A SCIENTIFIC ADVISER TO THE MINISTRY OF DEFENCE AND ORS. ETC. ETC.

v.

S. DANIEL AND ORS. ETC. ETC.

APRIL 10, 1990

B [S. RANGANATHAN AND K.N. SAIKIA, JJ.]

Central Civil Services (Classification, Control and Appeal) Rules, 1965: Rules 2(a), 9(1), Proviso, 12, 13 and Schedule Part V, Item No. XIV.

C *Ministry of Defence—Research Laboratories attached to Ministry—Civil posts—Class III Employees—'Appointing Authority'—Authority to Institute Disciplinary proceedings—Who is—Specified appointing authority, Scientific Adviser—Delegation of power of appointment to Director—Appointments made by Director—Initiation* D *of disciplinary proceedings by Director—Validity of.*

Rule 2(a)—Only envisage the authority to whom the power of appointment has been delegated and not both Delegator and Delegatee—Expression "Appointing Authority"—Scope and meaning of—Whether means highest of authorities mentioned in sub-clause (i) to E *(iv)—Expression "whichever is highest authority"—whether governs only sub-clause (iv) of Rule 2(a) and not other clauses—Purpose of Rule 2(a) explained.*

Rule 9(1)—Proviso—Power of Appointment—Delegation of—Consequences of Delegation—Both authorities viz. Delegator and F *Delegatee whether can be treated as 'authority empowered to appoint.'*

Railway Servants (Discipline & Appeal) Rules, 1968: Rules 2(1)(a), 2(1)(c), 7 & 8/Railway Establishment Code.

Railway Servants—Group C and D employees—Appointing G *authority—Desciplinary authority—Who is—Competent appointing authority, General Manager—Delegation of power of appointment to Zonal Officers/Divisional Superintendents—Appointments made by Divisional Superintendents/Zonal Officers—Initiation of Disciplinary Proceedings by Divisional Superintendents—Validity of.*

H *Administrative Law—Delegation of power of Appointment—*

Consequences of Delegation—Scope of Delegate's power—Theory of imputation to the principal the acts of the delegate—Whether applicable to Service Rules which make distinction between power to appoint and power to take disciplinary proceedings—Power to take disciplinary proceedings—Whether adjunct to power of appointment. A

General Clauses Act, 1897: Section 16—Applicability of—Whether confers power on the factual appointing authority to conduct disciplinary proceedings or impose penalties. B

Practice and Procedure: Special Leave Petition—Dismissal in limine—Supreme Court—Whether precluded from considering the issue in appeal on merits.

C

The respondents were holding class III civil posts in the Research Laboratories attached to the Ministry of Defence. Under the Central Civil Services (Classification, Control and Appeal) Rules, 1965, their 'appointing authority' was the Scientific Adviser. But the appointing authority, the Scientific Adviser, delegated his power of appointment to the D **Director under Proviso to Rule 9(1). Pursuant to the delegated power, the Director appointed the respondents. Subsequently, the Director initiated disciplinary proceedings against the respondents.**

Similarly for the respondents, in the connected appeals, belonging to Group C and D employees of the Railways the competent authority, E **prescribed under the Railway Establishment Code, to make appointments was the General Manager. But the General Manager delegated his power of appointment to Zonal Officers/Divisional Superintendents. Pursuant to the delegated power the Divisional Superintendents appointed the respondents. Subsequently, disciplinary proceedings were initiated against the respondents by the Divisional Superinten-** F **dents.**

The respondents challenged the disciplinary proceedings before the Central Administrative Tribunal contending that they were without jurisdiction since the Director and the Divisional Superintending were not competent to initiate the disciplinary proceedings. The Central G **Administrative Tribunal accepted the plea and quashed the proceedings.**

In appeals to this Court it was contended on behalf of the respondents (i) that the Director was not competent to initiate disciplinary proceedings against them and only the Scientific Adviser, a higher authority, could do so; the expression "whichever authority is the high- H

A est authority" in Rule 2(a) governs only sub-clause (iv) of Rule and this expression seeks to ensure that though the power to appoint may have been delegated under the Proviso to Rule 9(1), such delegation does not extend to the exercise of disciplinary powers; (ii) that appointments made by the Scientific Adviser should be treated as appointments made by the Scientific Adviser himself with the result that a subordinate authority could not initiate
B disciplinary action against the respondent.

Also, in the connected railway cases, it was contended on behalf of the respondents that notwithstanding the delegation of powers of appointment by the General Manager, he, being the highest amongst the various appointing authorities, was alone competent to institute disciplinary
C proceedings.

On behalf of the appellant, Union of India, it was contended: (i) that on a proper interpretation of the rules, the Director Zonal Officer/Divisional Superintendents were competent to initiate the proceedings and (ii) that, irrespective of the provisions in the rules, a person who makes an appoint-
D ment has always an implied power of suspending or dismissing the appointee under section 16 of the General Clauses Act, 1897.

Disposing of the appeals, this Court,

HELD: 1. The delegation of the power of appointment under the Proviso to rule 9(1) does not necessarily deprive the disciplinary authority
E specified in the main part of the rule from exercising the delegated power of appointment in any case or class of cases. [459B]

Godawari S. Parulekar v. *State of Maharashtra,* [1966] 3 S.C.R. 314; followed.

Ramachandra Rao v. *State,* [1984] 3 S.L.R. 768; *Halsbury's Laws of*
F *England,* 4th Edn., pare 32; *Wade on Administrative Law,* 6th Edn., P. 365, referred to.

King Emperor v. *Shibnath Banerjee,* 72 I.A. 241; *Huth* v. *Clarke,* [1890] 25 Q.B.D. 391, cited.

2. A proper and harmonious reading of rules 2(a) and rule 9
G shows that sub-rule (a) of rule 2 only envisages the authority to whom the power of appointment has been delegated under rule 9 and not both the delegator and the delegatee. Rule 2(a) directs the ascertainment of the authorities specified, in such of clauses (i) to (iv) of the rule as may be applicable to a particular case and designates the highest of them as the 'appointing authority'. It envisages only *one* authority as falling
H under each of these clauses and not more. An inter-pretation of clause

(i) or (ii) as contemplating more than one authority runs counter to the tenor of the rule. The said rule does not contemplate any authority other than the one empowered to appoint a person belonging to the post or grade which the concerned government employees holds. In that sense the two parts of clause (i) and clause (ii) are not to be read disjunctively to ascertain the authority empowered to make appointments (a) to the service (b) to the grade and (c) to the post and consider the highest of them. One has to restrict oneself to the post or grade of the government servant concerned and invoke clause (i) or (ii) as the case may be. [459F-H; 460C-D]

Dharma Dey v. *Union of India,* [1980] 2 S.C.R. 554; *Om Prakash Gupta* v. *Union of India,* A.I.R. 1975 S.C. 1265, explained and held inapplicable.

Murishwar v. *Union,* [1976] S.L.C. 82; *Union* v. *Choudhary,* [1976] 2 S.L.R. 819; *Choudhary* v. *Union,* [1977] All India Services Law Journal 1, cited.

2.1 In Rule 2(a), not only do the words "whichever is the highest authority" occur in the Rules separately from the four sub-clauses but the terms thereof also clearly envisage a determination of one who, among several authorities, is the highest. It, therefore, clearly means that the 'authorities' falling under the definition in sub-clauses (i) to (iv) have to be ascertained and the highest among them taken as the disciplinary authority for purposes of rule 12(2)(b). [449B]

3. The appointing authority under the Schedule is a high-ranking authority and, in an organisation like the Railways for instance, it will be virtually impossible for him to consider each and every case of appointment of, or disciplinary action against, all the Class III or Class IV employees in the organisation. It is indeed this realisation that has rendered necessary a delegation of the power of appointment and cannot be ignored, in the absence of compelling reasons, in the matter of disciplinary powers. [461C-D]

4. In the context of rules 2(a) and 12(2) which outline a contrast between the person who is empowered to appoint and the person who actually appoints, it is impossible to treat the Scientific Adviser/General Manager as the person who appointed the respondents. [456H; 457A]

Roop Chand v. *State,* [1963] Supp. 1 S.C.R. 539, held inapplicable.

B. Daniel & Ors. v. *Union of India,* [1980] 2 S.L.R. 477, **referred to.**

4.1 A delegation of power does not enhance or improve the hierarchical status of the delegate. [456G]

Krishna Kumar v. *Electrical Engineer Central Raliway & Ors.*, [1980] 1 S.C.R. 50, **referred to.**

5. It is doubtful how far, in the context of the service rules which make a clear distinction between the power to appoint and the power to take disciplinary proceedings, the latter can be said to be adjunct or ancillary to the former. [457D-E]

Daluram Pannalal Modi v. *Commissioner,* [1964] 2 S.C.R. 286, **held inapplicable.**

6. Section 16 of the General Clauses Act, 1897 confers on the factual appointing authority, in terms, only a power to suspend or dismiss and not a power to conduct disciplinary proceedings or impose the various other kinds of penalties envisaged in the rules. To say that the latter power also comes within S. 16, one would need to make a further assumption that the power to suspend or dismiss is a more comprehensive power which would include the power to impose smaller penalties too and this assumption is said to run counter to the rules which deal with the two powers separately. The said section applies only "unless a different intention appears". It applies only where a general power of appointment is conferred under an Act or Regulation. Here the Act or Regulation i.e. the Rules envisage the power of appointment conferred by them on certain authorities being delegated. The power conferred on the delegatees is circumscribed by the instrument of such delegation and cannot be extended beyond its ambit. [454B-E]

Heckett Engineering Co. v. *Workmen,* [1978] 1 S.C.R. 693; *Gafoor Mia and Ors.* v. *Director, DMRL,* [1988] 2 CAT 277, **referred to.**

7. The dismissal in limine of the Special Leave Petition cannot preclude the Tribunal or Court from considering the issue in the appeals on merits. [452H; 453A]

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1210 to 1217 of 1980 etc.

From the Judgment and Order dated the 22nd April, 1980 of the

Andhra Pradesh High Court in Writ Appeal Nos. 499, 500 to 505 of 1979 and 144 of 1980. A

Anil Dev Singh, G.B. Pai, K. Madhva Reddy, P.A. Choudhary, Hemant Sharma, P. Parmeshwaran, B. Parthasarthi, C.V. Subba Rao, Abbas Naqvi, R.P. Gupta, N.K. Nair, B. Kanta Rao, Chandrashekhar Panda, A.T.M. Sampath, P.N. Ramalingam, R.D. Upadhyay, Ms. S. Janani and A. Subba Rao for the appearing parties. B

The Judgment of the Court was delivered by

RANGANATHAN, J. In the Special Leave Petitions, we grant leave and proceed to dispose of all these appeals by a common order. It may be noted that, except in C.A. 3044/89, the Union of India is the appellant. C

The short common question arising in this large batch of appeals is: who is the authority competent to initiate disciplinary proceedings against the Government servants who are the parties here (hereinafter referred to, for convenience, as 'the respondents')? There are two sets of appeals before us, one arising out of proceedings in the Ministry of Defence, and the other in the Ministry of Railways. The rules governing the former are the Central Civil Services (Classification, Control & Appeal) Rules (hereinafter referred to as "the Civil Services rules") and those governing the latter are the Railway Servants (Discipline and Appeal) Rules (hereinafter referred to as 'the Railway rules'). D E

S/Shri G.B. Pai, Anil Dev Singh, P.A. Choudhary, Madhava Reddy, B. Kanta Rao, A. Subba Rao, A.T.M. Sampath, R.D. Upadhyay and others have argued the matters at length and in great detail and we proceed to dispose of these appeals after considering all the aspects urged before us. F

We shall take *Daniel's* case (C.A. Nos. 1210 to 1217 of 1980) as illustrative of the cases under the Civil Service Rules. Though the employees in these and connected matters are Class III employees of Research Laboratories attached to the Ministry of Defence (shortly referred to as DRDL, DMAL, DERL and DLRL), they are serving in civil posts therein and, hence, governed by the Civil Service Rules. They had been appointed by the Director of the Laboratory. Disciplinary proceedings were initiated against them by the Director. There is, therefore, no possibility of any eventual violation of the constitutional prohibition in Article 311(1) against a Government servant being dis- G H

missed or removed from office by an authority subordinate to the appointing authority. Still, the respondents contend that the Director is not competent to initiate disciplinary proceedings against them and that it is only the Scientific Adviser to the Government of India—a higher authority—that can do so. This contention, based on the relevant provisions of the Civil Service Rules, proceeds on the following lines.

Rules 12 and 13 of the Civil Service Rules deal with this topic and read as follows:

> "12. Disciplinary Authorities—(1)The President may impose any of the penalties specified in rule 11 on any Government servant.
>
> (2) Without prejudice to the provisions of sub-rule (1), but subject to the provisions of sub-rule (4), any of the penalties specified in rule 11 may be imposed on—
>
> (a) xx xx xx
>
> (b) a person appointed to a Central Civil post included in the General Central Service, by the authority specified in this behalf by a general or special order of the President or, where no such order has been made, by the appointing authority or the authority specified in the Schedule in this behalf.
>
> 13. Authority to institute proceedings—
>
> (1) The President or any other authority empowered by him by general or special order may—
>
> (a) institute disciplinary proceedings against any Government servant;
>
> (b) direct a disciplinary authority to institute disciplinary proceedings against any Government servant on whom that disciplinary authority is competent to impose under these rules any of the penalties specified in rule 11.
>
> (2) A disciplinary authority competent under these rules to impose any of the penalties specified in clauses (i) to (iv) 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."

In these cases, the disciplinary proceedings have been instituted neither by the President nor by an authority directed by him to do so, nor by any other authority empowered by him, by general or special order, to do so. The disciplinary authority (D.A.) in the present case, therefore, has to be in terms of rule 12(2)(b), "the appointing authority or the authority specified in the schedule in this behalf". The "authority specified in the schedule in this behalf", admittedly, is the Scientific Adviser to the Government of India. The question next is whether the Director is the "appointing authority" in the case of the respondents. This matter is dealt within Rule 9(1) read with its proviso which read thus:

> "9. Appointments to other Services and Posts—
>
> (1) All appointments to the Central Civil Services (other than the General Central Service) Class II, Class III and Class IV, shall be made by authorities specified in this behalf in the Schedule."
>
> "Provided that in respect of Class III and Class IV civilian services, or civilian posts in the Defence services appointments may be made by officers empowered in this behalf by the aforesaid authorities."

The 'appointing authority' specified in the schedule referred to in Rule 9(1), in the case of the respondents, is, again, the Scientific Adviser to the Government of India. But, by a notification made in exercise of the power conferred by the proviso, he had authorised the Director to make appointments to Class III and Class IV posts in his establishment and, it is common ground, the Director had appointed the respondents in exercise of that power. In other words, there is no dispute that the Director is the "appointing authority" of the respondents not only in the sense that he was empowered to appoint them under rule 9 but also in the sense that he actually made these appointments. Nevertheless, it is said, he is not the 'appointing authority' in the case of the respondents within the meaning of rule 12(2)(b). In support of this argument, attention is drawn to rule 2 which contains

A the definitions of various expressions for the purposes of the rules which will be applicable in the absence of anything to the contrary in the relevant context. Rule 2(a) reads:

> "(a) 'appointing authority' in relation to a Government servant means—
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> B
>
> (i) the authority empowered to make appointments to the Service of which the Government servant is for the time being a member or to the grade of the service in which the Government servant is for the time being included, or
>
> C (ii) the authority empowered to make appointments to the posts which the Government servant for the time being holds, or
>
> (iii) the authority which appointed the Government servant to such Service, grade or post, as the case may be, or
>
> D
>
> (iv) where the Government servant having been a permanent member of any other Service or having substantively held any other permanent post, has been in continuous employment of the Government, the authority which appointed him to that Service or to any grade in that
> E Service or to that post.
>
> whichever authority is the highest authority."

It will be noticed that this clause refers to two classes of persons: (a) the authority empowered to make appointments to the service, grade
F or post with which we are concerned—sub clauses (i) and (ii)—and (b) the authority who actually appointed the Government servant to the service, grade or post in question—sub clauses (iii) and (iv). Each of these is sub-divided into two categories but we need not, for the purposes of the present cases, bother about this sub-division. Stopping here, it will be seen, as pointed out already, that the Director falls
G under both the above categories as he is empowered to appoint the respondents by virtue of the power delegated to him under the proviso to rule 9(1) and as he has also factually appointed them. But, it is said, the Scientific Adviser to the Government of India, notwithstanding his having delegated his power to the Director under the proviso, also continues to be an authority empowered to appoint persons to the
H posts in question under rule 9(1) read with the schedule. So under the

first category of persons indicated above as referred to in rule 2(a) there are two authorities the Scientific Adviser and the Director and under the second category we have the Director. And, here comes the crucial point on which the respondents bank their entire case: the last few words of rule 2(a) make it clear and specific that the expression 'appointing authority' means the highest of the authorities mentioned in sub-clauses (i) to (iv). So, it is said, the 'appointing authority' for purposes of rule 12(2)(b), in the instant case, will be the highest of the three authorities we have referred to above, viz. the Scientific Adviser to the Government of India. In short, it is contended that, by using the last few significant words in rule 2(a), the Civil Rules seek to ensure that, though the power to appoint persons to a particular post, grade or service may be delegated under the proviso to rule 9(1), such delegation should not extend to the exercise of disciplinary powers. It is the clear intention of the rule-makers, it is argued, that disciplinary powers should continue to vest in the appointing authority mentioned in the schedule read with rule 9(1) and should not be allowed to be exercised by his delegate under the proviso. The emphasis, it is said, is not on the person who has made, or is empowered to make, the appointment of the particular civil servant in question; it is on the person who makes, or is empowered to make, appointment of persons generally to the post, grade or service to which the civil servant in question belongs. It is, therefore, urged that though one Class III servants in the laboratory may be appointed by the Director and another by the Scientific Adviser (who can make such appointment despite the delegation), the disciplinary authority for both and, indeed for all class III servants in the Laboratory, must be the same and cannot be different. This interpretation of rule 2(a), it is said, is not only quite plain on the language used but has also received the approval of this Court in *Dharam Dev* v. *Union,* [1980] 2 SCR 554. Further force is sought to be lent to the argument by pointing out that the expression 'appointing authority' is used only in rules 2, 10, 12 and 24 of, and the schedule to, the Civil Service rules and that, to refuse to give effect to the definition for purposes of rule 12 is to render the definition clause virtually *otiose*. This plea was upheld by the Andhra Pradesh High Court in *Danial's* case [1980] 2 SLR 477 and, following it, in the other cases before us. A similar view has been taken in the Delhi High Court in *Murishwar* v. *Union,* [1976] Service Law Cases 82 in *Union* v. *Tarlok Singh,* cited therein, and by the Calcutta High Court in *Union* v. *Choudhury,* [1976] 2 SLR 819. But a contrary view has been taken by the M.P. High Court in *Chaudhury* v. *Union,* [1977] All India Services Journal 1) and by the Andhra Pradesh High Court in W.A. 793/83 and W.P. 2441/79.

A B C D E F G H

A The position in respect of ordnance factories which has to be considered in some of the cases is identical, except for the nomenclatures of the respective authorities, and does not need any separate discussion.

B To turn, next, to the railway cases, we are concerned with appointees to Group C and Group D of the services, which correspond to class III and class IV of the Civil Services. In respect of these persons, the relevant provisions are as follows:

> "2(1)(a) *'Appointing Authority'*, in relation to railway servant, means:
>
> C (i) the authority empowered to make appointments to the service of which the railway servant is, for the time being, a member or to the grade of the Service in which the railway servant is, for the time being, included, or
>
> D (ii) the authority empowered to make appointments to the post which the Railway servant, for the time being holds, or
>
> (iii) the authority which appointed the Railway servant to such Service, grade or post, as the case may be, or
>
> E (iv) where the Railway servant having been a permanent member of any other Service or having substantively held any other permanent post, has been in continuous employment under the Ministry of Railways, the authority which appointed him to that service or to any grade in that
> F Service or to that post whichever authority is highest authority".
>
> "2(1)(c) *'Disciplinary Authority'* means—
>
> (i) in relation to the imposition of a penalty on a Railway
> G Servant, the authority competent, under these rules, to impose on him that penalty;
>
> (ii) in relation to rule 9 and clauses (a) and (b) of sub-rule (1) of Rule 11 in the case of any Gazetted Railway servant, an authority competent to impose any of the penalties
> H specified in rule 6.

(iii) in relation to rule 9 in the case of any non-gazetted Railway servant, an authority competent to impose any of the major penalties specified in rule 6;

(iv) in relation to clauses (a) and (b) of sub-rule (1) of Rule 11, in the case of a non-gazetted Railway servant, an authority competent to impose any of the penalties specified in Rule 6".

"7. *Disciplinary authorities*—

(1) The President may impose any of the penalties specified in Rule 6 on any Railway Servant.

(2) Without prejudice to the provisions of sub-rule (1), any of the penalties specified in Rule 6 may be imposed on a Railway servant by the authorities as specified in Schedules I, II and III.

(3) The discplinary authority in the cases of a Railway Servant officiating in a higher post, shall be determined with reference to the officiating post held by him at the time of taking action".

"8. *Authority to institute proceeding.*—

(1) The President, or any other authority empowered by him, by general or special order, may—

(a) institute disciplinary proceedings against any Railway servant;

(b) direct a disciplinary authority to institute disciplinary proceedings against any Railway servant on whom that disciplinary proceedings against any Railway servant on whom that disciplinary authority is competent to impose, under these rules, any of the penalties specified in rule 6.

(2) A disciplinary authority competent under these rules to impose any of the penalties specified in clauses (i) to (iv) of Rule 6 may, subject to the provisions of clause (c) of sub-rule (1) of rule 2, institute disciplinary proceedings against any Railway servant for imposition of any of the penalties

A specified in clauses (v) to (ix) of rule 6, notwithstanding that such disciplinary authority is not competent under these rules, to impose any of the latter penalties".

Schedule II referred to in rule 7(2) lays down that an order of compulsory retirement, removal or dismissal from service may be ordered, B in the case of a Group C or Group D Railway servant by the appointing authority or authority equivalent in rank or any higher authority and Note 2 to the Schedule mentions that such an authority may also impose any lower penalty. Under rule 275 of the Railway Establishment Code (Vol. I), which deals with the recruitment, training and promotion of Group C and Group D railway servants, the authority C competent to make a first appointment is the General Manager or any lower authority to whom he may delegate the power. The General Manager of each Railway has delegated his powers under several heads. One set of the Schedule of Delegation of Powers by the General Manager of the Southern Railway in Establishment Matters has been set out in some detail in the order of the Central Administra- D tive Tribunal (CAT) in the case of *Gafoor Mia and Ors.* v. *Director, DMRL,* [1988] 2 CAT 277, (which is one of the orders in appeal before us.) It is neither useful nor necessary to repeat them here in extenso. Here also, the argument is that, notwithstanding the delegation of powers of appointment of Group C and Group D employees to various other zonal officers, the General Manager has not divested himself of E the power to make such appointments and continues to be the 'appointing authority'. Being the highest among the various appointing authorities, he alone stands vested with the power to institute disciplinary proceedings and impose penalties. It is, therefore, submitted that the disciplinary proceedings, in the cases under this batch, initiated by the Divisional Superintendent and like officers were with- F out jurisdiction and were rightly quashed by the CAT in *Gaffoor Mia's* case, already referred to, and the decisions in the other matters before us following the said decision.

This, in crux, is the argument for the respondents. Before dealing with this argument, it will perhaps be helpful to steer clear of G certain minor arguments addressed by either side:

(a) Sri Kanta Rao submitted that the same view as in *Gafoor Mia,* had been taken by the C.A.T. in *Supriya Roy's,* case and that this Court has already, on 21.9.88, dismissed S.L.P. Nos. 9956-57 of 1988 filed against the said order. This H appears to be correct but the dismissal *in limine* of that S.L.P.

cannot preclude us from considering the issue in these appeals on merits. It is seen that, in C.A. 3963/88, an application has been filed for revocation, on this ground, of the leave granted by this Court. We dismiss this application.

(b) Much store is set, on behalf of the respondents, by the decision of this Court in *Dharam Dev's* case (supra). It is no doubt true that the decision refers to the provisions of Rule 2(a) and applies the same to the case before it. But the context in which the case arose was a very simple and straight forward one. In that case, the employee in question had in fact been appointed by the Comptroller and Auditor General of India (CAG) and he was the highest authority in regard to the service in question. All that the decision pointed out was that, in view of this and of Article 311, no authority lower in rank to the CAG was competent to take action against the appellant before the Court. The Court had no occasion to consider the type of controversy that has arisen here and did not consider either the interaction of sub-clauses (i) and (iii) of clause (a) of rule 2 or the situation as to whether there could be more than one authority empowered to appoint persons to a post, grade or service within the meaning of sub-clause (i) or (ii) of clause (a) itself. This decision is therefore not helpful—and certainly not conclusive—to solve the issue arising before us. The same is the position in regard to the decision of this Court in *Om Prakash Gupta* v. *Union*, A.I.R. 1975 S.C. 1265 which seems to have been relied on, for the Union, before the CAT. In that case, the appellant was a temporary Government servant not holding a specified post. All that this Court pointed out was that, if the definition in rule 2(a) was not applicable to such a person, the word 'appointing authority', understood in its plain and natural meaning would mean the authority which appointed him—viz. the Director General of the Geological Survey of India. If, on the other hand, the terms of rule 2(a) were applicable—the person empowered to appoint the appellant being one Sri Moghe and the person who appointed him being the Director General—the latter, who was the higher authority, would be the 'appointing authority'. This, again, was an instance of a simple and direct application of the rule, involving no complications as here and cannot be treated as deciding the issue before us.

(c) On behalf of the appellant, the Union of India, reliance is placed on S. 16 of the General Clauses Act, 1897. It is argued

A that, irrespective of the provisions in the rules, a person who makes an appointment has always an implied power of suspending or dismissing him—vide: *Heckett Engineering Co.* v. *Workmen,* [1978] 1 S.C.R. 693. There are three difficulties in accepting this argument. In the first place, even if the argument is valid, it confers on the factual appointing authority, in terms, only a B power to suspend or dismiss and not a power to conduct disciplinary proceedings or impose the various other kinds of penalties envisaged in the rules. To say that the latter power also comes within S. 16, one would need to make a further assumption that the power to suspend or dismiss is a more comprehensive power which would include the power to impose smaller penalties too and this assumption is said to run counter to the rules which deal C with the two powers separately. Secondly, S. 16 applies only "unless a different intention appears". If the construction placed on the Civil Service Rules and the Railway rules on behalf of the respondents is correct, then the rules express a different intention and it would therefore not be possible to rest on the general D principle enunciated by S. 16. The contention has, therefore, to be examined independently and S. 16 cannot be an answer to it. Thirdly, S. 16 applies only where a general power of appointment is conferred under an Act or Regulation. Here the Act or Regulation (i.e. the Rules) envisage the power of appointment conferred by them on certain authorities being delegated. The E power conferred on the delegatees is circumscribed by the instrument of such delegation and cannot be extended beyond its ambit, as observed by the C.A.T. in *Gafoor Mia's* case (supra). S. 16, therefore, does not come to the rescue of the appellants.

(d) An argument was raised at the earlier stages, that the F words "whichever is the highest authority" governs only sub-clause (iv) of rule 2(a) of the Civil Service Rules and not the other sub-clauses. This contention cannot bear a moment's scrutiny both because the above words occur in the Rules separately from the four sub-clause but also because the terms thereof clearly envisage a determination of one who, among G several authorities, is the highest. It, therefore, clearly means that the 'authorities' falling under the definitions in sub-clauses (i) to (iv) have to be ascertained and the highest among them taken as the disciplinary authority for purposes of rule 12(2)(b).

The above discussion narrows down the controversy before us to H a very short issue: Can it be said, where the appointing authority under

rule 9(1) has delegated his powers of appointment under the proviso, that both the authorities should be treated as the "authority empowered to appoint" persons to the post, grade or service or does this expression get restricted only to the latter, i.e. the delegatee authority? If both fall under the above description within the meaning of sub-clause (i), the respondent's plea that the definition in rule 2(a) will mark out only the Scientific Adviser/General Manager would be correct. On the other hand, if the second of the above interpretation is correct, the appellant's stand will have to be upheld.

Learned counsel for the respondents vehemently contend that the authority specified under the schedule read with rule 9(1) does not lose his authority to appoint merely by the act of delegating his powers to a subordinate authority. Such delegation no doubt empowers the subordinate authority to appoint but does not take away the power of appointment conferred on the authority specified in the schedule read with rule 9(1).

Before dealing with the above contention, we may make reference to certain decisions cited by counsel on the consequences of such delegation. In *Roop Chand* v. *State*, [1963] Suppl. 1 SCR 539 the petitioner had filed an appeal from the order of the Settlement Officer to the State Government under S. 21(4) of the relevant Act. But the State Government, having delegated—under S. 41(1) of the Act—the right to hear and dispose of the appeals made to it to the Assistant Director (Consolidation), the petitioner's appeal was disposed of by the said Officer who allowed the same. The Respondent thereupon sought to invoke a power conferred on the State Government under S. 42 of the Act to revise the orders passed by the authorities under the Act. On a writ petition filed before it the Supreme Court quashed the revisional order passed by the State Government on the simple logic that the order passed under section 41(1) read with section 21(4) was an order of the State Government (though, in fact, passed by a delegate) and could not be "revised" by the State Government itself under S. 42. The Andhra Pradesh High Court speaking through P.A. Choudary, J. in *Daniel's* case (since reported in 1988 2 S.L.R. 477) thought that the principle of the case was of no avail to the Union of India which appears to have contended, on the strength thereof, that "though the disciplinary action was initiated by the Director, it must be treated as having been taken by the Scientific Adviser himself because the action of the Director, being that of a delegate, must be regarded in law as that of the principal himself". The learned Judge repelled the argument, observing:

"The ratio of the aforesaid case is that the action of the delegate can be treated as that of the principal himself. Applying the ratio of the above case to the facts of our case, it can be said at the most that the orders of appointments made by the Director, by reason of the statutory delegation made by the Scientific Adviser under Rule 9(1), are those of the Scientific Adviser himself, on the basic that the exercise, of the power delegated to an authority may be treated as an exercise of the power by the principal himself.

Accepting the principle, we cannot agree with the contention of the learned Counsel that the Director's exercise of the disciplinary power against the petitioners should be treated as an exercise of disciplinary authority by the Scientific Adviser himself. The reason is too simple. Firstly, the statute deals, throughout its provisions, with the disciplinary power as a different and separate power from the power to appoint. Secondly, the disciplinary power is never delegated by the Scientific Adviser to the Director either under Rule 9(1) or any other rule of the CCA Rules. It follows, therefore, that the theory of imputation to the principal the acts of the delegate can have no application to such a situation as the one before us. We, therefore, find that the *Roop Chand's* case is of no avail to the respondents."

Though Sri Choudhary, who appeared before us for the respondents seemed to have second thoughts about this, we are of opinion that the observations extracted above set out the correct position and that the *Roop Chand* decision is of no help. An attempt has been made before us to invoke the *Roop Chand* principle in a different way to support the case of the employees and argue that their appointments made by the Director should be treated as appointments made by the Scientific Adviser himself and that, therefore, no disciplinary action can be initiated against them by any one other than the Scientific Adviser himself. We do not think that this argument can be accepted. As observed in *Kishore Kumar's* case [1980] 1 S.C.R. 50 a delegation of power does not enhance or improve the heirarchical status of the delegate. The rule in *Roop Chand* as to the nature and character of the power exercised by a delegate was enunciated in a particular context. It cannot be treated as a general principle applicable to all situations. In particular, in the context of rules 2(a) and 12(2) with which we are concerned and which outline a contrast between the person who is empowered to

appoint and the person who actually appoints, it is impossible to treat the Scientific Adviser/General Manager as the person who appointed the respondents.

Reference has not been made to *Daluram Pannalal Modi* v. *Commissioner,* [1963] 2 SCR 286. This was a case as to the interpretation of the scope of a delegate's power. S. 19 of the Madhya Pradesh Sales Tax Act, 1958, empowers the Commissioner, if he is satisfied that any sale or purchase of goods, has escaped assessment, to make a reassessment. S. 30 of the Act, however, enabled the Commissioner to "delegate any of his powers and duties under the Act" and the Commissioner, exercising this power, delegated to the Assistant Commissioner his powers and duties to make an assessment or reassessment and to exercise all other powers under Sections 18, 19 and 20. An assessee challenged a reassessment notice issued by an Assistant Commissioner contending that what had been delegated was only the power of reassessment but not the duty of being satisfied that there was an escapement which, according to the assessee, still remained with the Commissioner. This argument was repelled and it was held that the requirement of being satisfied was an adjunct of the power to initiate reassessment proceedings. That principle cannot apply here as it is doubtful how far, in the context of the service rules which make a clear distinction between the power to appoint and the power to take disciplinary proceedings, the latter can be said to be adjunct or ancillary to the former.

This leads us to the question whether the appointing authority specified in the schedule can exercise his power of appointment to a post, cadre or service even after he has delegated that power to a subordinate authority under the proviso. An answer to this question in the affirmative is contended for on the strength of certain authorities which may now be considered. In *Godawari S. Parulekar* v. *State of Maharashtra,* [1966] 3 SCR 314 the appellant had been detained by an order passed by the State Government under rule 30 of the Defence of India Rules. It was contended on behalf of the appellant, *inter alia,* that the State Government had earlier issued a notification delegating its powers under rule 30 to the District Magistrate and was so not competent to make the order of detention in question. Reliance was placed for this argument on the observations of the Judicial Committee in *King Emperor* v. *Shibnath Banerjee,* 72 I.A. 241. These observations were distinguished and the above contention was repelled. It was held that by issuing the notification in question, the State Government had not denuded itself of the power to act under r. 30 (vide Willis J. in

A *Huth* v. *Clarke,* [1890] 25 QBD 391. Learned counsel also referred to the decision of the Karnataka High Court in *Ramachandra Rao* v. *State,* [1984] 3 SLR 768. This case does hold that a power which is delegated can be exercised both by the delegator and the delegatee, though the Supreme Court decisions cited therein as deciding this issue do not seem to help. *Halsbury* 4th Edn., para 32, citing *Huth* v. B *Clarke,* (supra), summarises the English Law on the subject thus:

> "In general, a delegation of power does not imply parting with authority. The delegating body will retain not only the power to revoke the grant but also power to act concurrently on matters within the area of delegated authority except in so far as it may already have become bound by an C act of its delegate".

However, the following passage from Wade on Administrative Law (Sixth Edition) at p. 365 would seem to indicate that the position is not quite clear and may need detailed consideration in an appropriate D case:

> "A statutory power to delegate will normally include a power to revoke the delegation when desired. While the delegation subsists it may be arguable whether the delegating authority is denuded of its power or is able to exercise it E concurrently with the delegate. This question arose where under statutory authority the executive committee of a county council delegated to a sub-committee its powers to make regulations for the control of rabies; but before the sub-committee had done anything the executive committee, without revoking the delegation, itself issued regula- F tions for the muzzling of dogs. These regulations were upheld, but on inconsistent grounds, one judge holding that the executive committee had resumed its power and the other that it had never parted with them, and that 'the word "delegate" means little more than an agent. In a later case the latter view prevailed, on the ground that 'one can- G not divest oneself of one's statutory duties'. But the contrary was held by the Court of Appeal where a minister had formally delegated to local authorities his power to requisition houses. By doing this he had for the time being divested himself of his powers, so that an invalid requisition by the local authority could not be cured by their act- H ing in his name; and the court rejected the contention that

> delegation was a form of agency. The Local Government Act 1972 expressly preserves the powers of a local authority concurrently with those delegated to its commits, etc."

We do not think it is necessary to go into this question. In view of the decision in *Godawari* (supra), we shall accept the general proposition that the delegation of the power of appointment under the proviso to rule 9(1) does not necessarily deprive the disciplinary authority specified in the main part of the rule from exercising the delegated power of appointment in any case or class of cases.

Still the basic question that remains is, whether, in the context of rule 2(a) read with rule 9(1), the reference to the authority empowered to make the appointment is to the authority mentioned in the proviso to rule 9 or to both the authorities falling under the main part of rule 9(1) as well as the proviso. The sheet anchor of the respondent's case is that the expression 'appointing authority' is used in very few of the rules. One of them is rule 12 and there can, therefore, be no valid reason to refuse to apply the definition clause in the context of those rules. It is urged that, by holding the person specified in the schedule also to be the 'appointing authority' as defined in rule 2(a), none of the other rules relating to appeal, revision etc. become redundant as urged on behalf of the appellants. We agree with the respondents that the expression 'appointing authority' in rule 12 should have the meaning attributed to it in rule 2(a). But what is the real and true interpretation of Rule 2(a)? What does that sub-rule talk of when it refers to a 'person empowered to make the appointment' in question? These words clearly constitute a reference to rule 9. Does rule 2(a) refer then to the authority empowered by the schedule to make the appointments or the authority to whom he has delegated that power or both? We think, on a proper and harmonious reading of rule 2(a) and rule 9, that sub-rule (a) of rule 2 only envisages the authority to whom the power of appointment has been delegated under rule 9 and not both the delegator and the delegate. We have come to this conclusion for a number of reasons. In the first place, it is clear on the plain language of rule 2(a), that it directs the ascertainment of the authorities specified, in such of clauses (i) to (iv) of the rule as may be applicable to a particular case and designates the highest of them as the 'appointing authority'. It envisages only *one* authority as falling under each of these clauses and not more. The respondent's contention which involves interpretation of clause (i) or (ii) as contemplating more than one authority runs counter to the tenor of the rule. Secondly, the strictly literal meaning of rule 2(a) insisted upon by the respondents

would render the rules unworkable. For instance, under clause (i), one of the authorities to be considered is the 'authority empowered to make appointments to the service of which the government servant is for the time being a member'. The respondents belong to one of the Central Civil Services. Though they belong to class III or class IV, there are class I and class II officers as well therein. Rule 8 declares that only the President can make appointments to Class I in the service. If each of the clauses is read as envisaging a plurality of authorities as contended for and if clause (i) is literally interpreted, it will also include the President who is one of the authorities empowered to make appointments to the service of which the concerned employees is a member. This will render the entire gamut of the rules unworkable. On this interpretation, the President will be the only appointing authority under rule 2(a) in all cases, being the highest of the authorities envisaged therein. This cannot clearly be correct. Rule 2(a) does not contemplate any authority other than the one empowered to appoint a person belonging to the post or grade which the concerned government employee holds. In that sense the two parts of clause (i) and clause (ii) are not to be read distributively to ascertain the authority empowered to make appointments (a) to the service (b) to the grade and (c) to the post and consider the highest of them. One has to restrict oneself to the post or grade of the government servant concerned and invoke clause (i) or (ii) as the case may be. Thirdly, the whole purpose and intent of rule 2(a) is to provide that appointing authority means either the *de facto* or the *de jure* appointing authority. It will be appreciated that, generally speaking, only the *de jure* authority can make the appointment but, occasionally, a superior authority or even a subordinate authority (with his consent) could have made the appointment. Again it is possible that the authority empowered to make the appointment at the time when relevant proceedings in contemplation may be higher or lower in rank to the authority which was empowered to make the appointment or which made the appointment at a different point of time. The whole intent or purpose of the definition to safeguard against an infringement of Art. 311(1) and ensure that a person can be dealt with only by either a person competent to appoint persons of his class or the person who appointed him, whoever happens to be higher in rank. That rule is not infringed by the interpretation placed by the appellants. The provisions of Schedule II in the case of the Railways which specify the appointing authority or an authority of equivalent rank or any higher authority as the disciplinary authority are also consistent with this interpretation. Fourthly, the interpretation sought to be placed by the respondents on rule 2(a) is artificial and strained. It amounts to saying that a person who is

empowered to appoint a government servant (as the Director, DERL, for example, undoubtedly is) and who has also appointed him will not be the appointing authority, because, theoretically, even a more superior authority could have appointed him despite having delegated his authority in this regard to a subordinate. On the contrary, the interpretation urged by the Union will not adversely affect the few employees, if any, who may be appointed by a superior scheduled authority despite delegation of such power to a subordinate authority. For, in such a case, the superior authority would be the person who has factually appointed such an employee and he will clearly be the 'appointing authority' by virtue of rule 2(a). Lastly, the interpretation sought for by the Union is consistent with practical consideration. The appointing authority under the Schedule is a high-ranking authority and, in an organisation like the Railways for instance, it will be virtually impossible for him to consider each and every case of appointment of, or disciplinary action against all the Class III or Class IV employees in the organisation. It is indeed this realisation that has rendered necessary delegation of the power of appointment and cannot be ignored, in the absence of compelling reasons, in the matter of disciplinary powers.

On behalf of the respondents, it is contended that the intention of the rules is to restrict powers of discipline from being exercised by all appointing authorities. Centralisation, it is urged, is the object. This contention is not borne out by the table of innumerable disciplinary authorities set out in the schedule, not to speak of those on whom factual or special powers have been conferred by the President (as was indeed done in many of these very cases later). As against this, Sri Pai, for the appellants pointed out that if one has regard to the strength of the railway staff or the other class III or IV staff employed in various civil services, the interpretation urged on behalf of the respondents would cast an impossible burden of work on the authorities specified in the schedule to whom alone the respondents seek to confine the power to take disciplinary proceedings. There is force in this contention.

It has been brought to our notice that notifications have since been issued (for example on 29th August 1979 in the case of the DERL and 2.1.87 in the case of Ordnance factories) by the President under rule 12 empowering certain authorities to exercise disciplinary powers. We need hardly say that any disciplinary proceedings initiated by such authorities from the date when such notifications came into effect will be perfectly valid. It has also been brought to our notice that, in some cases, (for example, C.A. Nos. 1443, 1444 and 4340/88), the CAT has

A also gone into the merits of the cases and set aside the penalties or punishments imposed on the concerned respondent. We do not propose to review the finding on this aspect of the matter under Article 136. C.A. No. 1444/88, we are told, has also abated as the appellant has taken no steps to bring on record the legal representatives of the respondent but, in view of the Tribunal's findings on merits, it is B unnecessary to go into this question now. The order of the CAT, in such cases, will therefore, stand notwithstanding our conclusion being different from that of the CAT on the main issue discussed above. On the other hand, in most cases, the CAT, because of the view taken by it on the main question, has not dealt with the merits of the proceedings. For example, it was mentioned that in C.A. 316/81, the respon- C dent has been removed from service by the Deputy Director, an authority subordinate to the Director who had appointed him. This aspect has not been considered and will have to be considered now. Similarly, in C.A. 3044/89 filed by the employee, it is pointed out that the appellant had been appointed by the Director of Ordnance Services in 1964. The power of appointment was delegated to Com- D mandants in 1971 and the respondent was penalised by the Commandant, a subordinate authority, to whom disciplinary powers were delegate by the President only in 1979. Though this point does not appear to have been raised before the Tribunal, it goes to the root of the matter and we, therefore, think that it should be left open to be considered by the Tribunal now.

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As the cases before us are many and were decided principally on the point of law discussed earlier, we have not touched upon the facts or merits of individual cases. We set aside the orders of the CAT in all cases—except C.A. Nos. 1443 and 4340/88 which stand dismissed as mentioned above—and direct the Tribunal/High Court to pass fresh F orders disposing of the applications filed before them in the light of our judgment. Where disciplinary proceedings have been stayed at the stage of initiation or later because of the view taken by the Tribunal, they should now be continued and finished without delay in accordance with law. The appeals are disposed of accordingly.

G T.N.A. Appeals disposed of.