

A THE HIMACHAL ROAD TRANSPORT
CORPORATION AND ANR.

v.

SHRI KEWAL KRISHAN

MARCH 21, 1997

B [K. RAMASWAMY AND K.T. THOMAS, JJ.]

Service Law :

C *Himachal Road Transport Corporation (Class III & IV Services
(Recruitment, Promotion and certain Conditions of Service) Regulation 1975.*

D *Regulation 4—Disciplinary proceedings—Authority competent to initiate—Conductor subjected to disciplinary proceedings—Assistant Manager, being Head of Office initiated the proceedings—Inquiry report submitted to
Divisional Manager who accepted the report and removed the delinquent from service—Tribunal holding that Assistant Manager had no jurisdiction to initiate the disciplinary proceedings—Held, Assistant Manager having been designated as Head of the Office, action initiated by him for disciplinary proceedings against the delinquent is within the parameters of law—Head of Office being competent authority to appoint, is competent authority to impose
E the penalty—In view of the Regulations of the Corporation, by necessary implication, CCS (CC & A) Rules stand replaced by the Regulations.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2504 of 1997.

F From the Judgment and Order dated 12.8.96 of the Himachal Pradesh Administrative Tribunal, Shimla in T.A. No. 755 of 1986

J.S. Attri for the Appellants.

G L.N. Rao, Ms. Neelam Kalsi and Vimal Dave for the Respondent.

The following Order of the Court was delivered :

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

H 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 to 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, was 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 exercise 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 Office. The penalties in relation to Rule 11 of the 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 powers of the Himachal Pradesh Transport Corporation, Mr. K.N. Uppal was declared as Head of the Office. Thus, K.N. Uppal though Assistant Manager, was designated under the statutory rules as Head of the Office in terms of Annexure 'B'. As a consequence, action initiated by him for the disciplinary proceedings against the respondent is within the parameters of law.

- A Mr. L.N. Rao, learned counsel appearing for the respondent, contends that under Rule 13(2) of CCS (CC & A) Rule, 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 clauses (i) to (ix) of Rule 11 may institute disciplinary proceedings against any Government servant for the imposition of any of the penalties specified in clauses (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.

- D What Rule 13(2) contemplates is that a subordinate officer who is empowered to impose minor penalty is also entitle 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 Office, namely, the Assistant Manager is the competent authority to appoint. Once he is the competent authority to appointment, 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.

- F 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 orders do not indicate that the counsel had pressed all these contentions. It has restricted its consideration on the jurisdictional issue.

- G 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.

R.P.

Appeal allowed.