8. We have considered the rival contentions as also perused the material on record.

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9. Respondents have not been able to provide any satisfactory explanation regarding consideration of MB No.51872 in the case of Munna Lal, XEN/C as also inability of V.K.Duggal in securing details from Bhanu Prakash and Rajiv Saxena in the enquiry report. It is also found that the enquiry officer has remarked in his report, "This is a linked up case in the D&A proceedings launched against S/Sh. Munna Lal, SEN/C, Rajiv Saxena, AEN/C/Budget and Sh. Sushil Kumar, MCC/PWI/RMU/MB", and as such recommended that the enquiry report be read in conjunction with the reports of Munna Lal, SEN/C and Sushil Kumar, MCC/PWI/RMU. The learned counsel of respondents was specifically queried as to how the enquiry officer could link up the aforesaid cases with the present enquiry. He was unable to explain the linkage. This, in our view, is also consideration of an extraneous material by the enquiry officer which has been prejudicial to the interest of the charged officer. The materials referred to above in this paragraph are certainly extraneous but have been taken into consideration by the enquiry officer in arriving at his conclusions in the enquiry. These, in our view, are prejudicial to the defence of the charged officer.

10. We find that Annexure A-4, i.e., orders promoting applicant in grade Rs.6500-10500 were passed by Senior Personnel Officer or by the DRM. Perusal of these orders indicates that these orders were issued on obtaining approval of the "appropriate authority". Appropriate authority in this case is accepted to be the DRM. Respondents have relied on the case of *Kanta Devi* (supra) stating that even though the employee had been promoted by a subordinate officer with prior approval of a superior officer, the order of punishment could be passed by the subordinate authority. It is found that in the related case of *Kanta Devi* the rules mandated that approval of the superior authority, i.e., I.G., was necessary in case of appointment/promotion and as such it was held that the position of the subordinate authority as the appointing/promoting authority did not change and the superior authority had not become the appointing/promoting authority. The

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situation in the present case is different inasmuch as the rules do not require approval of the higher authority for appointment in grade Rs.6500-10500. In such a situation when approval of "the appropriate authority", i.e., DRM, had been obtained for appointment of applicant in grade Rs.6500-10500, while the DRM acquired the position of appointing authority, Senior Personnel Officer remained merely a subordinate authority communicating the decision of the appointing authority. In this light, the impugned orders Annexure A-1 imposing the penalty having been passed by a lower authority than DRM, in our view, have been passed by an incompetent authority. Only Additional DRM or DRM was competent to pass such orders. As a natural corollary, the appellate and revisional authorities for applicant would also be officers superior to the ADRM and Chief Track Engineer, respectively. In this manner, in our view, the impugned orders Annexures A-1, A-2 and A-3 have been passed by incompetent authorities and cannot be approved.

11. As to the contention of the learned counsel of applicant that Annexure A-1 has been passed without application of mind and is non-speaking and non-reasoned, the learned counsel of respondents maintained that in the absence of any dissent between the enquiry officer and the disciplinary authority, it is not obligatory on the part of the disciplinary authority particularly when no representation has been made against the enquiry report by the charged officer, to incorporate detailed reasoning in the impugned orders, and as such, these orders cannot be said to be non-speaking or non-reasoned. We agree with the learned counsel of respondents in this behalf and the objection raised on behalf of applicant is rejected, therefore.

12. Rule 6 (vi) *ibid* reads as follows:

"(vi) Reduction to a lower time scale of pay, grade, post or service, with or without further directions regarding conditions of restoration to the grade or post or service from which the Railway servant was reduced and his

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seniority and pay on such restoration to that grade, post or service;"

In terms of this provision, in addition to reduction to a lower time scale of pay, grade, post or service, directions can be issued regarding conditions of restoration to the grade, post or service and seniority and pay on such restoration to that grade, post or service. In the present case, the revisional authority while reducing the punishment of removal from service to reduction in grade has not given any directions regarding conditions of restoration to the original grade but has given a direction for applicant's placement at the bottom of seniority in the lower grade. Such a direction is permissible under the above provision only when restoration to the original grade is also incorporated in the orders of punishment. In such a situation alone, conditions of restoration to the grade as also seniority on restoration in the original grade can be specified. In the absence of any direction in the revisional orders regarding restoration to the original scale, placement at the bottom of seniority, is also in violation of the aforesaid rule.

13. It had been stated on behalf of applicant that there has been no evidence in support of the charges against applicant. The learned counsel of applicant had stated that Shri Rajiv Saxena, the then AE/Budget was the only witness cited by respondents in the chargesheet dated 15.2.2001. This witness had not stated anything in his evidence against applicant. As a matter of fact, he had stated that while Shri Sushil Kumar, MCC, used to supervise loading of the ballast into DMT at BTO, he, and not the applicant, was in charge of direct supervision of the loading of ballast. While no incriminating evidence has forthcoming from the witness cited on behalf of respondents, defence witness Vijay Narain had also stated that applicant had given specific instructions not to load the ballast which had been identified in red colour. Obviously, the charge of loading the objectionable ballast could not be brought home upon the applicant in the absence of any evidence produced on behalf of respondents. Respondents would

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not be able to derive any benefit from the case of **R.S.Saini** (supra) as there is no evidence at all to reasonably support the finding of the enquiry officer.

14. Having regard to the facts and circumstances of the case as also the discussion made above, Annexures A-1, A-2 and A-3 are quashed and set aside with consequential benefits to the applicant of restoration to the original post of PWI forthwith as if no chargesheet had been issued to applicant. It is further directed that the period from the date of removal from service till the date of joining back on duty shall be treated as on duty in the post of PWI. The consequential arrears of pay and allowances are directed to be paid to applicant within a period of two months from the date of communication of these orders.

16. OA is allowed in the above terms.



(K. B. S. Rajan)
Member (J)



(V. K. Majotra) 18.5.05
Vice-Chairman (A)

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