

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6710 OF 2003

Union of India and ors.	...Petitioners
Versus	
N.B. Joshi	...Respondent

Mr. Suresh Kumar for the Petitioners.
Mr. Rahul G. Walia for the Respondent.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

DATE : 19th APRIL 2018.

ORAL JUDGMENT:

1] Heard learned counsel for the parties.

2] The challenge in this petition is to the judgement and order dated 10th April 2003 made by the Central Administrative Tribunal (CAT), Mumbai in O.A. No. 470 of 1999 instituted by the respondent to question the charge-sheet dated 31st October 1996 issued to him by the Assistant Catering Services Manager (ACSM).

3] Mr. Suresh Kumar, learned counsel for the petitioners, submits that there is absolutely, no legal bar to initiation of

disciplinary proceedings or issuance of charge-sheet by an officer/authority sub-ordinate to the delinquent officer, appointing authority or disciplinary authority. He submits that Article 311 (1) of the Constitution of India merely provides that no persons covered under the said Article shall be dismissed or removed by an authority sub-ordinate to that by which he was appointed. Since, this is the only ground on which the CAT has interfered with the charge-sheet issued to the respondent and further since, such ground is quite untenable, Mr. Suresh Kumar submits that the impugned judgment and order made by the CAT is liable to be set aside. In support, Mr. Suresh Kumar relies upon the decisions in case of ***Inspector General of Police and anr. vs. Thavasiappan - (1996) 2 SCC 145, State of Punjab and anr. vs. ASI Balkar Singh - (2002) 10 SCC 171*** and ***State of Uttar Pradesh and anr. vs. Chandrapal Singh and anr. - (2003) 4 SCC 670.***

4] Mr. Suresh Kumar also takes us through the Railway Servants (Discipline & Appeal) Rules, 1968 (said Rules), including in particular, Rule 8 thereof to submit that a

disciplinary authority competent to impose any minor penalty, is also competent to institute disciplinary proceedings against any railway servant for imposition of major penalty, notwithstanding that such disciplinary authority is not competent under these rules, to impose any of the major penalties.

5] Mr. Suresh Kumar submits that the import of Rule 8 (2) of the said Rules has not been correctly appreciated by the CAT and therefore, the impugned judgment and order warrants interference.

6] Mr. Rahul Walia, learned counsel for the respondent, submits that the decisions relied upon by Mr. Suresh Kumar were delivered in cases where there were no rules prescribing the authorities competent to institute proceedings or where the rules were silent in that regard. He submits that in the present case, Rule 8 of the said Rules is quite clear and Mr. Suresh Kumar has omitted reference to crucial phrase "*subject to the provisions of clause (c) of sub-rule (1) of Rule 2*" as it appears in Rule 8(2) of the said Rules. Mr. Walia submits that the

ambiguity, if any, stands clarified by the clarification provided by the Railway Board on 4th February 1971, in which, it is very clearly stated that only an authority competent to impose any of the major penalties can initiate disciplinary proceedings for imposition of a major penalty in relation to Rule 9, in respect of non-gazetted staff. Mr. Walia submits that clarifications issued by the Railway Board are binding upon the petitioners.

7] Mr. Walia further submits that in O.A. No. 571 of 2005 decided on 22nd October 2010, the CAT has taken the view identical to the view now taken in the impugned judgment and order. The petitioners challenged this decision of the CAT before this court by instituting Writ Petition NO. 9667 of 2011. However, by order dated 9th January 2012, this petition came to be dismissed. On this basis, Mr. Walia submits that it is not even proper that the petitioners now pressed for any reliefs in the present petition.

8] Mr. Walia further points out that the CAT has taken cognizance of documents which preceded the issuance of the chargesheet and from which, it is quite clear that the

decision to impose penalty of dismissal had already been taken and that too, in respect of a flimsy charge that the respondent refused to prepare some vegetable cutlets and misbehaved with Pantry Car Manager on one occasion. Mr.Walia submits that the CAT after perusing the entire material on record, has quashed the chargesheet and there is no jurisdictional error in the view taken by the CAT, so as to warrant interference under Article 226 and 227 of the Constitution of India.

9] The rival contentions now fall for our determination.

10] The respondent, in the present case, was appointed as an Assistant Cook in pay scale of Rs. 800 - 1150. According to the petitioners, the respondent was a Group - C employee.

11] A charge-sheet dated 31st October 1996 was issued to the respondent by the ACSM, by styling himself as a disciplinary authority, in which, it was alleged that on 10th August 1996, the respondent refused to prepare required number of vegetable cutlets and misbehaved with the

Pantry Car Manager and other staff and that this conduct, indicates failure to maintain devotion to duty and to carry out orders given by his superiors.

12] The CAT has interfered with the charge-sheet, *inter alia*, on the ground that ACSM was neither the disciplinary authority nor was he competent to institute proceedings insofar as the respondent was concerned.

13] From the decisions relied upon by Mr. Suresh Kumar, it does appear that in the absence of any rules prescribing anything to the contrary, there is no legal bar to an officer sub-ordinate to the disciplinary authority or appointing authority issuing a charge-sheet or instituting disciplinary proceedings. However, if such a matter is governed by the rules, then, such rules, cannot be by-passed on the specious plea that there is no constitutional bar under Article 311 (1) of the Constitution of India.

14] Since, Mr. Suresh Kumar as well as Mr. Walia had made reference to Rule 2(c) and Rule 8 of the said Rules, it will be appropriate to transcribe the same for convenience

of reference.

"2(c) 'Disciplinary authority' means -

- (i) in relation to the imposition of a penalty on a Railway servant the authority competent, under these rules, to impose on him that penalty;*
- (ii) in relation to Rule 9 and clauses (a) and (b) of sub-rule (1) of Rule 11 in the case of any Gazetted Railway servant, any authority competent to impose any of the penalties specified in Rule 6;*
- (iii) in relation to Rule 9 in the case of any non-gazetted railway servant, an authority competent to impose any of the major penalties specified in Rule 6;*
- (iv) in relation to clauses (a) and (b) sub-rule (1) of Rule 11, in the case of non-gazetted Railway servant, an authority competent to impose any of the penalties specified in Rule 6.*

...

...

8. Authority to institute proceedings

(1) The President or any other authority empowered by him, by general or special order, may-

(a) institute disciplinary proceedings against any Railway servant;

(b) direct a disciplinary authority to institute disciplinary proceedings against any Railway servant on whom that disciplinary authority is competent to impose, under these rules, any of the penalties specified in Rule 6.

*(2) A disciplinary authority competent under these rules to impose any of the penalties specified in Clause (i) to (iv) of Rule 6 may; **subject to the provisions of Clause (c) of sub-rule (1) of Rule 2**, institute disciplinary proceedings against any Railway servant for the imposition of any of the penalties specified in Clauses (v) to (ix) of Rule 6, notwithstanding that such disciplinary authority is not competent under these rules, to impose any of the latter penalties."*

15] Rule 8(2) of the said Rules provides that a disciplinary authority competent under these rules to impose any of the penalties specified in Clause (i) to (iv) of Rule 6 (minor penalties) may; *subject to the provisions of Clause (c) of sub-rule (1) of Rule 2*, institute disciplinary proceedings against any railway servant for the imposition of any of the penalties specified in Clauses (v) to (ix) of Rule 6 (major penalties), notwithstanding that such disciplinary authority is not competent under these rules, to impose any of the latter penalties.

16] The possible contradictions or ambiguity which might have arisen in the interpretation of Rule 8(2) of the said Rules stand clarified by the Railway Board way-back on 4th February 1971. This clarification is undoubtedly, binding upon the petitioners. The clarification, militates against the contentions of Mr. Suresh Kumar in the facts and circumstances of the present case.

17] The clarification dated 4th February 1971 issued by the Railway Board reads as follows:

*"No.E(D&A) 70 RG 6-30 New Delhi, Date:4/2/71
The General Manager,*

Central Railway,
Bombay.

Sub.:- *Railway Servants (Discipline & Appeal) Rules 1968 – Procedure for initiating disciplinary proceedings for imposition of a major penalty.*

-...-...-

Reference your letter No.HPB/309/E/ dated 12/1/71 on the above subject.

It is clarified that there is no contradiction in the provisions of Rule 2(1)(C) (iii) and that of Rule 8 (2), as stated in your above letter. The words **“Subject to the provisions of clause (C) of Sub-Rule (1) of Rule 2” used in Rule 8(2) simply mean that only an authority competent to impose any of the major penalties can initiate disciplinary proceedings for imposition of a major penalty in relation to Rule 9, in respect of non-gazetted staff.**

It may be mentioned that while framing the RS(D&A) Rules, 1968 a deliberate decision was taken to the effect that only an authority competent to impose any of the major penalties should initiate disciplinary proceedings for imposition of such a penalty on non-gazetted staff. As such, the authority for all purposes of institution of disciplinary proceedings and issue of charge memorandum for imposition of a major penalty is the authority competent to impose any of the major penalty.”

18] From aforesaid, it is obvious that the interpretation suggested by Mr. Suresh Kumar overlooks the crucial phrase “*subject to the provisions of clause (c) of sub-rule (1) of Rule (2)*”. If, such phrase is taken into consideration, as, it is necessary to do so, then, as clarified by the Railway Board itself, Rule 8(2) simply means that only an authority

competent to impose any of the major penalty can initiate disciplinary proceedings for imposition of major penalty in relation to Rule 9 in respect of non-gazetted staff.

19] Besides, as pointed out by Mr. Walia, the CAT in its judgment and order dated 22nd October 2010 in O.A. No. 571 of 2005 has taken a view similar to the view now taken in the impugned judgment and order. This judgment and order dated 22nd October 2010 made by the CAT was challenged by the petitioners by instituting Writ Petition No. 9667 of 2011, which petition, came to be dismissed on 9th January 2012. Accordingly, the invitation of Mr. Suresh Kumar that we take a different view in the present case, cannot be accepted. We see no jurisdictional error in the impugned judgment and order.

20] Mr. Walia has referred to certain documents, which also suggest that a decision has already been arrived at to take serious action against the respondent for his failure to prepare vegetable cutlets or on account of his misbehaviour with the Pantry Car Manager on one occasion. Mr. Walia has referred to certain notings put up

by superior officers to dismiss the respondent. In fact, one of the documents referred to by Mr. Walia was a noting, which states that since the respondent has filed several court cases seeking promotion/over time, it is suggested that the respondent be transferred to M.B. Division where he will lose T.A. of Rs.800 – 900 per month “*which will be a good punishment*”. Another noting put up by the superior officer suggests that a charge-sheet be issued to the respondent “*for his dismissal from service*”. This means that even before the charge could be proved against the respondent, penalty was proposed by superior officers. Since, the CAT has not gone into this issue, there is no necessity for us to go into this issue in much greater details. All that we can say at this stage is that such documents or notings, can give rise to any apprehension that the respondent will not be treated fairly.

21] For all the aforesaid reasons, we dismiss this petition. Rule is discharged. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)