

CASE NO.:
Appeal (civil) 5168 of 2006

PETITIONER:
Union of India & Ors

RESPONDENT:
Hasmukhbhai Hirabhai Rana

DATE OF JUDGMENT: 23/11/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No. 21885 of 2004)

ARIJIT PASAYAT, J.

Leave granted.

Appellants call in question legality of the judgment rendered by a Division Bench of the Gujarat High Court dismissing the writ petition filed by the appellants-Union of India and its functionaries. The orders passed by the Central Administrative Tribunal, Ahmedabad Bench (in short the 'CAT') in the Original Application No.170 of 1997 and Review Application No.32 of 2003 were upheld. The only issue which was raised by the Union of India was that CAT was not justified in holding that the order of dismissal was passed by an authority lower in rank than the appointing authority.

The factual position in a nutshell is as follows:

On 1.1.1990 a letter was issued to the respondent informing him that on successful completion of the course which included successful completion of practical training on division and on the respondent passing the prescribed Hindi test he may be offered an appointment in the temporary cadre on the regular scales of pay. Subsequently after the completion of training, on 13.6.1990 a letter was issued by the Divisional Commercial Manager (in short the 'DCM') Vadodara. A charge sheet was issued on 1.6.1993 making allegations like misappropriation. Liberty was granted to the respondent to make submissions in respect of the charges and after an enquiry the DCM passed an order of penalty of removal from service. Respondent filed an appeal before the Appellate Authority. The Senior Divisional Commercial Manager, Vadodara, the Appellate Authority dismissed the appeal. A revision petition was filed. The Revisional Authority i.e. ADRM also dismissed the revision. A petition was filed before CAT praying to set aside and for quashing the order of removal. A reply was submitted by present appellants. It was stated that the respondent has been rightly removed from service. The Tribunal held that an authority lower than the appointing authority passed the order for removal from service. The DCM and Senior DCM who had acted as disciplinary authority as well as the Appellant Authority were lower in rank than the appointing authority. Accordingly the order was quashed. As noted above the writ petition filed before the High Court was

dismissed.

In support of the appeal, learned counsel for the appellants submitted that the order dated 1.1.1990 was the selection order and in fact the appointment order is dated 13.6.1990 which was passed by the DCM. Selection order was passed by the DRM while the appointment order was passed by the DCM who had acted as the disciplinary authority.

Learned counsel for the respondent supported the orders of the CAT and the High Court.

It appears that before CAT and High Court the controversy was whether the DCM was the appointing authority. There was no plea taken regarding the distinction now projected i.e. 1.1.1990 is the selection order and 13.6.1990 was the appointment order.

There is no dispute that the departmental proceeding can be initiated by a person lower in rank than appointing authority. But the final order can be passed only by the appointing authority or an authority higher to him. The law relating to initiation by a person lower in rank than the authority competent to pass final order has been the subject matter of adjudication in many cases. (See State of Madhya Pradesh and Others v. Shardul Singh [1970 (1) SCC 108] and in State of U.P. and Another v. Chandrapal Singh and Another [2003 (4) SCC 670]).

It is not in dispute that the respondent has been reinstated in the mean time but what appears not to have been done is to grant an opportunity to the appellants so that the appropriate authority can pass the final order in the departmental proceeding. The distinction now sought to be made between the orders dated 1.1.1990 and 13.6.1990 cannot appear to have been highlighted either before CAT or the High Court. It is only before this Court that such a plea has been raised.

In the aforesaid background we modify orders of the CAT and the High Court to the extent that DRM can consider all relevant aspects after granting opportunity to the respondent on the basis of the enquiry report submitted. The departmental enquiry shall be concluded as early as practicable. Needless to say that the respondent has to co-operate in the departmental proceedings. Appeal is allowed to the aforesaid extent with no order as to costs.