

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE G.JAYACHANDRAN

W.P.No.4098 of 2017
and
W.M.P.No.4241 of 2017

- 1.Union of India,
represented by the General Manager,
Southern Railways, Park Town,
Chennai-600 003.
 - 2.The Senior Divisional Operations Manager,
Madurai Division, Southern Railway, Madurai.
 - 3.The Divisional Operations Manager,
Madurai Division, Southern Railway, Madurai.
 - 4.The Assistant Operations Manager,
Madurai Division, Southern Railway,
Madurai.
- Petitioners

-vs-

- 1.M.M.Mohideen
 - 2.The Registrar,
Central Administrative Tribunal,
Chennai.
- ... Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records of the second respondent Tribunal in O.A.No.310/00073/2015 dated 08.08.2016 and quash the same.

For Petitioners :: Mr.S.R.Sundaram

For Respondents :: Ms.K.Nithya Shree for
M/s.Giridhar & Sai for R1

ORDER
(Order of the Court was made by
HULUVADI G.RAMESH, J.)

This writ petition has been filed to quash the order of the second respondent Tribunal in O.A.No.310/00073/2015 dated 08.08.2016.

2.The matter relates to dismissal of an employee for unauthorised absence from duty, by an officer not competent to take such a decision. The first respondent was appointed as Sweeper cum Porter in Madurai Division of Southern Railway, on compassionate ground, pursuant to the death of his father while in service. According to the first respondent, due to ill-health he was unable to attend the duty from 16.11.2012 to 03.07.2013 and during the said period, he was under the treatment of a Government Siddha Doctor. The fourth petitioner issued a penalty charge memorandum as against the first respondent on 12.04.2013 treating the leave taken by him as 'unauthorised absence'. The contention of the first respondent is that even though the first respondent requested to consider the issue on sympathetic grounds, the Enquiry Officer submitted a report stating that the charge made against the first respondent was proved, pursuant to which, according to the first respondent, an incompetent disciplinary authority has issued a penalty advice dated 31.07.2014 removing him from service, without considering the Rules contained in the Railway Servants' Disciplinary and Appeal Rules 1968. The appeal and the revision filed by the first respondent before the competent authorities, also ended in confirmation of the penalty imposed on him. Hence, the first respondent approached the second respondent-Tribunal by way of filing an original application in O.A.No.310/00073 / 2015 praying for quashment of the orders passed by the authorities in question, and for a direction to reinstate him with all consequential benefits. The Tribunal allowed the original application filed by the first respondent by passing an order on 08.08.2016, on the ground that the order of dismissal was not passed by the competent authority and also remitting the matter to place the same before the competent authority in the light of the Manual at Page 14 Schedule-II Rule 4 and Sub-rule (2) of Rule 7 Clause 3 of the Indian Railway Medical Manual.

3.Challenging the said order passed by the Tribunal, the Department has come up with this writ petition.

4.The learned counsel for the petitioners has submitted that even though the Tribunal has rightly held that the procedure followed by the Department for imposing the charge against the first respondent is correct, it had misdirected itself in

holding that the fourth petitioner, viz.the Assistant Operations Manager is not the competent authority to pass an order of removal from service.

5.Counter affidavit has been filed by the first respondent in which it is stated that this writ petition is devoid of merits and further, the penalty of removal of service is disproportionate to the charge levelled against him. It is also stated that the Tribunal has erred in holding that the charge was proved and that having remanded the matter, the Tribunal ought not to have given any finding on the merits of the case.

6.Heard the learned counsel on either side and perused the materials available on record.

7.Due to unauthorised absence, the first respondent was removed from service. The appeal and revision filed by him before the competent authorities also ended in confirmation of the charge. Finally, the first respondent filed the original application in O.A.No.310/00073/2015 before the second respondent Tribunal. What was canvassed before the Tribunal is that the officer who passed the order removing the first respondent from service, is not competent enough to take such a decision. The second respondent Tribunal, even though rendered findings against the first respondent that the charge imposed on him has been proved, allowed the application on the sole ground that the order of removal from service has not been passed by the competent authority, and remitted the matter back to the fourth petitioner to place the matter before the competent authority for passing appropriate orders after considering the enquiry report.

8.On a perusal of the impugned order passed by the second respondent Tribunal, we find that the same was not passed by the competent authority. It appears that the fourth petitioner, who passed the order was holding the additional charge of the competent authority. But, the appointing authority alone is entitled to exercise the power in respect of removal of an employee from service and not by any other officer who holds additional charge of the competent authority. Merely because he holds the additional charge, it does not mean that he is competent enough to take a decision removing an employee from service on the ground of misconduct or dereliction of duty.

9.In the above stated circumstances, we dismiss this writ petition. No costs. Consequently, the connected miscellaneous petition is closed. It is open to the concerned appointing authority to proceed against the first respondent in accordance with law, if so advised.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The General Manager,
Southern Railways, Park Town,
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- 2.The Senior Divisional Operations Manager,
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- 3.The Divisional Operations Manager,
Madurai Division, Southern Railway, Madurai.
- 4.The Assistant Operations Manager,
Madurai Division, Southern Railway, Madurai.
- 5.The Registrar,
Central Administrative Tribunal,
Chennai.

+1 cc to M/s.S.R.Sundaram Advocate sr 53818
+1 cc to M/s.Giridhar & Sai Advocate sr 54053

W.P.No.4098 of 2017
and
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