

(2002) 12 AHC CK 0068
In the Allahabad High Court
Case No : Second Appeal No. 1217 of 2001

Mazhar Alam Khan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-12-2002

Acts Referred:

Railway Protection Force Act, 1957 — Section 6

Citation : (2003) 1 AWC 268 : (2003) 1 UPLBEC 340

Hon'ble Judges : B.K. Rathi, J

Bench : Single Bench

Advocate : M. Islam and Anil Kumar Sharma, for the Appellant; Jagannath Singh, for the Respondent

Final Decision : Allowed

Judgement

B.K. Rathi, J.—This is an appeal u/s 100 of C.P.C. against the judgment and decree of the appellate court dated 18.3.1993 passed in Civil Appeal No. 78 of 1991.

2. I have heard Sri Anil Kumar Sharma, learned counsel for the appellant and Sri Jagannath Singh for the respondents.

3. There is no dispute regarding the facts of the case which may briefly be narrated as follows.

4. The appellant was working as "Rakshak" in Railway Protection Force. Disciplinary proceedings were started against him and after completion of enquiry, he was removed from the service by Assistant Security Officer. The appellant preferred an appeal against that order before the Commandant, Railway Protection Force, which has also been dismissed. Therefore, the appellant filed a suit for declaration that the order of removal dated 22.5.1985, as well as the order of appellate court dated 25.9.1986 are illegal and void and that he be treated in service and is also entitled to the salary and the other benefits of service. The respondents contested the suit and alleged that the

appellant was rightly dismissed from the service. The trial court framed necessary issues and decreed the suit and held that the order of dismissal dated 22.5.1985 as well as the order of the appellate court dated 25.9.1986 are illegal and he shall be deemed to be in service and is entitled to pay and other benefits. Against that judgment and decree, the respondents preferred an appeal which has been allowed by the impugned judgment dated 18.3.1993 and the suit of the appellant has been dismissed.

5. The only point argued before me in this appeal is that the appointing authority of the appellant is Chief Security Officer, respondent No. 3 but the order of removal has been passed by Assistant Security Officer. That therefore, the order is without jurisdiction. Therefore, the following substantial question of law arises for decision in this appeal.

"Whether the order of Assistant Security Officer removing the appellant from service is without jurisdiction?"

6. The learned counsel in support of his argument has referred to Section 6 of the Railway Protection Force Act which provides regarding appointment of Members of the Force. It provides that power of appointment rests with Inspector General, Additional Inspector General or Deputy Inspector General.

7. Reference has also been made to the Schedule III of the Act which is regarding the disciplinary authorities and their powers. According to the schedule, the power of dismissal and removal has been given to the Director General, Chief Security Commissioner, Additional/ Deputy Chief Security Commissioner/Principal R.P.F. Academy, Divisional Security Commissioner/ Security Commissioner/ Commanding Officer/ Senior Security Commissioner. Clause VII further provides that Deputy/ Assistant Security Commissioner/ Assistant Commandant of R.S.P.F. had no power of dismissal or removal.

8. The learned counsel for the respondent has not challenged these rules and it has been argued that the power was delegated to Assistant Security Officer. However, no order of delegation of power has been produced on record. No provision of law has been shown under which the power can be delegated. Therefore, the contention that the power was delegated cannot be accepted. In any case, if it was delegated, it was not according to the law as the same could not be delegated.

9. Accordingly, the order of Assistant Security Officer, dated 22.5.1985, removing the appellant from service is without jurisdiction and is void. The order of dismissal of appeal is therefore, also illegal.

10. This appeal is, therefore, allowed and judgment of the first appellate court dated 25.9.1986, is quashed and that of the trial court is restored. The parties shall bear their own costs of this appeal.