

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (Civil) No. 944/2002**

% Reserved on: 2nd December, 2009

Decided on: 20th January, 2010

Shri R.K. Minocha Petitioner

Through: Mr. Rajinder Nishchal, Advocate.

versus

Union of India & Ors. Respondents

Through: Mr. A.K. Bhardwaj, Advocate with
Ms. Jagrati Singh, Advocate.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MS. JUSTICE MUKTA GUPTA

- | | |
|---|---------------|
| 1. Whether the Reporters of local papers may
be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Not necessary |
| 3. Whether the judgment should be reported
in the Digest? | Not necessary |

MUKTA GUPTA, J.

1. The Petitioner, an ex-member of Central Clerical Service, while working as Upper Division Clerk in the Directorate of Printing, Ministry of Urban Affairs and Employment, was charge-sheeted under Rule 14 of the

Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as CCS (CCA) Rules) on 11th June, 1996 firstly, for habitually absenting himself from duty without sanction of leave of absence or any prior intimation and secondly, for not performing the duties of the post assigned to him while posted in the Vigilance Section of the Directorate of Printing.

2. Pursuant to the departmental proceedings, the Petitioner was held guilty and a penalty of compulsory retirement from service was imposed on him vide order dated 16th October, 1997. Petitioner's appeal was also rejected by the Appellate Authority on 3rd June, 1998.

3. Challenging the order of the disciplinary authority, imposing a penalty of compulsory retirement from service, the Petitioner filed a petition before the Central Administrative Tribunal, Principal Bench, New Delhi being Original Application No. 1474/1999 praying for setting aside the penalty, on the ground that the charge memo and the penalty order were a nullity, as the same were issued by an authority incompetent to do so under the Rules.

4. The original application of the Petitioner was dismissed on 28th April, 2001 by the Tribunal. Subsequently, the Review Application No. 237/2001 filed by the Petitioner was also dismissed by the Tribunal on 4th June, 2001.

5. Challenging the orders passed by the Respondents as upheld by the Tribunal the Petitioner has filed the present writ petition.

6. The only issue raised by the learned counsel for the Petitioner before this Court is that the Respondent No. 2 in the present petition, that is the Director of Printing, Ministry of Urban Affairs and Employment, Nirman Bhawan, who has passed the order of compulsory retirement of the Petitioner was neither his appointing authority nor was he authorized in the schedule relating to CCS (CCA) Rules and that the power to impose a major penalty is vested with the Deputy Secretary/Director, Cadre Authority of the Ministry.

7. In response it is contended on behalf of the learned counsel for the Respondents that the Petitioner was at the relevant time working as a Lower Division Clerk and was governed by the Central Secretariat Clerical Service Rules, 1962 (hereinafter called Service Rules, 1962 for the sake of brevity).

8. As per the Service Rules, 1962, Section 2 defines, the “appointing authority”, “cadre” and “cadre authority” as under:

“2 (a) **“Appointing authority”** in relation to any grade means the authority empowered under the Central Civil Services (Classification, Control and Appeal), Rules, 1965, to make appointments to that Grade;

(e) **“Cadre”** means the group of posts in Upper Division and Lower Division Grade of the service in any of the Ministries or offices specified in column (2) of the First

Schedule and in all the offices specified against it in column (3) of that Schedule;

(f) “**Cadre Authority**” in relation to any cadre means the Ministry or Office specified in respect of that cadre in column (2) of the First Schedule;”

Note. - For the purpose of disciplinary matters, “Cadre Authority” in relation to any cadre, however, means the Ministry or Office, specified in respect of that cadre in column 2 or the Office specified in column 3 of the First Schedule.

9. Learned counsel for the Respondents has produced the First Schedule to Rule (e) and (f) wherein at Serial No. 32, Ministry of Works and Housing is mentioned and Directorate of Printing is one of the offices in column 3 to which these rules also apply.

FIRST SCHEDULE

(See Rules 2 (e) and 2(f) 2(m) and (4)

Names of Ministries/Offices to whom the Central Secretariat
Service Rule 1962 apply.

32.	Ministry of Works and Housing.	(i) Office of the Directorate General, Central Public Works Department and Chief Engineer, CPWD, new Delhi, Madras, Bombay and Calcutta. (ii) Directorate of Estates (iii) National Buildings Organisation. (iv) Directorate of Printing (v) Central Public Health Environmental Engineering Organisation.
-----	--------------------------------	--

10. According to the learned counsel for the Respondent the Director (Printing), Directorate of Printing under the Ministry of Urban Development and Poverty Elimination, the then Ministry of Urban Affairs and Employment is fully competent to impose any of the penalties enumerated under Section 11 of the Central Civil Services(Classification, Control and Appeal) Rules, 1965 of this Central Secretariat Clerical Staff (CSCS) Cadre, on employees working in the Directorate of Printing and also those who were from the Cadre of Central Secretariat Clerical Staff. Thus, according to the learned counsel for the Respondents, as per Rule 11 of the CCS (CCA) Rules, 1965, both the Deputy Secretary and the Director are the competent person to impose penalties.

11. Learned counsel for the Respondents in support of his contentions has relied upon the decision rendered by the Supreme Court in the case of ***Jai Jai Ram vs. The U.P. State Road Transport Corporation, Lucknow, JT 1996 (6) SC 463*** wherein it was held:

“5. It was next contented that the officers who had taken action against the appellants had no power to make appointments in Government service or on civil posts while they were on deputation with the Corporation and, therefore, they could not have taken any action against the appellants in view of the protection afforded by Article 311. It was submitted that the authority contemplated by Article 311 is

the authority which should have power to appoint a person on a civil post under the Union or a State, as the case may be. We do not find any substance in this contention also. Article 311 gives protection to a member of a civil service of the Union or an all-India service or a civil service of a State or to a person holding a civil post under the Union or a State against dismissal or removal by an authority subordinate to that by which he was appointed. Article 311 does not provide that a member of a civil service or a person holding a civil post either under the Union or a State cannot be dismissed or removed by an authority except the appointing authority. There is no requirement that the authority which takes disciplinary action must continue to have the power of making appointment to the civil service or on a civil post under the Union or a State. It can be any other authority so long as it is not subordinate in rank or grade to the authority by which the delinquent Government servant was appointed. That is the only requirement of Article 311 and we cannot read anything more into it. In *State of U.P. v. Ram Naresh Lal* 1970 (3) SCC 173 this Court has in clear terms held that there is nothing in the Constitution which debars a Government from conferring powers on an officer other than the appointing authority to dismiss a Government servant provided he is not subordinate in rank to the appointing officer or authority. “

12. Thus, it is apparent that the Director (Printing), Directorate of Printing was also the competent authority to impose the penalty of compulsory retirement of the Petitioner in terms of the entry 32 of the first schedule to Rule 2 (e) and 2(f) of the Central Secretariat Clerical Services Rules, 1962. The Director (Printing) is also not an authority subordinate to the appointing authority of the Petitioner and hence not barred under Article 311 of the Constitution of India to take disciplinary action against the Petitioner.

13. The Tribunal on the basis of submissions made and the legal position brought before it has rightly held that there is no merit in the Petitioner's contention. We find no infirmity in the impugned order dated 20th April, 2001 passed by the Central Administrative Tribunal.

14. Writ petition is dismissed. No order as to cost.

MUKTA GUPTA, J

MADAN B. LOKUR, J

JANUARY 20, 2010

vn