
(1975) 08 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1799 of 1971

Pritam Lal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-08-1975

Acts Referred:

Citation : (1975) WLN 342

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

Bench : Single Bench

Final Decision : Allowed

Judgement

D.P. Gupta, J.—The petitioner was appointed as a Booking Clerk in the year 1953 in the Northern Railway after selection by the Railway Service Commission. In the year 1959 he was promoted as a Senior Booking Clerk and was confirmed in that cadre in the year 1960. A memorandum accompanied by a statement of allegations dated April 30, 1962 was served upon the petitioner for alleged misconduct and after an enquiry, the Assistant Traffic Superintendent (E), Jodhpur by his order dated October 12, 1965 imposed a penalty upon him of temporarily withholding increment for one year. Against the aforesaid order, the petitioner preferred an appeal to the Divisional Commercial Superintendent which was dismissed on April 15, 1966. No appeal or revision was preferred by the petitioner thereafter. However, on August 18, 1966 the Divisional Superintendent, Northern Railway, Jodhpur issued a notice (Ex. 3) to the petitioner calling upon him to Show cause why the enhanced penalty of removal from service be not imposed upon him. An enquiry was conducted in the matter but as the petitioner declined to participate in the said enquiry, the same was held ex-parte. On the basis of the report of the Enquiry Officer, the Divisional Superintendent by his order dated April 5, 1969 (Ex. 5) enhanced the penalty inflicted upon the petitioner and reduced him to the grade of a Booking Clerk for a period of two years affecting his future increments. The petitioner thereafter submitted a representation to the Chief Commercial Superintendent against the

aforesaid enhancement, but he again issued a notice of enhancement of penalty to the petitioner, as in his view the penalty imposed upon the petitioner was still not sufficient. The Chief Commercial Superintendent by his order dated August 1, 1970 further enhanced the penalty imposed upon the petitioner by reducing him to the grade of a Booking Clerk for a period of three years, instead of two years, affecting his future increments. An appeal against the aforesaid order to the General Manager of the Northern Railway was also dismissed on August 9, 1971. The petitioner thereafter filed the present writ petition in this Court.

2. The only submission made by the learned Counsel for the petitioner is that the Divisional Superintendent and the Chief Commercial Superintendent were not competent to issue notices for the enhancement of penalty at the relevant time under Rule 1736 of the Indian Railway Establishment Code (Vol. I) and, therefore, the orders regarding enhancement of penalty imposed upon the petitioner by the Divisional Superintendent and the Chief Commercial Superintendent and all proceedings subsequent there to were invalid and void. Rule 1736, so far as is relevant for our present purpose, runs as under;-

1736 Review of orders in disciplinary cases - (1) The Railway Board, a General Manager and any officer not below the rank of a Deputy Head of Department or a Divisional Superintendent specified in this behalf by the General Manager shall have the power on their his own motion or otherwise to revise any order passed by an authority subordinate to them/him. They/he shall also have the power to reconsider an earlier order passed on an appeal by them/him or by a predecessor if on a subsequent date either fresh light is thrown upon the case or by his conduct the employee has established a case for mitigation of the penalty imposed.

Provided that no action under this sub-rule shall be initiated-

(i) more than 6 months after the date of the order to be reviewed in cases where it is proposed to enhance the penalty imposed; and

(ii) more than one year after the date of the order to be reviewed in cases where it is proposed to reduce or cancel the penalty imposed.

(2)

(3)

A perusal of the aforesaid Rule shows that the Railway Board and the General Manager are empowered to revise any order passed by any subordinate authority on their/his own motion or otherwise. They also have the power to reconsider an earlier order passed on an appeal by them/him or by their/his predecessor, in case either any fresh material is available at a subsequent date or mitigating circumstances are established. This power could also be delegated by the General Manager to any officer not below the rank of a Deputy Head of Department or a Divisional Superintendent, specified by him in that behalf. In the present case, the question relates to the power to revise an order passed by a subordinate

authority acting as the Appellate Authority in disciplinary matters. Learned Counsel appearing for the Railway Administration was unable to place before me any order of delegation by the General Manager of the Northern Railway in respect of the power of revising an order passed by a sub/dinate authority within the meaning of Rule 1736 (1). On the other hand, the petitioner asserts that there was no such order of delegation passed by the General Manager at the relevant time. The only delegation of authority which appeared to have been made by the General Manager was by his circulars dated June 20 1962 and January 16, 1963, reproduced at pages 6 and 8 of the writ petition, but the same merely related to the reconsideration of earlier orders passed on appeal by such authority or by his predecessor. The power of reconsideration of earlier orders passed by the same authority or his predecessor was delegated under Rule 1736(1) by the General Manager to the Heads of Departments, Deputy Chief Mechanical Engineer (W), Deputy Chief Mechanical Engineer, Amritsar and Deputy Chief Personnel Officer.

3. As the Railway Administration has failed to produce before this Court any order of the General Manager delegating upon the Divisional Superintendent or the Chief Commercial Superintendent the power of revising an order passed by an authority subordinate to him under Rule 1736 (1), it must be held that the Divisional Superintendent and the Chief Commercial Superintendent were not competent to issue notices of enhancement of penalty suo moto and to impose enhanced penalties upon the petitioner. In this view of the matter, the enhancement of penalty effected by the Divisional Superintendent by his order dated April 5, 1969 (Ex. 5) and by the Chief Commercial Superintendent by his order dated August 1, 1970 (Ex. 6) were entirely without jurisdiction. As the aforesaid order Ex. 5 passed by the Divisional Superintendent was invalid and without authority the subsequent order Ex. 6 passed by the Chief Commercial Superintendent, further enhancing the penalty imposed upon the petitioner, was also equally invalid. In the absence of a valid delegation in that respect, within the meaning of Rule 1736(1), the order of the Chief Commercial Superintendent enhancing the penalty imposed upon the petitioner is also void and without jurisdiction. As a matter of fact, the order passed by the Divisional Commercial Superintendent on April 5, 1969 dismissing the petitioner's appeal became final and conclusive and the same could not have been interfered with by any higher authority except the General Manager of the Northern Railway or the Railway Board in the absence of a proper delegation of the power of revision of order of subordinate authorities within the meaning of Rule 1736(1). Thus all proceedings in the matter subsequent to the order passed by the Divisional Commercial Superintendent on April 5, 1966 were invalid and void on account of the absence of a proper delegation of power by the General Manager. As no appeal or revision was preferred by the petitioner against the penalty imposed upon him, nor a review could have been made by any other authority except the General Manager in respect of the order passed by the Divisional Commercial Superintendent on April 5, 1966, all subsequent proceedings beginning with the giving of the notice

of enhancement dated August 18, 1966 upto the order passed by the General Manager, on August 9, 1971 dismissing the of the petitioner are without jurisdiction and void.

4. The writ petition is consequently allowed as indicated above and the orders of the Divisional Superintendent dated April 5, 1969, Chief Commercial Superintendent dated August 1, 1970 and the General Manager dated August 9, 1971 are accordingly quashed, as also the notices of enhancement of penalty issued by the Divisional Superintendent dated August 18, 1966 and by the Chief Commercial Superintendent dated September 26, 1969. The petitioner shall get his costs from the respondents.