

JUDGEMENT (PER M.S.KARNIK, J.) :-

The petitioner – Union of India by this petition filed under Article 226 and 227 of the Constitution of India challenge the order dated 11/3/2005 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai ('the Tribunal' for short) in O.A. No.829 of 2002.

2. The facts of the case in brief are as under :-

The respondent was imposed penalty of removal from service by an order dated 22/6/2001 passed by the Disciplinary Authority. The order of removal was upheld by the Appellate Authority vide order dated 1/11/2001. The Revisional Authority dismissed the revision by an order dated 14/2/2002. The Tribunal set aside the order of removal only on the ground that the authority which issued the impugned order imposing penalty on the respondent was not competent to impose penalty.

3. The OA was therefore partly allowed and the respondent was directed to be reinstated with liberty to

petitioner to proceed in the matter by referring it to the competent authority for appropriate orders including treatment of period from the date of removal from service to reinstatement.

4. We have heard learned Counsel Shri Pandian for the petitioner. Learned Counsel was at pains to point out that the authority which passed the order of removal was competent to impose penalty.

5. Learned Counsel invited our attention to the relevant provisions of Railway Servants (Discipline & Appeal) Rules, 1968, more particularly Rule 2 (1)(a). He also invited our attention to Rule 7 which provides for “Disciplinary Authority”. Shri Pandian thereby contends that the authority which passed the order of removal was competent to impose penalty.

6. Learned Counsel for the respondent invited our attention to the appointment/promotion order dated 29/9/1997

which indicates that the respondent was promoted as Senior Booking Clerk in the grade of Rs.1200-2040 and the letter has been signed by Shri S.S. Kadam for Senior Divisional Personnel Officer ('Senior DPO' for short), CSTM. In the submission of the learned Counsel for the respondent, as the appointment/promotion order of the respondent was signed by Senior DPO, therefore the Senior DPO is the appointing authority. The order of removal has been issued by the Divisional Commercial Manager (DCM), a Senior Scale Officer below the rank of appointing authority. Learned Counsel submits that DCM therefore could not have issued the order of removal from service.

7. We have heard learned Counsel. Article 311 (1) of the Constitution of India provides that no person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he has been appointed. The question for

consideration is whether, as alleged by the respondent, he was removed from service by an authority subordinate to that which had appointed him. We have already noticed that the appointment/promotion order was signed by the Senior DPO. It is therefore clear that in so far as the respondent is concerned, it is the Senior DPO who had appointed him and thus was the appointing authority. The order of removal is issued by the DCM. It is not disputed that the DCM is below the rank of Senior DPO.

8. Learned Counsel Shri Pandian argued that even the DCM has power to appoint officers of the rank of the respondent, therefore, he would have power to remove the respondent. We cannot accept this contention. Whether or not an authority is subordinate in rank to another has to be determined with reference to the state of affairs existing on the date of appointment. It is at that point of time that the constitutional guarantee under Article 311(1) becomes available to the persons holding the post that he shall not be removed or dismissed by an authority subordinate to that which appointed

him. On the date of the appointment, the appointing authority of the petitioner was Senior DPO. The DCM therefore cannot remove him.

9. To come to this conclusion we have relied upon the decision of the Hon'ble Supreme Court in the case of **Krishna Kumar Vs. Divisional Assistant Electrical Engineer and others** reported in (1979) 4 SCC 289. Their Lordships have held that “ even the delegation of the power to make a particular appointment does not enhance or improve the hierarchical status of the delegate. An Officer subordinate to another will not become his equal in rank by reason of his coming to possess some of the powers of that another.”

10. Since the respondent was appointed by the Senior DPO and has been removed from the service by the order passed by the DCM, it must be held that the DCM had no power to remove the respondent from the service.

11. For these reasons, we find no infirmity with the order passed by the Tribunal. The present Writ Petition is accordingly dismissed.

12. Rule is discharged with no order as to costs.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)