

(2011) 05 DEL CK 0453

In the Delhi High Court

Case No : Writ Petition (C) 3377 of 2011

Union of India (UOI) and Others

APPELLANT

Vs

Subash Chandra Sharma

RESPONDENT

Date of Decision : 19-05-2011

Acts Referred:

Discipline and Appeal Rules, 1968 — Rule 2, 9

Citation : (2011) 05 DEL CK 0453

Hon'ble Judges : Dipak Misra, C.J; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Kumar Rajesh Singh, for the Appellant; Meenu Mainee, for the Respondent

Judgement

Sanjiv Khanna, J.

CAVEAT No. 460/2011

1. Learned Counsel for the caveator is present and has been heard. Caveat is accordingly disposed of.

CM Nos. 7057-7058/2011

Exemption applications are allowed, subject to all just exceptions.

W.P.(C) 3377/2011 & CM No. 7056/2011

With the consent of the parties, the matter is taken up for hearing and disposal.

2. The issue raised and argued is a short one and does not require detailed elucidation of facts. Union of India has filed the present writ petition impugning the order dated 20th January, 2011 allowing O.A. No. 3805/2010 filed by Subash Chandra Sharma, the Respondent herein. By the impugned order, departmental proceedings initiated against the Respondent have been quashed on the ground that authorization/charge sheet dated 29th October, 2009 was not issued by the competent authority.

3. The Respondent, Section Engineer (P. Way) was served with charge sheet dated 29th October, 2009. The Respondent was to retire at the end of the said month on 31st October, 2009. This charge sheet was issued by Mr. M.A. Rehman, Senior Divisional Engineer (N). The contention of the Respondent before the tribunal was that Mr. M.A. Rehman could not have issued the said charge sheet as the Respondent was working under the charge of Mr. Sumit Sardana, Senior Divisional Engineer, Bhopal. The said Mr. Sardana was the disciplinary authority of the Petitioner and had left for a week's training and during the interregnum Mr. M.A. Rehman was given the duty to look after routine and emergency work. The contention of the Respondent, which has been accepted by the tribunal, is that Mr. M.A. Rehman was not disciplinary authority and could not be delegated the power to issue a charge sheet.

4. The order of the tribunal cannot be sustained for several reasons. It is well settled that initiation of disciplinary enquiry can be by an officer subordinate to the appointing authority. The Respondent was to retire from Railway service on 31st October, 2009 and Mr. Sumit Sardana under whom he was working was on leave and had gone for training. In these circumstances, Mr. M.A. Rehman had issued the charge sheet. Both Mr. Sumit Sardana and Mr. M.A. Rehman are Senior Divisional Engineers and were holding the same or equivalent post on 29th October, 2009. Further, Mr. M.A. Rehman had been asked to look after the work, which was being undertaken by Mr. Sumit Sardana in his absence. Mr. M.A. Rehman was not junior or subordinate to Mr. Sumit Sardana and both of them were holding the same post/rank. In the order dated 6th October, 2010, which was passed by Divisional Railway Manager (West), Central Railway, Bhopal pursuant to directions given in the earlier O.A. No. 2900/2010 vide order dated 13th September, 2010, the said contention was examined and rejected recording as under:

3. The Contents of para 3 of the legal notice are denied. You have strongly objected that Sr. DEN (N) BPL, Shri M.A. Rehman was not competent to issue the charge sheet and had no jurisdiction because he was not the administrative authority under whom you were working. In this context it is clarified that Shri M.A. Rehman, Sr. DEN (N) BPL was well competent to issue the charge sheet. The copy of Schedule of Power is enclosed herewith. At the relevant time he was looking after the work of Sr. DEN (CO) BPL, thus the administrative jurisdiction and power conferred upon him because Sr. DEN (CO) was under training from 26.10.2009 to 30.10.2009 and it is also informed that Shri M.A. Rehman, Sr. DEN (N) was working in Junior Administrative Grade equivalent to Sr. DEN (CO), thus the objection is not sustainable as per rule.

5. It has been explained and clarified that as per the Master Circular No. 66, under Rule 9 (Procedure to be followed for Imposition of a Major Penalty) in case of non-Gazetted employees, the disciplinary authority is the competent authority, which can impose major penalties specified in Rule 6. Further, major penalty proceedings can be instituted by the authority, who is competent to impose at

least one of the major penalties under paragraph 21(ii) of the Master Circular No. 66. Similarly, in terms of Rule 2 (c)(iii) of Discipline and Appeal Rules, 1968, disciplinary authority in relation to Rule 9 for imposition of major penalty proceedings of any non-Gazetted Railway servant is an authority competent to impose any of the major penalties. As per schedule of powers, a Junior Administrative Grade Officer is competent to impose major penalty of reduction to a lower time scale of pay, grade, post or service in Group C staff in all grades, including the Respondent. There is no further stipulation or condition in the said rules that only the concerned officer i.e. a person to whom the Respondent was reporting can issue the charge sheet.

6. In view of the aforesaid discussion, writ of certiorari is issued and order dated 20th January, 2011 passed by the tribunal in O.A. No. 3805/2010 is quashed. It is held that the disciplinary proceedings have been validly initiated.

7. The writ petition is disposed of. In the facts of the case, there will be no order as to costs.