

RAJASTHAN HIGH COURT

Sudarshanlal Bajaj

Vs.

S.P. Agarwala

Civil Writ Petn. No. 397 of 1963
(D.S. Dave, C.J. and Kan Singh, J.)

05.01.1965

JUDGMENT

D.S. Dave, C.J.

1. This is a writ application by Sudarshanlal Bajaj under Article 226 of the Constitution of India challenging the validity of an order dated 6th May, 1963, passed by the Divisional Operating Superintendent, Western Railway, stationed at Jaipur, whereby the petitioner was reduced from the post of Assistant Station Master to that of the Traffic Signaller for two years with future effect from 9th May, 1963.

2. The petitioner's case is that he was Assistant Station Master at the Dausa railway station in the year 1962. On the midnight of 30th and 31st July, 1962, there was an incident of an averted collision at about 1-25 a.m. on Line No. 3 in front of Dausa railway station between 872 Down goods-train entering Dausa station and 5 Up Express Passenger-train entering the same station from the opposite direction. The charge against the petitioner was that he was responsible for violating certain orders at the time of reception of 5 Up and thereby endangered the safety of the travelling public, as he gave permission for lowering of signals for road (Line No. 3) which was occupied by 872 Down goods train. There would have been collision between the two trains, but it was averted as 5 Up stopped 408 feet and 6 inches short of engine of 872 Down. The petitioner denied the charge, but he was held guilty and punished as mentioned above.

3. Although a number of grounds were taken in the writ application, learned counsel for the petitioner has pressed only two grounds at the time of the arguments before this Court.

4. The first ground on which the impugned order dated 6th May, 1963 has been assailed is, that the Divisional Operating Superintendent had no authority to impose penalty of reducing the petitioner to a lower rank, as the petitioner was appointed by the General Manager and he alone was competent to inflict this punishment.

5. The next ground raised by learned counsel is that the inquiring officer (Shri S.N. Shukla) who was appointed by the Disciplinary Authority, was a railway employee of Class III and that the enquiry could be conducted only by a Committee consisting of at least two gazetted officers or at least two senior class II officers.

6. The writ petition has been contested by Shri M.D. Bhargava appearing for the respondents. It is urged that the petitioner was not initially appointed by the General Manager, but by the District Traffic Superintendent and that the Divisional Operating Superintendent held a post equivalent to that of the District Traffic Superintendent. He was, therefore, authorised to impose the penalty awarded to the petitioner.

7. With regard to the second objection it is contended that, according to Rule 1710 of the Indian Railway Establishment Code, Volume I, hereinafter to be referred as the 'Code', it was not necessary for the Disciplinary Authority to appoint a Committee or a Board of Inquiry consisting of more than one person. It is pointed out that, according to the said Rule, it was open to the Disciplinary Authority to inquire into the charges itself or, if it considered necessary, it could appoint an inquiring officer for the purpose. According to learned counsel, Shri S.N. Shukla was a properly appointed inquiring officer and no violation of the Rule was committed.

8. It would now be proper to take up the first objection first.

9. Learned counsel for the petitioner has not been able to place on record the first appointment order of the petitioner. He says that he could not produce the appointment order since it was never issued to his client. Learned counsel for the respondents also has not been able to lay his hands on the petitioner's appointment order. He has, however, placed on record a true copy of the service-sheet of the petitioner, which shows that he was initially appointed temporarily as a signaller by a wire of the District Traffic Superintendent. He has also shown to us the personal file of the petitioner and pointed out that in the year 1958 also he was reduced in rank to a lower scale for six months by the Divisional Operating Superintendent. He has further

referred to an official publication entitled "Western Railway Schedule of Powers delegated by the General Manager to Heads of Departments and other officials" published in the year 1958. The relevant entry on which he relies and which appears at pages 12 and 13 of the book, is as follows :

S. No.....3	
Nature of Powers	Appointment to Non-gazetted posts.
Extent to which powers are delegated to Heads of Departments	Full powers to Heads of Departments to make initial appointments to sanctioned Non-Gazetted posts in their respective Departments, subject to the following conditions. DGMP will function as Head of Department in this respect for the Personnel Department and Railway Schools.
Extent to which powers are delegated to Divisional Superintendents and Deputy Heads of Departments	The DSs/Dy. Heads of Departments/Dy. CAO (G)/Dy. CAO (TA), AII/DFA/Dy, CAO (S and C) are also delegated powers to make initial appointments to all Non-gazetted posts in their respective establishments
Extent to which powers are delegated to Senior Scale Officers and Assistant Officers, etc.	...
Remarks	

Now, in the absence of an appointment order, there is no alternative for this Court except to rely upon the service-sheet produced by the respondents. From the perusal of the service-sheet, it appears that the petitioner was initially appointed not by the General Manager, but by the District Traffic Superintendent. It is stated on behalf of the respondent that after the merger of B. B. and C. I. railway into what is now known as the Western Railway and after the introduction of the divisional system of administration, the railway areas were divided into divisions instead of districts. Accordingly, the post and functions of the District Traffic Superintendent were split up

into the following three posts in the senior scale of pay :

1. Divisional Operating Superintendent (DOS)
2. Divisional Commercial Superintendent (DCS)
3. Divisional Personnel Officer (DPO)

In other words, the post of District Traffic Superintendent of B. B. and C. I. railway is now equated with the Divisional Operating Superintendent. This position is not contested on behalf of the petitioner. Learned counsel for the respondents has placed before the Court, Government publication entitled "Western Railway Introduction of the Divisional system". A perusal of this book shows that from the year 1956 onwards divisional system was introduced and the Divisional Operating Superintendent came in place of the District Traffic Superintendent for performing certain functions. It appears that this was the reason why the Divisional Operating Superintendent was able to punish the petitioner even in the year 1958. The petitioner has not shown if the authority of the Divisional Operating Superintendent to punish him at that time was challenged.

10. The entry in the book entitled 'Schedule of Powers', noted above, also shows that the Divisional Superintendents, Deputy Heads of Departments and other officials mentioned in the said entry were delegated powers to make initial appointments to non-gazetted posts in their respective departments. There is thus no force in the petitioner's argument that the Divisional Operating Superintendent was an officer lower in rank to the District Traffic Superintendent who had originally appointed him.

11. It may be further pointed out that under Schedule II read with Rule 1705 of the Code, disciplinary powers have been given to different grades of railway officers. The power to inflict punishment of reduction to a lower stage in the time-scale in respect of Class IV Staff, Artisans and Class III Staff has been given to Senior Scale Officers and Assistant Officers (Junior Scale and Class II Officers) holding in dependent charge. It is not disputed that the Divisional Operating Superintendent is a Senior Scale Officer and according to this Schedule, he had the authority to award penalty of reduction to a lower stage in the time-scale to the petitioner who was a member of Class III Staff.

12. It is urged by learned counsel for the petitioner that the Divisional Operating Superintendent had no power to remove the petitioner from service and since the charge-sheet dated 24th September, 1962 given to him was to show cause against his

dismissal from service; the entire proceedings from that date became invalid. This argument also does not appear to be tenable in view of the definition of the term 'Disciplinary Authority' given in Rule 1702 of the Code. The term 'Disciplinary Authority' has been defined therein as follows :

"Rule 1702 -

(i)

(ii) 'Disciplinary Authority', in relation to the imposition of penalty on a Railway servant means, the authority competent to impose on him that penalty, provided that for imposing penalties of compulsory retirement, removal or dismissal that authority shall be the 'Appointing Authority', and in relation to the issue of charge-sheets, etc., under Rules 1709 to 1712 and 1716 means, any authority competent to impose any of the penalties specified in Rule 1707."

It would appear from the said definition of the term 'Disciplinary Authority' that it consists of two parts. The first part, which is in relation to the imposition of penalty on a railway servant, shows that for this purpose, namely, for the purpose of imposition or penalty, Disciplinary Authority means the authority competent to impose on him that penalty. To this, there is an exception, which is embodied in the proviso and it lays down that if penalties of compulsory retirement, removal or dismissal are to be inflicted, then the Disciplinary Authority shall be the appointing authority.

13. In the second part, which is in relation to the issue of charge-sheets etc. under Rules 1709 to 1712 and 1716, the term 'Disciplinary Authority' means an authority competent to impose any of the penalties specified in Rule 1707.

14. Now, it may be pointed out that Rule 1707(i) mentions seven kinds of penalties of which those specified in clauses (iv) to (vii) have been termed as major penalties in contradistinction to the rest which may be called minor penalties. The definition of the term 'Disciplinary Authority' shows that, any authority, which is competent to inflict any of the penalties whether it is a major penalty or a minor penalty, is competent to issue a charge-sheet. But for imposing a penalty, only that Disciplinary Authority would be competent which has been authorized by law for that purpose. In other words, an authority which is competent to impose only a minor penalty, cannot impose a major penalty, though it is competent to issue a charge-sheet. For awarding the punishments of compulsory retirement, dismissal or removal, Disciplinary Authority would be Appointing Authority. It is not disputed before us that the Divisional

Operating Superintendent could impose upon the petitioner penalties other than those of dismissal, removal and compulsory retirement. He, therefore, did possess the authority to frame a charge-sheet against the petitioner. It has already been noted above that it further possesses the power to reduce him to a lower post in the time-scale. There is thus no force in the first contention raised by learned counsel for the petitioner.

15. As regards the second contention, learned counsel for the petitioner has placed his reliance on the supplementary instructions published at page 1094 of Sanjiva Row's Indian Railways Act, 3rd Edition, Vol. II. It is doubtful if these supplementary instructions, which seem to have been given with reference to Rules 1707 and 1730, have any statutory force, because they seem to have been issued only for the guidance of the officers. The instructions cannot add to or subtract from the provisions of law embodied in the statutory rules themselves. It may be pointed out that Rule 1710 runs as follows :

"Rule 1710 - Appointment of Board of Inquiry or Inquiring Officer - The Disciplinary Authority may enquire into the charges itself or, if it considers necessary, it may, either at the time of communicating the charges to the railway servant under Rule 1709 or at any time thereafter, appoint a Board of Inquiry or an Inquiring Officer for the purpose, which will be termed as the 'Inquiring Authority'."

16. It would appear from the plain language of the said. Rule that, according to it, the Disciplinary Authority may inquire into the charges itself or, if it considers necessary, it may, either at the time of communicating the charges to the railway servant or at any time thereafter, appoint a Board of Inquiry or an Inquiring Officer for that purpose. It is clear that it is left to the discretion of the Disciplinary Authority to appoint a Board of Inquiry or an Inquiring Officer as it thinks proper. It is not obligatory for the Disciplinary Authority to appoint a Board of Inquiry in every case. The appointment of Shri S.N. Shukla alone as an Inquiring Officer cannot, therefore, be said to be wrong in terms of this Rule.

17. It is averred on behalf of the respondents in their reply and it is not contradicted by the petitioner that Shri S.N. Shukla was holding a post superior to the one which was held by the petitioner. Shri Shukla was Divisional Traffic Inspector in the grade of

Rupees 300 to 400 while the petitioner was only an Assistant Station Master in the grade of Rs. 80 to 170 (PS), that is, Rs. 130 to 225 (AS). The post of Assistant Station Master was thus definitely inferior to that of the Divisional Traffic Inspector and it cannot be urged with any justification that the latter was an officer of the same status as that of the petitioner, simply because he was also an officer of Class III. It may be pointed out that amongst Class III officers, there are a number of grades and even in the clarification, which has been made by the Railway Board under its letter No. E (D and A)/ 62/RG-19 dated 10th April, 1962, appearing under Rule 1710, the only instruction is that an Inquiring Officer should always be of a rank higher than that of the accused. In other words, it is not noted that he must be an officer of the higher class. The Divisional Traffic Inspector was an officer of a rank higher than that of the petitioner and thus, there is no force in the second contention as well.

18. The result is that the writ petition fails and it is hereby dismissed. In the circumstances of the case, the parties are left to bear their own costs.

Petition dismissed.