
(1975) 01 RAJ CK 0012

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2220 of 1970

Hari Shanker Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-01-1975

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1975) 8 WLN 100

Hon'ble Judges : D.P. Gupta, J

Bench : Single Bench

Judgement

D.P. Gupta, J.—The petitioner was first appointed as a clerk on a temporary basis in the office of the Divisions 1 Superintendent, Western Railway, Ajmer, on June 11, 1956. In 1957, he was declared surplus and was absorbed by transfer in the office of the Deputy Chief Accounts Officer. Thereafter, by the order of the Deputy Chief Accounts Officer, Western Railway, Ajmer dated December 29, 1961, the petitioner was provisionally confirmed with effect from January 20, 1958. Subsequently, vide order dated December 26 1969, the Deputy Chief Accounts Officer (T.A.), Ajmer, informed the Divisional, al Personnel Officer, Ajmer that the provisional date of confirmation of the petitioner i.e. January 20, 1958 has been treated as the final date of his confirmation as clerk grade II (Rs. 110-180).

2. It appears that side order dated April 18, 1968, the Divisional Mechanical Engineer (Diesel), Abu Road (hereinafter referred to as "the DME"; placed the petitioner under suspension. At that time, the petitioner was working as a clerk in the diesel shed of the Western Railway at Abu Road On May 3, 1968, the DME served a charge sheet upon the petitioner, along with a statement of allegations, An enquiry was conducted by the Assistant Electrical Engineer (Diesel), Abu Rood, in respect of the charge levelled against the petitioner and the aforesaid Enquiry Officer submitted his report on June 11, 1669, The DME thereafter served a notice upon the petitioner on June 17, 1969 calling upon him to show cause why he should not be removed from service On July 11, 1969, the DME

passed an order of removal of the petitioner from service. The petitioner thereupon, preferred an appeal to the Divisional Superintendent, Western Railway, Ajmer, who rejected the appeal by his order dated November 15, 1969. The petitioner has challenged the aforesaid disciplinary recordings taken against him and the order of his removal from service and the order passed in appeal by the Divisional Superintendent, Ajmer.

3. The contention of the learned Counsel for the petitioner is that the DME was not the disciplinary Authority so far as the petitioner was concerned and as such, he was not authority either to give the show cause notice or to inflict the punishment of removal from service upon the petitioner, who was a substantive employee Rule 110 a of the Indian Railway Establishment Code, Volume I, Revised Edition (hereinafter called "the code") defines "Disciplinary Authority" in relation to the procedure for imposition of penalty on a Railway servant as the authority competent to impose on him that penalty. For the purposes of imposition of penalties of compulsory retirement, removal or dismissal, the Appointing Authority has been specified as the Disciplinary Authority. The aforesaid Rule defines Appointing Authority as under:

1702(i) "Appointing Authority", in relation to a railway servant means-

(a) the authority empowered to make appointments to the service of which the railway servant is for the time being a member or to the grade of the service in which the railway servant is for the time being included, or

(b) the authority empowered to make appointments to the post which the railway servant for the time being holds, or

(c) the authority which appointed him to such service, grade or post as the case may be, or

(d) where the railway servant having been a member of any other service or having held any other permanent post, has been in continuous employment under the Ministry of Railways, the authority which appointed him to the service or to any grade in that service or to that post, whichever is the highest authority.

As the petitioner was appointed on the post of a clerk grade II in the office of the Deputy Chief Accounts Officer by transfer by the order of Deputy Chief Accounts Officer himself and was also confirmed in that post by the order of the Deputy Chief Accounts Officer, as such, that Officer was the Appointing Authority in relation to the petitioner. Thus, the Deputy Chief Accounts Officer or any other officer of equivalent rank could act as the Disciplinary Authority, so far as the petitioner was concerned, for the purposes of imposing the penalties of removal from service or dismissal. It is not disputed before me by the learned Counsel appearing for the respondents that the DME is a lower authority than the Deputy Chief Accounts Officer. Although under Rule 1709 of the Code, the charge sheet etc. could be issued by the authority competent to impose the lowest of the major penalties yet the show-cause notice under Rule 1712 could not have been

issued and the penalty under Rule 1715 could not have been imposed by an authority lower than the Disciplinary Authority which, in the present case, was the same as the Appointing Authority. Thus, the record of the enquiry was to be considered and the show-cause notice had to be issued thereafter by the Disciplinary Authority and the DC. Accounts Officer or an Officer equivalent to him alone was competent in present case to issue the show-cause notice to the petitioner proposing the penalty of removal from service and the same officer could have passed the final order removing the petitioner from service. In this view of the matter, the DME, who might have issued the charge sheet and conducted the enquiry, was not competent to consider the report of the enquiry officer and to issue the show-cause notice in pursuance thereof and he was also not competent to pass the final order imposing penalty upon the petitioner.

4. Learned Counsel for the Railway Administration argued that the petitioner was appointed in the first instance by the order of the Divisional Personnel Officer and therefore, the DME was the competent authority to issue the show cause notice and inflict the punishment upon the petitioner, as he was equivalent to the Divisional Personnel Officer. There is no dispute that the order of provisional confirmation of the petitioner dated December 29, 1961 was passed by the Deputy Chief Accounts Officer and also the same authority subsequently by his order dated December 6, 1969 informed the Divisional Personnel Officer that the date of provisional confirmation of the petitioner had been treated as the final date of the confirmation on the post of clerk grade II. It is well settled that the authority confirming an employee on a particular post is the Appointing Authority for such employee for the purposes of Clause (1) of Article 311 of the Constitution. Reference in this connection may be made to *Daljitsingh Sadhusingh v. Union of India* (sic) wherein it has been laid down that in cases where a temporary or a quasi-permanent appointment is followed by a substantive appointment then it is the substantive appointment which has to be taken into consideration for the purposes of Article 311(1) of the Constitution. Same view has been taken by a Bench of this Court in *Nand Shankar Vs. State of Rajasthan and Others*, wherein it has been held that the appointment on a substantive basis has to be considered for the purpose of Clause (1) of Article 311 of the Constitution, although it may follow a prior appointment on probation. As a matter of fact, Rule 1702(1)(c) of the Code provides that the authority which appointed an employee to a post would be the Appointing Authority in relation to that Railway employee. Thus, the actual appointment of the petitioner in a substantive capacity having been made by the Deputy Chief Accounts Officer, he was the Appointing Authority in relation to the petitioner, and it was the authority alone who could have removed the petitioner from service.

5. Another argument advanced by the learned Counsel for the Railway Administration was that the petitioner was only provisionally confirmed by the order of the Deputy Chief Accounts Officer dated December 29, 1969 and as such, he should be considered to be a temporary employee only. This argument of the learned Counsel is not tenable. Even a provisional confirmation amounts to

a substantive appointment until the person so appointed provisionally is removed from the post. Rule 104 of Section "F" of the Indian Railway Establishment Manual (Second Edition) provides as under:

104. PROVISIONAL CONFIRMATIONS:

A railway servant may be provisionally confirmed against a post on which another railway servant holds a lien, which is suspended on account of:

(a) the latter's appointment in a substantive capacity-

(i) to a tenure post, or

(ji) to a permanent post outside the cadre on which he is borne, or

(iii) provisionally, to a post on which another railway servant would hold a lien had his lien not been suspended, or

(b) (i) his deputation out of India, or

(ii) his transfer to foreign service, or

(iii) the post falls vacant in circumstances not covered by Clause (a) above, e.g., when a railway servant is transferred, whether in a substantive or officiating capacity to a post in another cadre,

and in any of the above cases, there is reason to believe that he will remain absent from the post on which he holds a lien for a period of act less than 3 years The provisional confirmation, shall, however, be cancelled as soon as the railway servant's suspended lien revives.

A reference may also be made in this connection to Rule 2008 of the Indian Railway Establishment Code Volume II Sub-clause (d) of Rule 2008 provisions that if a railway servant's lien on a post is suspended under Clauses (a) or (b) of that Rule, the post may be filled in substantively and the railway servant appointed to hold it substantively shall acquire a lien on it; provided that the arrangement shall be reversed as soon as the suspended lien revives. Thus, a person who is appointed to a post and provisionally confirmed on account of suspension of lien of another railway servant, will hold the post substantively subject to the condition that such appointment would be cancelled in case the suspended lien of the other railway servant is revived. It the present case, the petitioner was provisionally confirmed with effect from January 20, 1958 by the order of the Deputy Chief Accounts Officer dated December 29, 1961 and thereafter, by the order of the same authority dated December 6, 1969, it was directed that January 20, 1958 may be considered to be the final date of confirmation of the petitioner in respect of the post of clerk grade II. Thus, the substantive appointment of the petitioner, which came into existence with effect from January 20, 1958, was not reversed at any time thereafter. There can, therefore, be no doubt that the petitioner was a substantive railway employee.

6. Learned Counsel for the petitioner desired to raise certain objections in

respect of the enquiry conducted against the petitioner but as I am inclined to take the view that the Deputy Chief Accounts Officer or officer equivalent to him and not the DME was empowered to issue the show-cause notice to the petitioner and only the Deputy Chief Accounts Officer or an officer of equivalent rank could have passed an order of removal of the petitioner from service, it is not necessary for me to consider the other objections which the learned Counsel for the petitioner desired to raise in respect of the enquiry. It would be for the appropriate authority who will now consider the report of the enquiry officer to consider, at the appropriate stage, the other objections which the petitioner (sic) raise in respect of the enquiry.

7. In view of the aforesaid discussion, the writ petition is allowed in part and the show-cause notice issued by the Divisional Mechanical Engineer (Diesel), Western Railway, Ajmer, dated June 17, 1969 & all proceedings subsequent thereto, including the order of removal of the petitioner from service dated June 17, 1969 as also the order passed by the Divisional Superintendent Western Railway, Ajmer, dated November 15, 1969, are quashed. It will be open to the appropriate authorities to take proceedings against the petitioner in furtherance of the enquiry report dated June 11, 1969, if they consider it proper to do so. In the circumstances of the case, I leave the parties to bear their own costs.