

PETITIONER:
THE HIMACHAL ROAD TRANSPORT CORPORATION & ANR.

Vs.

RESPONDENT:
SHRI KEWAL KRISHAN

DATE OF JUDGMENT: 21/03/1997

BENCH:
K. RAMASWAMY, K.T. THOMAS

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted. We have heard learned counsel on both sides.

This appeal by special leave arises from the judgment and order of the Himachal Pradesh Administrative Tribunal, Shimla made on August 12, 1996 in TA No. 755/86. The respondent-conductor was found to have not issued the tickets to the passengers. As a result, an enquiry was conducted on an initiation by the head of the office, one Mr. K.N. Uppal: Assistant Manager. The enquiry report was submitted by the Divisional Manager who accepted the report and removed the respondent from service. The respondent filed a civil suit which was dismissed by the trial Court. When the appeal was pending, the Tribunal came to be constituted. Accordingly, the appeal was transmitted to the Tribunal. The Tribunal, in the impugned order, has held that the Assistant Manager has no jurisdiction to initiate disciplinary proceedings against the delinquent and, therefore, the entire action taken is vitiated by manifest error of law. Accordingly, it quashed the order of dismissal. Thus, this appeal by special leave.

It is seen that the statutory power has been exercised by the Corporation exercising power under Himachal Road Transport Corporation (Class III & IV) Services (Recruitment, Promotion and Certain Conditions of Service) Regulations, 1975 whereunder in Rule 4, the amendment to the Regulation No. 4 was made, thus:

"The Schedule of powers of appointment, discipline and suspension etc. which is appended as Annexure 'B' to these Regulations should be substituted with the revised Annexure 'B' appended to this officer order."

The revised Annexure 'B' indicates that in respect of Serial No. 58 relating to conductors, authority competent to make appointment is the Head of the Officer. The penalties in relation to Rule 11 of CCS (CC&A) Rules are as mentioned in items (i) to (ix). The authority competent to impose the penalty is the Head of the Officer. The appellate authority

is the Assistant General Manager, the C.A.O. or D.M. Himachal Pradesh Road Transport Corporation. By proceedings dated June 29, 1978 in exercise of the power under special Serial No. 77 of the financial power of the Himachal Pradesh Transport Corporation, Mr. K.N. Uppal was declared manager, was designated under the statutory rules as Head of the Officer in terms of Annexure 'B'. As consequence, action initiated by him for the disciplinary proceedings against the respondent is within the parameters of law.

Mr. L.N. Rao, learned counsel appearing for the respondent, contends that under Rule 13(2) of SCC (CC&A) Rules, 1965 which was adopted by the Himachal Pradesh Government, contemplates that a disciplinary authority competent under these rules to impose any of the penalties specified in clause (i) to (ix) of Rule 11 may institute disciplinary proceedings against any Government servant for the imposition to any of the penalties specified in clause (v) to (ix) of Rule 11 notwithstanding that such disciplinary authority is not competent under these rules to impose any of the latter penalties. Therein the competent authority to initiate proceedings is the Divisional Manager and, therefore, the action initiated by the Assistant Manager is without authority of law. We find no force in the contention.

What Rule 13(2) contemplates is that a subordinate officer who is empowered to impose minor penalty is also entitled to initiate disciplinary proceedings for major penalties. Of course, the order could be passed by the competent authority after the enquiry was conducted and matter was placed before them. In view of the Regulations of the Corporation read above, by necessary implication, the CCS (CC&A) Rules stands replaced by the Regulations referred to hereinbefore. As a result, the Head of Officer, namely the Assistant Manager is the competent authority to appoint. Once he is the competent authority to appoint, he is equally, in relevant col. 5, is the competent authority to impose the penalty. Instead of himself imposing the penalty, he placed the matter before the Divisional Manager who himself imposed the major penalty of removal from service.

It is next contended by Mr. L.N. Rao that though the respondent had raised several contentions in his pleadings in the trial Court, the Tribunal was required to go into them. Therefore, he requested for remission of the matter to the Tribunal for disposal of other points. The Tribunal's order does not indicate that the counsel had pressed all these contentions. It has restricted its consideration on the jurisdictional issue.

In that view of the matter, we do not think that the order passed by the Tribunal warrants remittance of the matter to the Tribunal.

The appeal is accordingly allowed. The order of the Tribunal stands set aside. The suit stands dismissed. No costs.