

UNION OF INDIA AND ORS.

A

v.

N.V. PHANNENDRAN

AUGUST 29, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

B

Service Law.

Railway Servants (Discipline and Appeal) Rules, 1968 : Rules 2(a) and 9.

C

Removal—Punishment of—Competent authority to impose—Held Divisional Railway Manager is competent authority.

The respondent challenged his removal from service before the Central Administrative Tribunal on the ground that the Divisional Railway Manager was not the appointing authority and therefore he was not competent to impose the punishment of removal from service. Accepting the contention the Tribunal set aside the order of removal. Union of India preferred appeal to this Court.

D

Allowing the appeal, this Court

E

HELD : The ratio of judgment in *S. Daniel's case squarely covers the point of controversy in question. Therefore, the order of the Tribunal is clearly illegal. [142-E]**

Scientific Adviser to the Ministry of Defence and Ors. v. Daniel and Ors., [1990] 2 SCR 440, relied on.

F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8116 of 1995.

From the Judgment and Order dated 15.11.89 of the Central Administrative Tribunal at Ernakulam Bench, Kerala in T.A. No. 1008 of 1986.

G

N.N. Goswamy, Indra Sawhney, A.K. Sharma and B. Krishna Prasad for the Appellants.

M.M. Kashyap for the Respondent.

H

A The following Order of the Court was delivered :

Leave granted.

B The only contention raised before the Central Administrative Tribunal was that the Divisional Railway Manger, Railways, was not appointing authority. Therefore, he was not competent to impose the punishment of removal from service. That found favour with the Tribunal. Accordingly the order of removal from service was set aside by the Tribunal in its order dated November 15, 1989.

C The controversy is no longer *res integra*. In *Scientific Adviser to the Ministry of Defence and Others v. S. Daniel and Others*, [1980] 2 SCR 440, a bench of this Court interpreted the Rules in a common judgment. On a reading of Rule 2(a) and Rule 9 of the Railway Servants (Discipline and Appeal) Rules, it was held that it would be impossible for the President to deal with all the disciplinary matters of the Government employees. Therefore, delegation of appointment power was made to the general Manager and disciplinary power was delegated to the Divisional Manager. The General Manager is not the delegator. Consequently, the doctrine that a delegator cannot further delegate his powers to the delegatee has no application. As a result, it was held that the delegation of power to impose appropriate punishment is permissible. Since the ratio squarely covers the point of controversy, we are of the view that the order of the Tribunal is clearly illegal.

F It is next contended that though several contentions have been raised on merits, the Tribunal had only dealt with on this issue and, therefore, an opportunity may be given to the respondent to agitate those questions by remitting the matter to the Tribunal. We find it difficult to accept this contention. It is true that though several points appear to have been raised, but before the Tribunal the only contention argued for the respondent was as extracted in paragraph 4 of the order of the tribunal.

G It says :

H "The only point that was urged before us by the learned counsel appearing for the applicant is that Division Railway Manager not being the appointing authority is not competent to impose a punishment of removal from service on the applicant who is a Travelling Ticket Examiner in the pay scale of Rs. 425-640."

Since the Controversy was only limited to this point before the Tribunal, A
we do not find any justification to remit the matter.

The appeal is accordingly allowed but in the circumstances without costs.

T.N.A.

Appeal allowed.