
(1966) 09 RAJ CK 0006
In the Rajasthan High Court
Case No : Civil Writ Petition No. 73 of 1966

Chhatar Singh

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-09-1966

Acts Referred:

Constitution of India, 1950 — Article 311(2), 52, 53, 74, 77
General Clauses Act, 1897 — Section 3(23), 3(8)
Government of India (Allocation of Business) Rules, 1961 — Rule 2

Citation : AIR 1967 Raj 194 : (1968) 1 LLJ 483 : (1967) RLW 164

Hon'ble Judges : D.S. Dave, C.J; Kan Singh, J

Bench : Division Bench

Advocate : Chandmal Lodha, for the Appellant; L.R. Bhansali and M.M. Vyas, for the Respondent

Final Decision : Dismissed

Judgement

Kan Singh, J.—This is a writ petition under Article 226 of the Constitution by one Shri Chhatar Singh who was an Assistant Engineer in the Northern Railway and by it he seeks to challenge the order of his removal from service (Ex. 12) purporting to have been passed by the President in exercise of his powers under Article 311(2)(c) of the Constitution of India after dispensing with the holding of an enquiry against the petitioner. The case set up by the petitioner in his writ petition is briefly this:

2. The petitioner was an Assistant Engineer in the Civil Engineering Department of the Northern Railway and was posted at Jodhpur during the year 1965. On 9-9-1965, he was asked by the Divisional Engineer (East), Northern Railway, Jodhpur at about 5-00 P. M. to proceed to Banner immediately by the first available train leaving Jodhpur at 10.25 P. M. In pursuance of this order, the petitioner says, he booked his carriage but, as his wife suddenly fell ill on account of a nervous break down, he had to stay with her as, according to him, there was no adult member who could attend on his wife. The petitioner goes on

to say that on account of this unforeseen difficulty developing in his path he informed the Divisional Engineer on phone about the serious illness of his wife and conveyed to him that it would not be possible for the petitioner to leave for Banner that night, but he would go there the following morning.

The petitioner submits that on the morning of 10-9-05, as the condition of his wife had not improved, he applied for four days' casual leave to the Divisional Engineer. The Divisional Engineer, however, declined to sanction the leave and he conveyed to the petitioner, that he had been booked off duty by the Divisional Superintendent. He also received a letter from the Divisional Superintendent intimating him that for disobeying orders he had been put off duty. On 13-9-65, the petitioner received an order of the General Manager, Northern Railway, that he had been put under suspension from 10-9-65. Thereafter the petitioner was served with a charge sheet and disciplinary proceedings were commenced against him in respect of the petitioner's having failed to carry out the orders given to him by the Divisional Engineer on 9-9-65 to proceed to Banner immediately. The petitioner submitted his reply and asked for copies of some documents. While the enquiry proceedings were continuing against the petitioner, he received the order (Ex. 12) dated 15-1-66 purporting to have been passed by the President that he had been removed from service, with effect from 22-1-66. The petitioner challenges the validity of this order principally on the following three grounds:--

(1) That the enquiry that was going on against him was almost nipped in the bud and he was visited with the order Ex. 12. This order, according to the petitioner, was bad because, the petitioner's case was never put up before the President, nor was the order passed after the President had satisfied himself personally that it was in the interest of the security of the State that the enquiry be not held into the charges levelled against the petitioner. It is also urged that the action of the respondents was mala fide. :

(2) That the President could not delegate his powers under Article 311(2)(c) of the Constitution to any Minister by rules of business or otherwise and, according to the petitioner, in fact there was no such delegation.

(3) That in the facts and circumstances of the case there was no case for the applicability of Article 311(2)(c) of the Constitution because, according to the petitioner, the enquiry into his case had no connection with the security of the State.

3. The writ petition has been opposed by the respondents. It is denied by them that it was necessary under the law to put up the case of the petitioner to the President himself, nor was it necessary that the President should have been personally satisfied of the necessity of the action. They further denied that the action taken against the petitioner was mala fide. It is urged that the order has been issued in the name of the President and it was properly authenticated by an officer who was empowered to authenticate the orders of the President. The

order they claim thus fully conformed to the requirements of Article 77 of the Constitution. As such it is urged that it is not open to the petitioner to contend that this was not an order passed by the President. The respondents further submit that the case was dealt with according to the rules of business of the Government of India and as all matters relating to Railways have been allocated to the Railway Ministry which has been designated as the Railway Board, the case could be finally disposed of by the Minister of Railways.

It is stated that the case was, in fact, submitted to the Minister for Railways who was personally satisfied that it was not expedient in the interest of the security of the State to hold the enquiry against the petitioner. It is thus submitted that the satisfaction of the competent authority, that is, the Minister incharge was sufficient for the purposes of Article 311(2)(c) of the Constitution and the order being in proper form its validity cannot be questioned. It is denied that the facts and circumstances disclosed in the petitioner's case and which necessitated the dispensing with the formal disciplinary enquiry had no connection with the security of the State.

It is stated that the territory of India was under invasion from Pakistan during September, 1965, and as a result of enemy action at Gadra Road one Shri Bansal, Assistant Engineer (West) had received injuries and it was, therefore, imperative to have another Assistant Engineer in his place to supervise all engineer work in connection with the damage caused by enemy action and saboteurs. Shri Chhattar Singh who was available at Jodhpur was, therefore, immediately asked to leave for Barmer by the first available train, but on the last minute he refused to go on the plea of his wife's sickness. It was felt by the respondents that if during an emergency of a magnitude that was faced by the country the disobedience of orders on the part of officers were tolerated, then the same was bound to shake the morale of the subordinate staff working under them.

It is submitted that the enquiry into the case of the petitioner would have involved a detailed investigation about bombardment of the trains and other damage caused to the rolling stock as a result of enemy action. Going into the details would not according to the respondents, have been in the interest of the security of the State. Lastly it is urged that the decision of the President or for that matter that of the competent authority was not justiciable, as the satisfaction that is contemplated under Article 311(2)(c) of the Constitution is not made subject to any condition.

4. It will be apparent from the rival contentions, set out above, that the only question that falls for our determination is whether the order Ex. 12 is not a valid one. It is reproduced hereunder :--

"GOVERNMENT OF INDIA

MINISTRY OF RAILWAYS

(RAILWAY BOARD)

No. NS/RB/3.

New Delhi-1, Dated 15th Jan. 1966.

ORDER:

The President is satisfied that the retention of Shri Chattar Singh, Assistant Engineer, Northern Railway Jodhpur, in service is prejudicial to National security and that the said Shri Chattar Singh ought to be removed from service.

(2) The President is further satisfied under Sub-clause (c) of the proviso to Clause (2) of Article 311 of the Constitution that in the interest of the security of the State, it is not expedient to hold an enquiry in the case of the said Shri Chattar Singh.

(3) Accordingly, the President hereby removes the said Shri Chattar Singh from service with effect from the 22nd January, 1966.

By order and in the name of the

President of India.

Sd/- P. B. Jain

15-1-66,

(P. B. Jain)

Deputy Director, Railway Board."

The order has been issued in the name of the President of India and has been authenticated by a Deputy Director of the Railway Board. In accordance with S. O. No. 2297 dated 3rd November, 1958, made by the President regarding the authentication of orders and other instruments, in exercise of his powers under Clause (2) of Article 77 of the Constitution, in the case of orders and other instruments in the Ministry of Railway a Secretary, Additional Secretary, Joint Secretary, Deputy Secretary, under Secretary or Assistant Secretary or a Director or a Joint Director or Deputy Director or Assistant Director of the Railway Board was authorised to authenticate the orders of the President.

The order Ex-12, having been authenticated by a Deputy Director of the Railway Board is thus properly authenticated according to Article 77 of the Constitution. Article 77(2) inter alia provides that the validity of an order or instrument which is properly authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President. To our mind, it is, therefore, not open to the petitioner to argue that this is not the order of the President. Nor do we find any substance in the petitioner's contention that the satisfaction that is contemplated for such an order was required to be the personal satisfaction of the President.

5. In AIR 1945 156 (Privy Council) in dealing with an order issued under the then Defence of India Rules where it was only the Additional Home Secretary who dealt with the matter and the case had in fact not gone to the Governor, but it was noted in the order that was issued under Rule 26 of the Defence of India Rules that the Governor was satisfied, their Lordships of the Privy Council held that the Governor need not be personally satisfied as to the matters set out in Rule 26 of the Defence of India Rules and there was no ground to exclude the ordinary methods by which the Government's executive business was carried on.

Mr. Lodha, learned counsel for the petitioner, realising the weight of this decision submitted that where the law provides for a particular matter to be dealt with by the Government as such the same could be dealt with according to the business rules and if a Government order has been issued in the proper form in the name of the President or the Governor, as the case may be, then the same cannot be questioned on the ground that it is not the order of the President or the Governor, but he maintains, that the validity of that order is still open to question on other grounds. Mr. Lodha is right in saying that the Government order, though issued in proper form in the name of the President or the Governor and duly authenticated can still be questioned on grounds other than that about the authorship of the order but, as held by their Lordships of the Privy Council in AIR 1945 156 (Privy Council) referred to above, there will be a presumption about the correctness of the recitals contained in the order relating to the carrying out of the conditions necessary to the valid making of the order. The presence of the recitals in the order will place a difficult burden on the person who wants to challenge their correctness.

The order Ex. 12 recites in clear terms (1) that the President was satisfied that the retention of Shri Chattar Singh, Assistant Engineer, Northern Railway in Jodhpur was prejudicial to national security; and (2) that in the interest of the security of the State it was not expedient to hold an enquiry in the case of Shri Chattar Singh. We have already held that the personal satisfaction of the President was not necessary. All that was necessary to see in the circumstances was whether the case had been dealt with according to the business rules. Our attention was invited by learned counsel for the respondents to S. O, 196 entitled Government of India (Allocation of Business), Rules 1961 made by the President in exercise of his powers under Clause (3) of Article 77 of the Constitution. Rule 2 thereof provides that the business of the Government shall be transacted in the Ministries Departments Secretariat and offices specified in the first schedule of these Rules (all of which are to be referred as the "Departments" in these rules). The following matters have been allocated to the Ministry of Railway (Railway Board) pertaining to Government Railways :--

"All matters, including those relating to the Railways revenues and expenditure but excluding Railway Inspectorate and Railway Audit."

6. It is clear from this that all matters relating to Railways have been allocated to the Ministry of Railways and we have no doubt that a question regarding the

removal of a Railway employee falls within the ambit of this allocation. Thus, we have no doubt in our mind that the petitioner's case could be dealt with in the Ministry of Railways. We have also no doubt that, as is evident from the affidavit of the respondents, the case was dealt with by the Minister of Railways according to the business rules and it was only when the Minister was satisfied that the retention of Shri Chattar Singh in service was prejudicial to national security and that holding of an enquiry was inexpedient in the interests of national security that the order Ex. 12 was passed. We are, therefore, satisfied that the disposal of the matter by the Railway Minister was in order and it was not necessary that the President should have been personally satisfied about the desirability of retention in service of the petitioner or about the non-holding of the enquiry.

7. We may now consider the contention of Mr. Lodha whether the action that is contemplated in Article 311(2)(c) is something different from the executive business of the Government so that it cannot be dealt with under the business rules and it is the President who alone has to deal with the matter personally. The Constitution that the people of India have given unto themselves is democratic in character. It has established a Sovereign Democratic Republic. According to the democratic structure envisaged thereunder there is distribution of powers between the three limbs of the State namely, the Executive, the Judiciary and the Legislature. Article 52 of the Constitution which occurs in Chapter I headed as the "Executive" states that there shall be a President of India. Article 53 provides that the Executive power of the Union shall be vested in the President and shall be exercised by him, either directly, or through officers subordinate to him, in accordance with this Constitution.

Article 74 provides that there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. It also lays down that the question whether any and if so, what advice was tendered by the Ministers to the President, shall not be enquired into in any Court. Unlike what was laid down in the Government of India Act, 1935, in relation to the functions of the Governor of a Province, the Council of Ministers under Article 74 is to aid and advise the President in the exercise of his functions without any exception and this means the various functions of the President as the Chief Executive Functionary of the Union and it will undoubtedly include, in our view, the President's function under Article 311 of the Constitution. Under Article 77(3) the President is required to make rules for the more convenient transaction of the business of the Government of India and for the allocation among Ministers of the said business. The expression "business of the Government of India" occurring in this Article is comprehensive enough to include the exercise of executive power of the Union including the functions under Article 311 of the Constitution.

8. Their Lordships of the Supreme Court had occasion to point out in *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, as to what is comprehended within the expression "executive power" of the State. They laid

down that "ordinarily executive power connotes the residue of Governmental functions that remain after legislative and judicial functions are taken away, subject of course, to the provisions of the constitution or of any law." Though their Lordships have observed that it may not be possible- to frame an exhaustive definition of what the term "executive function" means and implies yet, by and large, according to their Lordships "executive function" comprised both "the determination of the policy as well as carrying it into execution, the maintenance of order, promotion of general and economic welfare, the direction of foreign policy, in fact, the carrying of and supervision of the general administration of the State." In adopting this definition their Lordships discarded the narrow meaning given to the term "executive function" by some political writers that it means only execution of laws. Thus, in our view, matters dealt with under Article 311 could be disposed of in the manner contemplated by Article 77 of the Constitution which deals with the conduct of Government business and, to our mind, the expression "Government business" will mean in the generic sense the exercise of the executive authority of the Union and this will certainly comprise the discharge of the executive function of the President under Article 311 of the Constitution.

9. The term "President" cannot be divorced from the expression "Government of India" occurring in Article 77. In the first instance, General Clauses Act, 1897, has been made applicable for the interpretation of the Constitution and the term "Government" thereunder means the President in relation to Union affairs. Apart from this, in the democratic set up which has been brought about, the Council of Ministers is comprehensively and commonly referred as the Government, with President as the constitutional head who is bound to accept the advice of his Ministers. In this regard we may make a reference to the judgment of their Lordships of the Supreme Court in *P. Joseph John Vs. The State of Travancore-Cochin*, where dealing with the Government of the Travancore-Cochin State their Lordships observed that the term "Government" meant the Council of Ministers under the democratic set up and the Rajpramukh was only a constitutional head and was bound to accept the advice of his Ministers.

10. We may now refer to *Narendra N. Das Vs. State of West Bengal*, cited by learned counsel for the respondents. The learned Judge dealing with almost an identical question, as has arisen before us, observed as follows :--

"The satisfaction contemplated in proviso (c) to Clause (2) of Article 311 to the effect that in the interest of security of the State it is not expedient to give any opportunity to a Government servant to show cause against any disciplinary action intended to be taken against him is not the personal satisfaction of the Governor. The "satisfaction" contemplated is the satisfaction of the Government. Security of the State is the most essential executive act of the State and as such is a matter which is a responsibility not of the Governor but that of the Government. Deprivation of an opportunity to a Government servant to show cause against any disciplinary action to be taken against him is clearly an act of

and in relation to the security of the State. Such an act cannot but be the responsibility of the Government and not the personal responsibility of the Governor.

The order dismissing a Government servant under Article 311 issued in the name, of the Government and duly authenticated by a Secretary of the Government in such a case is in compliance with Article 166(2)."

This view accords with our own.

11. We may now turn to the question whether in the circumstances of the case the President was justified in dispensing with the enquiry against the petitioner. Now the satisfaction contemplated by Article 311(2)(c) is the subjective satisfaction of the competent authority. In other words, it is the satisfaction of that authority about the retention of the employee in service being prejudicial to national security or whether it is about the expediency of the dispensing with the enquiry in the interest of the security of the State. It is common knowledge that Jodhpur region had to pass through difficult times during the period 6th September to 23rd September, 1965. Bombardment of Jodhpur by air commenced about the 3th of September, 1965 and it continued upto the 22nd of September, 1965. These are facts of which we can take judicial notice. It is also common knowledge that Gadra Road was subjected to enemy action during the period. It was during such an emergency that the petitioner was asked to proceed to Barmer and the fact is that he did not do so for one reason or the other. As such we find ourselves unable to hold that enquiry into the fault, if any, on the part of the petitioner had no reasonable connection with the security of India.

12. We are, therefore, unable to go into that question about the sufficiency of the data on which the competent authority felt satisfied; about the necessity of passing an order Under Article 311(2)(c) against the petitioner, Ever since the House of Lords decided *Liversidge v. Anderson* 1942 AC 206 it has consistently been held in India also that the state of a person's mind cannot be determined by the objective test and as long as the competent authority acts in good faith its satisfaction cannot be enquired into in a Court of law. We may only mention the latest case that was brought to our notice at the bar namely, *Mohammad Azam v. State of Hyderabad (Now Andhra Pradesh)* AIR 1958 A P 619 which has reviewed the previous authorities beginning from 1942 AC 206. As pointed out in that case, the only ground on which the order can thus be challenged is on the basis of mala fides on the part of the authority, because if mala fides are there the competent authority, cannot be said to have honestly satisfied itself about the necessity of passing The order.

13. The petitioner has only made a vague allegation about mala fides on the part of the respondents. He has, however, not stated who was that person that was animated by ill will or bad faith towards him and, in our view, there is no substance whatsoever in this plea.

14. Having considered the matter we are not satisfied that the order Ex. 12 suffers from any flaw. The writ petition is, therefore, hereby dismissed, but in the circumstances of the case we leave the parties to bear their own costs.