IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8036 OF 2005

V.M. Shukla,	]	
Parcel Clerk, Central Railway, Kalyan	]	
Residing at : Room No.5,	]	
Vinay Vandana Co-op. Hsg. Soc. Ltd.,	]	
Shivaji Nagar, Valdhuni, Kalyan, Dist. Thane.	]	.... Petitioner

Versus

1. Union of India,	]	
Through General Manager,	]	
Central Railway, Headquarters Office,	]	
Mumbai C.S.T., Mumbai – 400 001.	]	
2. Divisional Railway Manager /	]	
Additional Divisional Railway Manager,	]	
Mumbai Division, Central Railway,	]	
DRM's Office, Mumbai CST,	]	
Mumbai-400001. (Revisional Authority)	]	
3. Senior Divisional Commercial Manager,	]	
Mumbai Division, Central Railway,	]	
Chatrapati Shivaji Maharaj Terminus (Main),	]	
Mumbai C.S.T., Mumbai – 400 001.	]	
(Appellate Authority)	]	
4. Divisional Commercial Manager (Goods),	]	
Mumbai Division, Central Railway,	]	
Chatrapati Shivaji Maharaj Terminus (Main),	]	
Mumbai C.S.T., Mumbai – 400 001.	]	
(Disciplinary Authority)	]	
5. Divisional Railway Manager,	]	
Mumbai Division, Central Railway,	]	

DRM's Office, Mumbai C.S.T.,]
Mumbai – 400001.] .... Respondents

ALONG WITH

WRIT PETITION NO.7017 OF 2005

1. Union of India,]
Through General Manager,]
Central Railway, Chattrapati Shivaji Terminus,]
Mumbai C.S.T., Mumbai – 400 001.]
2. The Additional Divisional Railway Manager (C),]
Mumbai Division, Central Railway,]
Mumbai CST, Mumbai-400001.]
3. The Senior Divisional Commercial Manager,]
Mumbai Division, Central Railway,]
Mumbai C.S.T., Mumbai – 400 001.] .... Petitioners

Versus

V.M. Shukla,]
Working as 'Parcel Clerk',]
Central Railway, Kalyan,]
Residing at : Vinay Vandana Co-op. Hsg. Soc. Ltd.,]
Room No.5, Shivaji Nagar, Valdhuni, Kalyan] .... Respondent

Mr. R.G. Walia for the Petitioner in WP/8036/2005 and for the Respondent in WP/7017/2005.

Mr. Suresh Kumar for the Petitioners in WP/7017/2005 and for the Respondents in WP/8036/2005.

CORAM : A.S. OKA &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

RESERVED ON : 22ND NOVEMBER, 2018.

PRONOUNCED ON : 4TH DECEMBER, 2018.

JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally, at the stage of admission itself, by consent of Mr. Walia, learned counsel for the Petitioner in Writ Petition No.8036 of 2005, who is Respondent in Writ Petition No.7017 of 2005; and Mr. Suresh Kumar, learned counsel for the Respondents in Writ Petition No.8036 of 2005, who are the Petitioners in Writ Petition No.7017 of 2005.

2. Writ Petition No.8036 of 2005 is preferred by the 'Employee'; whereas, Writ Petition No.7017 of 2005 is preferred by the 'Railway Administration'.

3. For the sake of convenience, the parties are referred to by their original nomenclature as 'Petitioner' and 'Respondents' in Writ Petition No.8036 of 2005.

4. These two counter Writ Petitions are arising out of the 'Judgment and Order' dated 1st December 2004, passed by the Central Administrative Tribunal, Bombay Bench at Mumbai, *(for short, "the Tribunal")*, in Original Application No.822 of 2003, raising two short none the less important questions for consideration as to, *'whether the Authority, which is though an Authority superior to the employee, but not the Appointing Authority, can issue a 'Charge-Sheet' and if on the*

basis of such Charge-Sheet, the enquiry is initiated, then, whether its result becomes vitiated?' The second question raised for consideration is, *'whether the penalty imposed by such Authority, which is not competent to impose the major penalty, can be legal and valid ?'*

5. The factual aspects of the case are not in the realm of dispute and they are to the effect that, Petitioner was appointed in the 'Railway Administration' on 13th May 1981 in the pay-scale of 'Rs.260 - 430'. The 'Appointing Authority' was the APO (BB). The Petitioner was thereafter promoted in the pay-scale of 'Rs.1,400 - 2,300' vide 'Office Order' dated 17th December 1992. The promotion order was issued by the Divisional Personnel Officer. As per the 5th Pay Commission, the pay-scale of the Petitioner was enhanced to 'Rs.5,000 - 8,000', which pay-scale the Petitioner was holding when the penalty was imposed on him.

6. Respondent No.4 – the Divisional Commercial Manager (Goods) has issued the 'Charge-Sheet' to the Petitioner on 29th April 1999, under the Railway Servants (Disciplinary and Appeal) Rules, 1968, on the basis of which the enquiry was conducted, in which the Petitioner has participated. The Enquiry Officer has submitted the report on 31st August 2001, holding the Petitioner guilty for the Charge Nos.I, II and III. The 'Disciplinary Authority' has thereafter, considering the 'Report' of the 'Enquiry Officer' and the representation made by the Petitioner, imposed the major penalty of “compulsory retirement”, vide order dated

29th January 2002. The Petitioner has preferred an Appeal against the said order to the Appellate Authority, which came to be rejected by order dated 2nd May 2002. The Petitioner has then filed Revision Petition against the said order to the Revisional Authority, which has, vide its impugned order dated 8th November 2002, reduced the penalty of compulsory retirement to that of reversion to 'Junior Parcel Clerk' in the 'Grade Pay' of 'Rs.3,200 - 4,900', fixing the 'Basic Pay' @ Rs.3,200/- per month for a period of five years, with cumulative effect.

7. Being aggrieved by the said order, the Petitioner has preferred this 'Original Application' before the Tribunal contending, *inter alia,* that, the 'Charge-Sheet' was issued to him by the 'Divisional Commercial Manager (Goods)', though he was not competent to impose any of the major penalties and was also not holding independent charge of Commercial Department of Mumbai Division of Central Railway, in which the Petitioner was working. According to the Petitioner, the 'Divisional Commercial Manager' was authorized to impose only a “minor” penalty and not any of the major penalties, in accordance with 'Schedule-II' of the Railway Servants (Disciplinary and Appeal) Rules, 1968. It was submitted that, the 'Divisional Commercial Manager' was also not an 'Appointing Authority' and as such, he could not compulsorily retire the Petitioner from the service.

8. It was submitted that, the Railway Servants (Disciplinary and

Appeal) Rules, 1968 have been framed under the 'Proviso to Article 309 of the Constitution of India' and, therefore, they have statutory force. A special procedure is prescribed in those Rules for issuing 'Charge-Sheet' and holding of disciplinary enquiry for major penalties. As per the said Rules, the 'Disciplinary Authority' means, in relation to imposition of a penalty on Railway Servant, the Authority competent under those Rules to impose upon him that penalty.

9. It was submitted that, the 'Charge-Sheet' could have been, therefore, issued, only by an Authority, which was competent to impose any of the major penalties, provided under the Rules. The 'Divisional Commercial Manager' was also not the 'Appointing Authority' for the pay-scale of 'Rs.5,000 - 8,000' of the class and category of 'Head Parcel Clerk' and more particularly of the Petitioner. The original 'Appointing Authority' of the Petitioner was 'Divisional Railway Manager'. The 'Divisional Commercial Manager' was, though a senior pay-scale officer, was not holding independent charge of the 'Division' and as such, he was not the 'Competent Authority' to impose any major penalty upon the Petitioner; like “compulsory retirement” from the service.

10. It is submitted that, the Tribunal has accepted this contention raised by the Petitioner and has rightly held that, such senior pay scale officer like Respondent No.4, who is not holding an independent charge,

is not the 'Competent Authority' to impose major penalty, as it would be certainly outside the ambit of his powers. Accordingly, the Tribunal has quashed and set aside the orders imposing penalty on him. However, at the same time, the Tribunal has remanded the matter back to the competent 'Disciplinary Authority' to take action in accordance with the law and to follow the procedure from the stage the fault was pointed out. It is submitted that, under the 'Railway Rules', it is only the Authority, which is competent to impose one of the major penalties, can issue a 'Charge-Sheet' for major penalty. Here in the case, it is submitted that, if the 'Divisional Commercial Manager' was not competent to impose major penalty, then it follows that, he also cannot be competent to issue a 'Charge-Sheet' for major penalty. Hence, the very initiation of the enquiry on the basis of such 'Charge-Sheet' being vitiated, according to learned counsel for the Petitioner, the Tribunal has committed an error in remanding the matter back to the 'Disciplinary Authority' for holding of the enquiry from the stage when the fault was pointed out.

11. According to learned counsel for the Petitioner, in this respect, the Tribunal has wrongly placed reliance on the Judgment of the Allahabad High Court in the case of *P.N. Lal Vs. General Manager, N.E. Railway, Gorakhpur, and Others, 1975 LAB. I.C. 1027*, holding that the enquiry can be initiated by an Officer subordinate to the 'Appointing Authority' and, therefore, an Authority competent to impose minor penalty can also

issue a 'Charge-Sheet' for major penalty. It is submitted that, the Tribunal has, after arriving at the conclusion that the 'Appointing Authority' of the Petitioner was 'Divisional Railway Manager' and not Respondent No.4-Divisional Commercial Manager, who was merely a senior pay scale officer, should not have remanded the matter back to the 'Disciplinary Authority' for taking action in accordance with law in respect of imposition of penalty. Hence, according to learned counsel for the Petitioner, the impugned order passed by the Tribunal to that effect needs to be quashed and set aside.

12. Per contra, learned counsel for the Respondent Mr. Suresh Kumar has supported the finding of the Tribunal that, 'Charge-Sheet' need not be issued by the 'Appointing Authority', but it can be issued by any of the 'Officers', superior in rank or pay-scale, to the 'Employee'. Learned counsel for the Respondents has, however, challenged the finding of the Tribunal that, the major penalty cannot be imposed by Respondent No.4. It is submitted that, the 'Divisional Commercial Manager', who has imposed the penalty, is equivalent to the rank of 'Divisional Railway Manager' and, therefore, the penalty was not imposed by an Authority lower in rank than the 'Appointing Authority'. It was submitted that, the penalty was imposed in consonance with 'Schedule-II', issued under Rule 4 and sub-rule (2) of Rule 7, which deals with the 'Schedules of the Disciplinary Power'. The penalty was, thus, imposed by the Authority

equivalent to the Authority, who has signed the Promotion Order, promoting the Petitioner to the pay-scale of 'Rs.1,400 - 2,300' (Revised pay-scale Rs.5,000 - 8,000)'. According to learned counsel for the Respondent, therefore, the Tribunal has committed an error in setting aside the order imposing the penalty on the Respondent, only on the count that, Respondent No.4 was not the 'Competent Authority' to impose major penalty, though Respondent No.4 was very much the 'Superior Authority' to that of the Petitioner. To that extent, according to him, the interference is warranted in the impugned 'Judgment and Order' of the Tribunal.

13. In the light of these rival submissions advanced at bar, by learned counsel for the Petitioner and Respondents, the two issues necessarily arising for our consideration are;

(i) Whether the 'Charge-Sheet' issued by an 'Officer', though superior in rank and pay-scale to the Petitioner, but not the Authority competent to impose any of the major penalties, can be called as legal and valid ?

(ii) Whether the 'Divisional Commercial Manager' was competent to impose major penalty of 'compulsory retirement' on the Petitioner ?

14. As regards the first issue raised for our consideration as to, *'whether the officer superior in rank and pay-scale can issue 'Charge-Sheet' to an employee for imposition of any of the major penalties, if he*

was not competent to impose any of such major penalties'?, it is no more *res integra*, in view of the Judgment of the Division Bench of this Court in the case of *Union of India and Others Vs. N.B. Joshi, (Writ Petition No.6710 of 2003, dated 19th April 2018)*. The very identical issue was raised for consideration in the said case. The Respondent therein was also an employee of the 'Railway Administration'; appointed as an 'Assistant Cook' in the pay-scale of 'Rs.800 - 1,150'. He was a Group "C" employee. The 'Charge-Sheet' was issued to him by the Assistant Catering Services Manager (ACSM), by styling himself as a 'Disciplinary Authority'. The Tribunal has interfered with the 'Charge-Sheet' on the ground that, ACSM was neither the 'Disciplinary Authority', nor was the 'Competent Authority' to institute the proceedings. This finding and order of the Tribunal was challenged in the Writ Petition. The very same Rule, on which the reliance is placed by learned counsel for the Petitioner and Respondents in this Writ Petition, that of Rule 2(c) and Rule 8 of the Railway Servants (Discipline and Appeal) Rules, 1968, was pressed into submission by both the parties, for advancing their respective contentions and it was held that,

> *"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."*

15. Thus, it was held that, the Tribunal has not committed any error in holding that the 'Charge-Sheet' issued to the Respondent therein by the Authority, which was not competent to impose any of the major penalties, was not legal and valid.

16. While arriving at this conclusion, the Division Bench of this Court has placed reliance on the Judgment of this Court in the case of *Union of India and Ors. Vs. Mr. R.G. Natekar, (Writ Petition No.9667 of 2011, dated 9th January 2012)*, wherein the similar issue was raised for its determination and it was held 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. The Division Bench of this Court, therefore, in Writ Petition No.6710 of 2003, dated 14th April 2018, refused to take a different view than the view taken in Writ Petition No.9667 of 2011, dated 9th January 2012.

17. In the present case also, as there are specific rules framed by the 'Railway Administration', like Rule 2(c) and Rule 8, and having regard to the clarification issued by the 'Railway Administration' itself on 4th February 1971, stating that, there is no contradiction in the provisions of Rule 2(1)(C)(iii) and that of Rule 8(2), 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 a disciplinary proceedings for imposition of a major penalty in relation to Rule 9 in respect of non-gazetted staff. Hence, it has to be held that, the Tribunal has committed an error in holding that, the 'Charge-Sheet' can be issued by any superior officer, though he may not be an 'Appointing Authority' or may not be competent to impose any of the major penalty.

18. On facts, in the present case, it is not disputed that the 'Charge-Sheet' is issued to the Petitioner by Respondent No.4, i.e. the Divisional Commercial Manager (Goods), who was though superior to the Petitioner in pay-scale, admittedly, he was neither the 'Appointing Authority', nor the 'Competent Authority' for imposing any of the major penalty on the Petitioner. The Tribunal itself has recorded this finding and set aside the penalty imposed by him. The very initiation of the 'Charge-Sheet' at his instance, therefore, becomes vitiated and as a result, the enquiry initiated on the basis of such 'Charge-Sheet' also becomes null and void. The finding of the Tribunal, rejecting this contention raised by the Petitioner, that the 'Charge-Sheet' was not issued legally or properly to him by the 'Competent Authority', therefore, needs to be quashed and set aside, it being not legal and correct.

19. Once it is held that the 'Charge-Sheet' itself was not issued by the 'Competent Authority', then it follows that the very initiation of the

enquiry being vitiated, the major penalty could not have been imposed by an Officer, who was not competent to do so. Hence, the Writ Petition preferred by the Respondent-Union of India, challenging the said finding of the Tribunal, needs to be dismissed; whereas, the Writ Petition preferred by the Petitioner-employee, challenging the order of the Tribunal, remanding the matter for fresh enquiry, needs to be allowed.

20. As a result, Writ Petition No.8036 of 2005, preferred by the Petitioner-employee, is allowed. The impugned order passed by the Tribunal, remanding the matter for fresh enquiry from the stage the fault was pointed out, is quashed and set aside. Rule is made absolute accordingly.

21. Writ Petition No.7017 of 2005, preferred by the Respondent-Union of India, stands dismissed. Rule is discharged.

[DR. SHALINI PHANSALKAR-JOSHI, J.] **[A.S. OKA, J.]**