



2026:DHC:7120-DB



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

CNR No. DLHC010379912026

+ **W.P.(C) 11824/2026 & CM APPL. 54641/2026, CM APPL. 54642/2026, CM APPL. 54643/2026, CM APPL. 54644/2026, CM APPL. 54645/2026**

UNION OF INDIA & ORS.

.....Petitioners

Through: Mr. Ranjeev Khatana, (SPC,
Mr. Rohit Kapoor, Ms. Divyanshi Bucha,
Mr. Arjav Sethi, Mr. Ram Naresh Pal, CLA

versus

VINOD KUMAR

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT (ORAL)

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17.08.2026

C. HARI SHANKAR, J.

1. The respondent was appointed as a Token Porter on compassionate grounds.

2. On 11 May 2015, the Assistant Operations Manager¹, Moradabad passed an order imposing, on the respondent, the major penalty of removal from service. The respondent appealed against the said order. The appeal was dismissed by the Divisional Operations Manager, Moradabad on 2 September 2015. The respondent,

Signature Not Verified¹ "the AOM", hereinafter

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thereafter, preferred a petition to the President of India under Rule 31 of the Railway Servants (Discipline & Appeal) Rules, 1968² which was also rejected by the Divisional Railway Manager³, Moradabad.

3. The respondent, therefore, approached the Tribunal by way of OA 4015/2023, which has been disposed of by the order impugned in the present writ petition.

4. Before the Tribunal, the respondent placed reliance on Circular dated 6 February 1991 issued by the Railway Board. Para 2 of the said Circular dealt with the authority who was competent to make appointments on compassionate grounds and read thus:

“2. The matter has been considered further by Board and the following decisions and clarifications are conveyed:

Authority competent to make appointments on make compassionate grounds. The power to make compassionate appointments is vested in the General Manager, subject to the extant guidelines.

The General Manager may, however, redelegate this power of compassionate appointment in Group 'C' and Group 'D' to the Divisional Railway Managers and also to Heads of the extra Divisional Units who are in S.A. grade, subject to such control as he may like to impose on the exercise of such powers by these authorities.”

5. The respondent also pointed out that as per Schedule-II to the Discipline and Appeal Rules, the powers of the AOM were restricted to awarding penalties under clauses (i) to (vi) of Rule 6 of the Discipline & Appeal Rules and suspension, which would not include the penalty of removal from service.

² “the Discipline and Appeal Rules”, hereinafter

³ “the DRM”, hereinafter



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6. Contesting the stand of the respondent, the Railway Authorities submitted, before the Tribunal, that the appointment order of the respondent had been issued by the Assistant Operations Officer, who is equal in rank to the AOM and that, therefore, the AOM was competent to remove the respondent from service. Apropos the Schedule to the Discipline and Appeal Rules, the Railways placed reliance on Note-I in the Schedule which stated that the Appointing Authority, or any authority superior to the Appointing Authority, was competent to award the penalty under Clauses (vii) to (ix) of Rule 6, which would include the punishment of removal from service.

7. The Tribunal has not accepted the stand of the Railways. The impugned order holds that as the AOM was not the Appointing Authority of the respondent in terms of the Railway Board Circular dated 6 February 1991, the order of removal from service, as passed by the AOM, was bad for want of jurisdiction. Accordingly, the Tribunal has set aside the said order and reinstated the respondent in service with liberty to the petitioner, however, to proceed against the respondent in disciplinary proceedings in accordance with law.

8. Aggrieved thereby, the petitioner has approached this Court by means of the present writ petition.

9. We have heard Mr. Ranjeev Khatana, learned SPC for the petitioners at some length.

10. Mr. Khatana submits that the DRM, though the competent



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Appointing Authority, had in fact sanctioned the appointment of the respondent and that the actual appointment order was issued by the APO, who was equal in rank to the AOM who passed the order of removal from service. He has, for this purpose, drawn our attention to the appointment order of the respondent, which reads thus:

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सं: ई०/ई०पी०-२/नियुक्ति/वि०/९६

महाराष्ट्र रेल प्रबन्धकालय,
उत्तर रेलवे, मुरादाबाद ।
दिनांक: 16/1/97

आदेश

श्री बिनेद कुमार एन सीओर सि०
जिनकी इस कार्यालय के सीपसीओ अनुभाग के पत्रांक ई०पी०/०३०/५६५/सी०पी० दिनांक 12/12/96 द्वारा यातायात विभाग चतुर्थ ग्रेणी में अनुपस्थिति के आधार पर टोकिन पोर्टर के पद पर नियुक्ति स्वीकृत हुई है को अत्याई टोकिन पोर्टर के सा में स्टेसन मास्टर अधीक्षक रामपुर के आधीन टोकिन पोर्टर के रिक्त स्थान पर पैनमान सा 750-940 साये 750/- प्रतिमाह पर नियुक्त किया जाता है । इन्होंने स०-२ की जाचदारी परीक्षा प्र.प्र. वि.अ.सि. (डिग्रीशन) उत्तर रेलवे मुरादाबाद द्वारा जारी प्रमाणपत्र संख्या 160772 दिनांक 21/1/97 के अर्जित प्राप्त कर ली है । इनकी जन्मतिथि अमित बिन्हास / कुरी रामपुर 10-4-66 (दिन अथवा मंत्र डिग्रीशन) उत्तर रेलवे मुरादाबाद के अनुसार है ।

इनकी ज्वाइनिंग तिथि इस कार्यालय को यथाशीघ्र सूचित तथा इनका तन छूटी ज्वाइन करने की तिथि से लगाया जाये । इनके हस्ताक्षर स्पष्ट निम्नलिखित रूप में दिये जा रहे हैं ।

बिनेद कुमार
साक्षर
मोहसूता ।

सहायक कार्मिक अधिकारी-11
उ० र०, मुरादाबाद ।

तिथि निम्नलिखित सूचनाओं को आपस में कार्यवाही हेतु प्रेषित ।

स्टेशन मास्टर अधीक्षक रामपुर
अधीक्षक पैनमान भागजा पास अनुभाग, मुरादाबाद ।
पूर्वर गजल लेखा अधिकारी मुरादाबाद ।
श्री बिनेद कुमार का कार्यालय में उपस्थित किया इस पत्र को लेकर स्टेशन मास्टर रामपुर को छूटी हेतु यथाशीघ्र रिपोर्ट करें ।



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“Dated: 12/12/1996

NO: DPO/465(C.G.)

TO

Supdt. E T-II

Sub: Rectt. of dependents of Railway Employee on Compassionate Grounds.

S/Shri/~~Smt./Km.~~ Vinod Kumar Son of / ~~widow~~ of late Shri Sher Singh as Kh Claw Hd. MB has been sanctioned an appointment by the Divisional Railway Manager, Northern Railway, Moradabad under its special powers on Compassionate Grounds as Token Porter Grade Rs. 750 - 940 against an existing vacancy subject to his/her fulfilling all the conditions with regard to verification of character & antecedents & Medical examination.

The D.O.B. of Shri/~~Smt.~~ Vinod Kumar as per School Certificate, ~~affidavit~~ is 10.04.66. This may however, be got verified from his / ~~her~~ original certificate.

The date of actual appointment may be advised to Confidential Branch of this office in due course.

Postal address of the candidate is given below :-

Divl. Personnel Officer
Northern Railway
Moradabad.

Copy to- Shri Vinod Kumar

He / ~~She~~ should report to Supdt. E T-II for further orders.”

11. We are unable to accept Mr. Khatana’s submission.

12. In fact the submissions of Mr. Khatana are to an extent contrary to the pleadings in the writ petition before us. Under the head “the Assistant Operations Manager, Moradabad is the competent Disciplinary Authority for awarding the major penalty”, the petitioner has stated thus in sub paras (i) and (iii) :

“i. Admittedly, the power to appoint ‘Group C’ and ‘Group D’ employees has been delegated to the Divisional Railway Manager, by the General Manager as per relevant Railway Board’s notification.

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iii. It is submitted that power to appointment to a particular post is an administrative function and once that power has been exercised, then the manner to implement it can be delegated to subordinate officers. It is submitted that this will not amount to further delegation of powers as such authorizations of administrative functions are clearly recognized in the administrative law.

13. There is, therefore, a candid acknowledgement that in fact the DRM was the Appointing Authority of the respondent. We may also reproduce, in this context, the following paragraphs from the synopsis filed with the present writ petition:

“The Impugned Judgment is contrary to law and the applicable Railway Rules. The Learned Tribunal failed to appreciate that the appointment of the Respondent on compassionate grounds was sanctioned by the Divisional Railway Manager in exercise of the delegated power of appointment. The formal appointment order, however, was issued by the Assistant Personnel Officer in accordance with the established departmental procedure and is accordingly reflected in the Respondent's service records. The Divisional Railway Manager exercised the statutory discretion to approve the appointment. The issuance of the appointment order by the Assistant Personnel Officer was merely an administrative and ministerial act performed on behalf of the competent authority. It did not amount to a further delegation of the power of appointment. Rather, it was only an authorization to perform a consequential administrative function, consistent with the settled principles of administrative law and the departmental procedure governing appointments in the Railways.”

14. Mr. Khatana has also drawn our attention to the following paragraphs from the writ petition:

“v. Notably, the appointment of the Respondent was sanctioned by the Divisional Railway Manager, Moradabad as mentioned in the letter dated 12.12.1996. Thereafter, on the basis of this letter, the appointment order dated 16.01.1997 was issued by the Assistant Personnel Officer, Moradabad.

Copy of the service record of the Respondent is annexed herewith

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and marked as Annexure P-8.

vi. Therefore, the Assistant Personnel Manager acted on behalf of the Divisional Railway Manager, Moradabad and hence is the proper Appointing Authority for the Respondent.”

15. The aforesaid paragraphs, to our mind, completely defeat the case that Mr. Khatana is seeking to espouse. It is candidly acknowledged in these paragraphs that the DRM was the competent Authority, who was in fact the Appointing Authority of the respondent, and the Assistant Personnel Manager, in issuing the Appointment Order merely acted on his behalf. This has elsewhere been represented in the writ petition and the synopsis filed therewith, as executing a mere ministerial act on behalf of the DRM.

16. Indeed, in view of the Railway Board Circular dated 6 February 1991, none other than the DRM could have been the respondent’s Appointing Authority, as the Appointing Authority is the GM or the officers on which the GM delegates the power of appointment. There is no provision under which the delegate could further delegate the power of appointment which would, even otherwise, be contrary to the settled administrative principle of *delegatus non potest delegare*. Clearly, therefore, the respondent’s Appointing Authority was the DRM and the Assistant Personnel Officer in issuing the order of appointment merely acted on behalf of the DRM as is acknowledged in the writ petition itself.

17. We, therefore, find no error in the judgment of the Tribunal which holds that the order of removal of service of the respondent



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could not have been issued by the AOM, Moradabad.

18. We also note that the Tribunal has reserved liberty with the petitioner to proceed against the respondent by way of disciplinary proceedings in accordance with law which, to our mind, satisfactorily safeguards the petitioner. Indeed, we are of the opinion that, instead of filing the present writ petition, if the respondent had acted on the basis of the liberty granted by the Tribunal, perhaps matters would have reached a quietus by now.

19. Mr. Khatana also sought to contend that the OA was barred by time and that the Tribunal has erred in not considering this fact.

20. We find from the impugned order passed by the Tribunal that no submission with respect to limitation was urged before the Tribunal during the course of arguments. The Supreme Court has held in *State of Maharashtra v. Ramdas Shrinivas Nayak*⁴ that if a ground is taken before a Court and not recorded by the Court, the appropriate course of action would be to move the same Court pointing out that an argument which was raised was not considered. No such attempt has been made by the petitioner.

21. We also note that even on the aspect of limitation, the only averment in the counter affidavit filed by way of response to the OA is that the OA was filed after “long delay”. There is no whisper of any other contest on the ground of limitation in the counter affidavit filed by way of response to the OA.



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22. In that view of the matter, we are not inclined to entertain the plea of limitation raised by Mr. Khatana in this writ petition.

23. We, therefore, find no merit in this writ petition, which is, accordingly, dismissed in limine with no orders as to costs.

C. HARI SHANKAR, J

VINOD KUMAR, J

AUGUST 17, 2026/yg