
(1990) 08 BOM CK 0005
In the Bombay High Court
Case No : Writ Petition No. 1489 of 1983

Bhimrao F. Patil

APPELLANT

Vs

Chief Security Officer, Western Railway and Another

RESPONDENT

Date of Decision : 21-08-1990

Acts Referred:

Railway Protection Force Act, 1957 — Section 21, 6, 9
Railway Protection Force Rules, 1959 — Rule 20

Citation : (1991) 1 BomCR 483 : (1990) 92 BOMLR 459

Hon'ble Judges : S.M. Dadu, J

Bench : Single Bench

Advocate : G.K. Masand, for the Appellant; S.I. Shah, for the Respondent

Final Decision : Allowed

Judgement

S.M. Dadu, J.—Petitioner, a Rakshak under the Railway Protection Force Act, 1957, hereinafter referred to as "the Act", takes exception to an order dated 24th August 1980 removing him from service passed by the Security Officer.

2. Section 5 of the said Act lays down the classes of Officers and other ranks constituting the Railway Protection Force. Head Rakshak, Senior Rakshak and Rakshak are the three classes of ranks other than Officers of the Force. Section 6 lays down that the appointment of the members of the force shall vest in the Chief. Security Officer who shall exercise that power in accordance with the rules made under the Act. The proviso to section 6 enables the Chief Security Officer by an order to delegate the power of appointment to such other Officer as he may specify in this behalf. Rules have been framed under the Act vide the rule-making power given by section 21 of the Act. These rules are known as the Railway Protection Force Rules, 1959. Rule 20 lays down that the Superior Officers shall have the power of appointment as specified in Schedule I. The first Schedule gives the power of appointment to the Inspector General, the Chief Security Officer, the Security Officer and the Assistant Security Officer. Nothing has been brought to my notice to indicate that the Security Officer and the

Assistant Security Officer have been delegated the power as required by the proviso to section 6 of the Act. One of the penalties impossible upon a member of the force is removal from office. It is in the background of these statutory provisions that the petition has to be decided.

3. Petitioner was appointed as Rakshak in 1971, his letter of appointment having been signed by the Assistant Security Officer. In the course of his career, the petitioner came to be posted at Parel Workshop in the year 1973. On the night between 19 and 20th October 1975, the petitioner was on night duty expected to keep guard at a water tank. Vasant and Anant Sangle also being Rakshaks were posted at different points on the same night at the Parel Workshop. At about 4.00 a.m. sub-Inspector Chaudhary and Head Rakshak Shankar Bhiku were taking a round. They noticed the petitioner, Vasant and Anant engaged in removing insultation covers of burnt copper wires. Sighting the sub-Inspector and the Head Rakshak, the three took to their heels. Vasant and Anant managed to stage a get-away, but the petitioner was apprehended. Chaudhary and Bhiku collected the material objects and marched the petitioner to the office of the RPF. Word of the incident having been given to Inspector Coutinho, he came down from his residence to the RPF station. Chaudhary gave his report and Coutinho found nothing of an incriminating nature against the petitioner.

4. Some three years later, the Vigilance Department started looking into the allegations levelled by Chaudhary against the petitioner, Vasant and Anant. It was decided to hold a departmental enquiry against the three of them. Insofar as the petitioner is concerned, the witnesses examined at the enquiry against him included Chaudhary, Shankar Bhiku, Coutinho and Harishchandra Sahane. The Enquiry Officer who was of the rank of an Inspector came to the conclusion that the misconduct attributed to the petitioner stood proved. The papers were then placed before the Security Officer who while agreeing with the conclusion recorded by the Enquiry Officer, held that the misconduct established, warranted removal of the petitioner from service. On 14th March 1980, a show-cause notice was given to the petitioner against the finding of guilt as also the proposed punishment. Petitioner in his reply took exception to both. The Security Officer adhered to his earlier view and passed an order of removal. This order of removal dated 25th April 1980 was assailed in an appeal to the Chief Security Officer by the petitioner. The Chief Security Officer on 23rd July 1980 rejected the appeal holding that there was good ground to uphold the order passed by the Security Officer. This has brought the petitioner to the writ Court.

5. Petitioner challenges the removal on two grounds. It is contended that no person versed in law could have reached the conclusion arrived at by the Security Officer and the Chief Security Officer. The Chief Security Officer erred in upholding the finding of guilt recorded against the petitioner. In fact the Security Officer and the Chief Security Officer had done nothing more than to give their unreasoned concurrence to the course suggested by the Enquiry Officer. This apart, the petitioner had been deprived of valuable documents by Mr. Morris who

was acting as his next friend in the enquiry and who apparently had colluded with the Senior Officers of the RPF to get him removed from service. The authorities had refused to supply him copies of the required documents though he had offered to pay for the same. Not being in custody of the required documents, he had been seriously disabled in the matter of making an effective representation against the adverse findings recorded against him. Secondly, the order of removal was ultra vires the Act inasmuch as the Security Officer was not authorised by the Chief Security Officer to make the appointment and consequently an order of removal.

6. Respondents in their return justified the finding recorded by the Enquiry Officer, the order of removal passed by the Security Officer and also the rejection of the appeal by the Chief Security Officer. They deny that the order of removal suffers from any legal infirmities.

7. Having regard to the petition being capable of being decided on the basis of the incapacity attending to the order of removal, I do not see any need to go into the other contentions raised by the petitioner. As said earlier, section 6 of the Act vests in the Chief Security Officer the power of appointing members of the force. Section 5 specifies the classes and ranks which make the force broadly divided into officers and other ranks. The proviso to section 6 enables the Chief Security Officer to delegate the power of appointing members to the force. But this has to be done by an order made in this behalf by him. Respondents have not been able to produce any order to show that the Chief Security Officer has empowered either the Security Officer or the Assistant Security Officer to make appointments to the force, whether of officers or of other ranks. Miss Shah for the respondents relies upon the RPF Rules of 1959. As said earlier, Rule 20 details the powers of appointment vested in Officers of different ranks such as the Inspector General, Chief Security Officer, Security Officer and the Assistant Security Officer. Mr. Masand contends that Rule 20 read together with the Schedule is ultra vires section 6 of the Act to the extent that it permits the Security Officer and the Assistant Security Officer to make appointments without there being a delegation of power as required by the proviso to section 6 of the Act. This contention must be upheld. The rule making power flows from section 21 of the Act and this section is for the purpose of making the rules to carry out the purpose of the Act. The rules made cannot be in contravention of the Act. If the proviso to section 6 requires an order of the Chief-Security Officer delegating powers to the Security Officer and the Assistant Security Officer, the rule making power cannot dispense with the delegation required by the Act. To the extent, Rule 20 r/w. Schedule I empowers the Security Officer and the Assistant Security Officer to make appointments without the delegation contemplated by the proviso to section 6 of the Act, the said rule together with the specifications in Schedule I are ultra vires. Miss Shah however argues that the petitioner was appointed by an Assistant Security Officer and therefore, there is no error in the order of removal which is under the signature of a Security Officer. The infirmities in the order of appointment cannot get over by the illegality attached to the

order of removal. Section 9 of the Act which governs the dismissal and removal etc. of the members of the force makes it clear that the power conferred therein is subject to the provisions of Article 311 as also such rules as may be made by the Central Government. Though the rules permit the Security Officer and the Assistant Security Officer to pass an order of removal vis-a-vis Rakshaks, those rules to the extent they did not comply with the requirements of the proviso to section 6, are invalid. Therefore, the enabling power given by the rules is of no assistance to the respondents. It is not necessary to say anything more on the subject and hence the order :--

ORDER

The petition is allowed. The order of removal of the petitioner is declared to be illegal and ultra vires. Rule made absolute in terms of prayers (a) & (b) to the petition. Costs as incurred. Miss Shah applies for staying the operation of the order for a period of 4 weeks as from today. Request acceded to.