

Union of India and Others

Vs

Rajendra Singh

Civil Appeals Nos. 4071 and 4072 of 1992

(Kuldip Singh, Yogeshwar Dayal JJ)

12.10.1992

JUDGEMENT

YOGESHWAR DAYAL, J.:-

1. Heard. Special leave granted in both the matters. With the consent of learned counsel for the parties the appeals are being disposed of.

2. This order will dispose of the two appeals arising out of S.L.P. (Civil) No. 450 of 1990 and S.L.P. (Civil) No. 7584 of 1991.

3. In the appeal arising out of S.L.P. (Civil) No. 450 of 1990 the matter has arisen out of a second appeal (Second Appeal No. 621 of 1988) decided by a single Judge of the Lucknow Bench of the Allahabad High Court dated 19th December, 1988. As per the facts found by the learned single Judge the respondent was dismissed from service by the Assistant Security Officer, Railway Protection Force after the departmental enquiry. After exhausting the departmental remedies he filed a suit for declaration stating that the order of dismissal was void as it was passed by an authority subordinate to' the appointing authority.

4. It was alleged by him that he was appointed in the year 1965 as Rakshak by the Assistant Security Officer and the appointment was made after the approval of the Chief Security Officer. The order of removal dated 20th August, 1980 was passed by the Assistant Security Officer. The suit was contested by the Union of India (appellant No. 1 herein) and it was pleaded that the respondent herein was removed by the competent authority. The learned single Judge noted the provisions of the Railway Protection Force Act, 1957 (hereinafter referred to as 'the Act') as well the Railway Protection Force Rules, 1959 (hereinafter referred to as 'the Rules'). The trial Court took the view that there was no delegation of powers in favour the Assistant Security Officer and that the Chief Security Officer was the appointing authority and consequently the dismissal order was passed, by the incompetent authority and was, therefore, void. The High Court upheld that decision.

5. Appeal arising out of S. L. P. (Civil) No. 7584 of 1991 arose out of a writ petition (Writ Petition No. 3537 of 1983) decided by a Division Bench of the Lucknow Bench of the Allahabad High Court on 26th February, 1990. The Division Bench took the view that the order of removal passed against the respondent herein was by a subordinate officer to that of the appointing authority i.e. the Chief Security Officer and is in patent violation of Article 311 (1) of the Constitution. In this view of the matter the removal order dated 5th August, 1982 as well as the appellate order dated 24th

January, 1983, were quashed.

6. The Union of India have come up in the present appeals.

7. In Civil Appeal arising, out of S. L. P. (C) No. 7584 of 1991 the authority has produced before us the original order of appointment of the respondent herein along with 33 others passed by the Assistant Security Officer, N. E. Railway, Lucknow Junction dated 21 February, 1973 whereby the respondent herein, subject to his passing the prescribed training for R. P. F. Rakshaks, and having been found medically fit, was enlisted as Rakshak. In pursuance of this order the respondent had undergone a training and thereafter posted as Rakshak in the Railway Protection Force. The order of removal dated 5th August, 1982 was also passed by the Assistant Security Officer. We. have already noticed the reason for the Allahabad High Court to quash the impugned order of removal.

8. It is common case that there was no specific order of delegation by the Chief Security Officer to the Assistant Security Officer delegating the power to make appointment of Rakshaks and the delegation, in fact; by way of abundant caution was made only in 1974.

9. The decision in both the appeals turns on the scope of Sections 6, 9 and 21 of the Act read with Rule 20 of the Rules. Sections 6, 9 and 21 of the Act provide as under :-

"Section 6 : Appointment of members of the Force - The appointment of members of the Force shall rest with the Chief Security Officers who shall exercise that power in accordance with rules made under this Act.

Provided that the power of appointment under this section may also be exercised by such other superior officer as the Chief Security Officer concerned may by order specify in this behalf.

Section 9 : Dismissal, removal, etc. of members of the Force - (1) Subject to the provisions of Article 311 of the Constitution and to such rules as the Central Government may make under this Act, any superior officer may -

(i) dismiss, suspend or reduce in rank any member of the Force whom he shall think remiss or negligent in the discharge of his duty, or unfit for the same; or

(ii) ... ..

(2) ... ..

Section 21 : Power to make rules -(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for -

(a)... ..

(b) regulating the powers and duties of superior officers and members of the Force authorised to exercise any functions by or under this Act;

(c) ... ..

(d) ... ..

(e) ... ..

(3) All rules made under this section shall be laid for not less than thirty days before both Houses of Parliament as soon as possible after they are made and shall be subject to such modifications as Parliament may make during the session in which they are so laid or the sessions immediately following."

Rule 20 of the Rules provides as follows:-

"Powers of appointment - The powers of superior officers to appoint members of the Force shall be as specified in Schedule I."

Schedule I to the Rules provides thus:

(See Table below)

SCHEDULE 1

(Rule 20)

POWERS OF SUPERIOR OFFICERS TO MAKE APPOINTMENTS TO THE FORCE

Chief Security Officer

Security Officer

Assistant Security Officer

All Members of the Force      Sub-Inspectors, Assistant Sub-Inspectors, Head  
Rakshaks, Senior Rakshaks, Rakshaks      Senior Rakshaks, Rakshaks

10. The argument of learned counsel for the respondent is that the Act confers the power of appointment by virtue of Section 6 of the Act only on the Chief Security Officer and, therefore, the Rules could not provide appointment of any class of employees by any person other than the Chief Security Officer and to the extent Rule 20 read with Schedule I vest power on the Assistant Security Officer to make appointment of Senior Rakshaks and Rakshaks it is ultra vires the Act. If the Rules are valid then the appointing authority of the respondent in both the appeals is the Assistant Security Officer and would also be the authority for removal.

11. So far as Chandra Pal Pandey is concerned, his averment in the suit was that he was appointed by the Assistant Security Officer whereas in respect of Rajendra Singh we have seen the original records which show that he too was appointed by the Assistant Security Officer. Thus the orders of appointment of both the respondents were made by the Assistant Security Officer and so were the orders of removal. If the initial order of appointment itself could not be made by the Assistant Security Officer, the whole appointment would become bad from the very beginning. However, the High Court has taken the view that in view of Section 6 of the Act only the Chief Security Officer has the power of appointment and no one else.

12. A bare reading of the Act, particularly Section 6, will show that the Act contemplates that the "Appointment of members of the Force shall rest with the Chief Security Officer" who is supposed

to exercise powers in accordance with the Rules made under the Act. The proviso to Rule 6 contemplates other authorities being authorised for making the appointment as may be delegated to such officers by the Chief Security Officer. Therefore, there can be no doubt that the Act contemplates appointment of members of the Force not only by the Chief Security Officer but also by others. The question, therefore, arises is, what is the meaning of the expression "appointment of members of the Force shall rest with the Chief Security Officer"? The expression "rest" in this Section conveys the idea of overall control of appointment resting with the Chief Security Officer subject to the provisions of the Rules. As we have stated earlier section 6 of the Act contemplates appointment of the members of the Force by such authorities as may be authorised. The proviso to Section 6 contemplates specifically written order of delegation by the Chief Security Officer but this does not derogate from the power of the rule making authority to confer the said power. The Section and the proviso in our opinion do not rest the power of appointment merely with the Chief Security Officer. What is contemplated is that the Chief Security Officer will have overall control in the matter of appointment and that control be exercised in accordance with the Rules. If the Rules provide for appointment by other superior officers, it cannot be said to be in derogation of the Act or the purposes of the Act.

13. A bare reading of Section 9 of the Act also shows that it is only subject to the provisions of Art. 311 of the Constitution and to such rules as the Central Government may make under the Act, that any superior officer could exercise the powers mentioned in Section 9(1)(i) of the Act. If only the Chief -Security. Officer, who is one of the superior officers, alone have the powers of dismissal on the hypothesis that he alone was competent to appoint members of the Force then Section 9 of the Act would not have been worded in the manner it has been so enacted.

14. It is clear from Section 21 of the Act that the power of the Central Government for making the Rules is for carrying out the purposes of the Act. One of the purposes of the Act surely is recruitment of members of the Force and, therefore, the Rules could provide for the appointing authority so long as it is not in, derogation of the express provisions of the Act. Section 6 does not contemplate that the order of appointment cannot be made by any other person other than the Chief Security Officer.

15. Apart from Section 21(1) of the Act, sub-clause (b) of Section 21(2) of the Act also authorises the Central Government to make Rules in this behalf.

16. We thus hold that Rule 20 is not ultra vires Section 6 of the Act.

17. In this view of the matter we are of the view that since both the contesting respondents in the aforesaid two cases were appointed by the Assistant Security Officer who could also remove them and, therefore, their dismissals have not been in violation of Art. 311 of the Constitution of India or the Act.

18. The result is that both the appeals are allowed. The orders of dismissal of the respondent in both the appeals are upheld and the respective suit/ writ petition are dismissed. Parties are left to bear their own costs. Appeals allowed.

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