
(1962) 05 CAL CK 0002
In the Calcutta High Court

Rajat Kanti Sarmadhikary

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 24-05-1962

Acts Referred:

Constitution of India, 1950 — Article 311, 313
Police Act, 1861 — Section 4

Citation : (1962) 2 LLJ 553

Hon'ble Judges : B.N. Banerjee, J

Bench : Single Bench

Judgement

B.N. Banerjee, J.—In this rule amongst other matters, I am called upon to decide who is the appointing authority of the petitioner, a typist, on probation, in the District Intelligence Branch, Sealdah Government Railway Police. It is strange that such, a doubt at all arises in the case of the petitioner!

2. So as to understand the argument made on behalf of the petitioner it is necessary for me, in the first place, to examine the administrative set-up of the police in West Bengal. Under Regn. 4 of the Police Regulations, 1943, the State of West Bengal (excluding the city and suburbs of Calcutta) is divided into police administrative areas known as ranges consisting of a group of police districts; police districts again are divided into subdivisions, excepting that railway police districts are not normally so subdivided. Regulation 6 deals with branches of the police and reads as follows:

3. Police officers stationed in West Bengal may be-

(i) superior administrative officers, viz., the Inspector-General or a Deputy Inspector-General; or they may be attached to:

(ii) the district police,

(iii) the railway police,

(iv) the Police Training College.

(v) the Criminal investigation Department, which includes the intelligence Branch, or

(vi) the Inspector-General's staff.

4. Under Regn. 7 (read with Section 4 of the Police Act, 1861), the administration of the police throughout the general police district in West Bengal (that is to say, West Bengal, with the exception of the city and suburbs of Calcutta) is vested in the Inspector-General. The administrative areas mentioned in Regn. 4 are, however, controlled by officers as mentioned below:

(i) The range-a Deputy Inspector-General

(ii) The district-a Superintendent

5. In certain districts he is assisted by one more Additional Assistant or Deputy Superintendents. There are also Superintendents in charge of Railway Police district.

6. Under Regn. 9(a), the Criminal investigation Department is administered by a Deputy Inspector-General, whose special duties are described in Chap. IX of the Regulations.

7. Regulation 12 deals with organization of District Police force and reads as follows:

The force allotted to each district is organized broadly to provide staffs for police Stations (including subordinate police posts), courts, Town Police Special Armed Force, and special posts, such as the District intelligence Branch, Detective Department (where such exists) and certain posts involving clerical duties....

8. Regulation 40 deals with delegation of power by Superintendents of Police of police districts. Regulation 40(c) contains restrictions on the power of such delegation and. inter alia, reads as follows:

The Superintendent may not delegate to an Additional Superintendent responsibilities for any of the following:

(i) * * * (ii) * * * (iii) The work of District intelligence Branch except in a district where an Additional Superintendent is specially sanctioned for that branch.

9. Regulation 47 provides for power of inspection and Sub-clauses (c) and (d) of that regulation provide:

(c) The Deputy Inspector-General, Criminal investigation Department, shall inspect crime work in district as ordered from time to time by the Inspector General with reference to the incidence of organized crime.

(d) The Deputy Inspector-General in charge of the Intelligence Branch, Criminal Investigation Department, or his Special Superintendent, shall inspect the working of the arrangements for the collection of intelligence in any district once

in two years.

10. Regulation 768 contains provisions for appointment of clerks in the office of the Superintendents and Regn. 768(b) provides that appointments of subordinate clerks are to be made by Superintendents.

11. Regulation 879 provides that in matters of discipline, punishments and appeals, clerks of the Police Department shall be governed by the Bengal Subordinate Services (Discipline and Appeal) Rules, 1936.

12. I now turn to some of the provisions of the Bengal Subordinate Services (Discipline and Appeal) Rules, 1936, of which Rule 5 reads as follows:

All first appointments to the subordinate services not included in the schedule to these rules shall be made by the head of the office in administrative charge of the service or post.

13. The schedule to the Bengal subordinate Services (Discipline and Appeal) Rules gives a list of appointing authority and disciplinary authority of the West Bengal Police and a material extract from the schedule is set out below:

Title of service or post Authority empowered Authority empowered Appellate authority to appoint to impose penalties (1) (2) (3) (4) Bengal Police Criminal Investigation Department and Intelligence Branch. Superintendent, Deputy Inspector- Deputy Inspector- Inspector-General of upper and lower General of Police. General of Police, Police, Deputy division assistants, Assistant to the Assistant to the Inspector-General accountants, steno Deputy Inspector- Deputy Inspector- of Police. grapher and ty- General, Criminal General, Criminal pists. Investigation De- Investigation De- partment or partment or Spe- District Police officer Special Superin- cial Superinten- tendent, Intelli dent, Intelligence gence Branch. Branch. * * * * * Subordinate Clerks. Superintendent. Superintendent. Deputy Inspector- General of Police. 14. Bearing in mind the aforesaid provisions of the Police Regulation and the Bengal Subordinate Services (Discipline and Appeal) Rules, I have now to examine the circumstances in which the dispute in the instant case arose.

15. On 4 December 1959, an Assistant Secretary to the Home (Police) Department intimated to the Inspector-General of Police, West Bengal, the following Government order:

The undersigned is directed by order of the Governor to say that the Governor is pleased to sanction the retention on a permanent basis, with effect from the 1 March 1960, of the posts as shown in the enclosed statement, on the usual rates of pay and allowances:

Statement of Staff

* * *

(3)(b) West Bengal intelligence Branch Headquarters-

Inspector 1 (one) Sub-Inspectors 2 (two) Senior assistants. 2 (two) (Including one for Dum Dum Airport) Assistants 4 (four) Junior assistants. 14 (fourteen) Typists 2 (two) Duftry 1 (one) Constables 6 (Six)

(c) District intelligence Branches-

Sub-inspectors 27 (twenty-seven) Constables 30 (thirty) Clerks 12 (twelve) Typist-clerks 4 (four) Typists 3 (three)

16. The petitioner had been serving as a temporary typist, in the office of the District Intelligence Branch, Sealdah. He was appointed to one of the sanctioned posts of typist in the District Intelligence Branch in March 1960. The order of appointment of the petitioner is annexure A to the petition and is set out below:

Order No. 51 of 1960

Temporary typist Sri Rajat Kanti Sarmadhikary of D.I.B., Sealdah, having been declared medically fit and his age being within the prescribed limit at the time of his first appointment in Government service, is, with effect from 1 March 1960, absorbed in one of the three posts of typists, sanctioned permanently in Government Order No. 5171 Pl. dated 3/4 December 1959.

He will remain on probation for one year with effect from the date of his absorption.

(Sd.) R.N. Chatterjee,

Spl. Supdt. of Police, I,

I.B., W.B., Calcutta,

intelligence Branch, C.I.D.,

13 Lord Sinha Road, Calcutta,

the 25 March, 1960.

Memorandum No. 9938/4-58/Staff.

Copy forwarded to Sri K.C. Bose, I.P.S., Superintendent, Railway Police, Sealdah, for information and necessary action, with reference to his Memorandum No. 716, dated 7 March 1960. On completion of the probationary period a farther report may be submitted commenting on his work for confirmation.

(Sd.) G.P. Ghosh,

25 March 1960.

Special Assistant, I.B., C.I.D.,

West Bengal

17. The period of probation of the petitioner expired on 28 February 1961. He was, however not confirmed to the post thereafter but his probationary period

was extended under Chap. I, Part A, of the Services (Training and Examination) Rules, West Bengal, While serving as aforesaid the petitioner tried to improve his educational qualification and obtained permission from the Deputy Inspector-General of Police, West Bengal, to prosecute his B.A. studies by attending night classes in a certain college. Having completed his course of studies in the college the petitioner was trying to sit for the B.A. examination, when he fell into trouble. The petitioner states that he fell sick on 8 March 1961 and made an application for earned leave for one month on medical grounds before the respondent, Special Superintendent of Police (I), Intelligence Branch, Criminal Investigation Department, through the respondent Superintendent of Government Railway Police, Sealdah. The petitioner states that the respondent Special Superintendent of police granted the leave to the petitioner. The respondent Superintendent of Government Railway Police, however, thought that the application for leave on medical grounds was not bona fide and that the petitioner really wanted leave of absence for the purpose of appearing at his B.A. examination. He, therefore, directed the petitioner to join his duties immediately. This case is denied by the Superintendent of Government Railway Police, who in his affidavit-in-opposition gives a different version. He says that on 7 March 1961 the petitioner unofficially informed the head assistant of his office that he would absent himself from 8 March 1961, on the pretext of illness so as to prepare himself for the B.A. examination; the head assistant however wanted him to apply for leave on the actual ground and not on the alleged ground of illness; the petitioner did not take his advice but absented himself from his duties with effect from 8 March 1961; he sent a post card, dated 8 March 1961, to the respondent Superintendent, Government Railway Police, alleging illness and asking for permission to stay at home until recovery; on the next day he sent an application for leave for a month on medical grounds and on 13 March 1961 sent a medical certificate in support of his illness; on 16 March 1961, the Superintendent, Government Railway Police, received a report from his head assistant to the effect that the petitioner was really absenting himself for his B.A. examination and, thereupon, he wrote the following letter, dated 18 March 1961:

Reference your post card dated 8 March 1961 praying for permission to stay at home till recovery, and your petition dated 13 March 1961 accompanied by a medical certificate for one month's leave.

I understand that you will appear at the ensuing B.A. examination for which you have proceeded on leave. Please let me know if this is correct. I shall have to find out a substitute.

18. No reply was sent to the letter by the petitioner. But he resumed his duties on the expiry of one month, on 7 April 1961. The stand taken by the petitioner is that he was on leave during this period, as granted to him by Special Superintendent of Police, but the respondent Superintendent, Government Railway Police, takes up the stand that he was the authority to grant leave to the petitioner and he had not done so.

19. After the resumption of duty, the petitioner fell into deeper trouble, on account of events that subsequently happened. Immediately on resumption of duties, the petitioner submitted another application for 11 days' earned leave, with effect from 10 April 1961, so as to enable him to appear at the B.A. examination. That application was addressed to the Deputy Inspector-General of Police, Intelligence Branch, who was the head of the office of the Superintendent, Government Railway Police, Sealdah, through the respondent Superintendent, Government Railway Police. The petitioner states that he intimated to the authorities that he would sit for the examination in anticipation of the leave and prayed that the permission for leave might be telephonically communicated to him. The petitioner further states that the respondent Superintendent, Government Railway Police, became annoyed with the petitioner because of the leave application and, on 8 April 1961 wrote to the petitioner as follows:

The petition is being forwarded to the D.I.G., I.B. You are not allowed to avail of leave in anticipation of orders and hereby directed to attend office dally punctually. Violation of this direction will entail disciplinary action.

20. In his affidavit-in-opposition, the respondent Superintendent of Government Railway Police denies the allegation of annoyance and states that he merely wanted the petitioner to apply for leave in the regular manner and on proper grounds, well in advance so that if leave was to be granted to the petitioner a substitute could be arranged for carrying out the work in his office, which was accumulating due to the absence of the petitioner, who was the only typist in the office. He makes the grievance that the petitioner applied for leave without sufficient notice and, therefore, he could not permit him to absent with immediate effect.

21. On receipt of the letter from the respondent Superintendent, Government Railway Police, the petitioner tried for an interview with the Deputy Inspector-General of Police, Intelligence Branch, in order to straighten out the matter, but the respondent Superintendent, government Railway Police, refused him permission so to do. In these circumstances, the petitioner states, he absented himself without leave so as to appear at the B.A. examination.

22. This step taken by the petitioner was treated as misconduct and he was served with in order of suspension by the respondent Superintendent of Government Railway police on a total subsistence allowance of me anna per month. The petitioner characterizes the order of suspension as well as the low subsistence allowance allowed as actuated by vindictiveness on the part of the respondent Superintendent, Government Railway Police. The order of suspension is set out below:

Sri Rajat Kanti Sarmadhikary, typist, D.I.B., Sealdah, is placed under suspension pending enquiry into his conduct with effect from 15 April 1961 a.m. He will draw one anna as subsistence allowance as he has deserted the office without permission. He is directed to attend office once dally at 11.00 hours and report

personally to the H.A./D.I.B., Sealdah.

23. In his affidavit-in-opposition Superintendent, Government Railway Police, justifies the low rate of subsistence allowance on the following ground, namely, that the petitioner was allowed suspension allowances at the rate of one anna per month on the ground that if the delinquent be ultimately discharged or removed from service any payment made for suspension allowance or salary or allowance during the period of absence without leave, which was considered to be leave without pay, may not be recoverable.

24. The petitioner made a representation to the Deputy Inspector-General of Police, Intelligence Branch, against the order of suspension aforesaid, which he characterized as beyond the jurisdiction of the Superintendent of the Government Railway Police to make but the latter withheld the representation and threatened the petitioner with disciplinary action for the alleged misconduct of communicating with the Deputy Inspector-General directly.

25. While he was under suspension, the petitioner applied to the Superintendent, Government Railway Police, for permission to apply for appointment to a post of assistant in the Criminal investigation Department. But the said Superintendent straightway rejected the application. Thereupon, the petitioner sent an application for the vacant post through the respondent, Superintendent, Government Railway Police, and also sent an advance copy thereof to the department concerned. The petitioner states that Superintendent, Government Railway Police, made this an occasion for a third threat of disciplinary action against the petitioner. At last the respondent Superintendent, Government Railway Police, served upon the petitioner a threefold charge of misconduct and in the chargesheet stated that for the aforesaid misconduct he was liable to be discharged from probationary service and that such order of discharge shall not be treated as punishment contemplated in Rule 7 of the Bengal Subordinate Services (Disciplinary and Appeals) Rules, 1936, A copy of the chargesheet is set out below:

1. On 7 March 1961 prior to year departure from office after the day's work you informed Sri C.F. George, head assistant, D.I.B., Sealdah, that you were going to appear at the B.A. examination of 1961 and that you would apply for one month's leave on medical grounds to enable you to prepare for the said examination. The head assistant, who is your immediate superior in office, asked you not to do so but to apply for leave in the "usual course" so that Intelligence Branch could be approached for a substitute but you told him that it was not possible as the intelligence Branch would not sanction your leave. On 13 March 1961, you submitted a leave application with a medical certificate from one Dr. S.B. Bhowmick, L.M.F. By your conduct as revealed in your statement to the head assistant you showed disloyalty to the intelligence Branch organization including the District intelligence Branch, in which you are working as a probationary typist.

2. You remained absent from duties from 10 April 1961 to 20 April 1961 without leave or permission and in violation of the direction, conveyed to you in my letter No. P. 1015 dated 8 April 1961 in which you were specifically asked not to do so.

3. In my letter No. P. 1742 dated 17 June 1961 you were directed to show cause why disciplinary action would not be taken against you for sending a copy of your petition dated 10 June 1961 for appointment as an assistant in the Intelligence Branch D.I.B. to the D.I.G., I.B. direct after you had been refused permission to apply for the appointment as an assistant in the I.B./D.I.B. in my order dated 9 June 1961, but you disregarded the aforesaid direction and continued to disregard the same by not submitting your explanation.

By the conduct as stated in the aforesaid three paragraphs you have proved yourself unsuitable for a substantive appointment as a typist in the Intelligence District Intelligence Branch in which you are working as a probationary typist.

You are accordingly liable to discharge from the probationary service and I am to point out to you that such discharge is not a punishment as contemplated in Rule 7 of the Bengal Subordinate Services (Discipline and Appeal) Rules, 1936, which is in force, vide Article 311 of the Constitution of India are (sic) not applicable in this case.

I am further to point out to you that no appeal lies against an order of discharge for unsatisfactory conduct and unsuitability during your probationary period under Rule 11 of the Bengal Subordinate Services (Discipline and Appeal) Rules, 1936, which again is in force-vide Article 313 of the Constitution of India.

Before you are discharged from probationary service you are hereby directed to make any representation which you have not already made relating to the conduct referred to in the aforesaid three paragraphs to explain your aforesaid conduct within seven days of the receipt of this order for my consideration, and you are allowed to take copies of relevant papers.

26. The petitioner moves against the order aforesaid in this rule praying for a writ of certiorari for the quashing of the same and for a writ of mandamus commanding the respondent to cancel the same.

27. Mr. Anil Kumar Sen, learned advocate for the petitioner, argued with great emphasis that the respondent Superintendent, Government Railway Police, was neither the appointing authority nor the disciplinary authority for the petitioner and had no power to issue the order for the discharge of the petitioner from service. In support of his contention he relied on the following documents:

(i) the order of the petitioner's appointment, No. 51 of 1961, which was signed by respondent, Special Superintendent of Police (I) Intelligence Branch, Criminal investigation.

(ii) The schedule to the Bengal Subordinate Services (Discipline and Appeal) Rules, under which the appointing authority and the disciplinary authority for

typists in Criminal investigation Department, intelligence Branch, was either the Assistant to the Deputy Inspector-General, Criminal investigation Department, or the Special Superintendent, intelligence Branch.

(iii) Instruction contained in a book called "Intelligence Branch Manual of instructions" an extract wherefrom is made annexure A to the affidavit-in-reply, affirmed on 11 January 1962, of which Rule 12 reads as follows:

Rule 12.-Appointments to clerical Staff in the intelligence Branch and District Intelligence Branches? Fifty per cent of the vacancies in the Intelligence Branch and the District intelligence Branch Offices should be filled up by direct recruitment from the open market. The remaining fifty per cent of the vacancies should be filled up from among clerks of proved merit (preferably graduate) of various police offices under the Inspector-General of Police, West Bengal, including the Inspector-General of Police's own office.

Final selection of these clerks will be made by the Deputy Inspector-General of Police, Intelligence Branch, West Bengal. The appointing authority in both the cases will, however, be the Special Superintendent of Police (I), Intelligence Branch, West Bengal. In recruitment, preference may be given to those who know typewriting and stenography.

Appointments in the posts of typists in the intelligence Branch and District Intelligence Office shall be made by the Special Superintendent of Police (I), Intelligence Branch.

(iv) Paragraph 3 of the affidavit-in-opposition of the Superintendent, Government Railway Police, affirmed on 21 December 1961 in which he admitted that the Special Superintendent of Police (I), Intelligence Branch, Criminal Investigation Department, was the authority who had appointed the petitioner as one of the typists on probation for working in his office.

28. On the aforesaid materials Mr. Sen contended that the Superintendent, Government Railway Police, not being the appointing authority of the petitioner, could neither discharge him from probation nor take disciplinary action against him.

29. Mr. Anil Chandra Mitter, the learned standing Counsel, in trying to repel the argument, in the first place, relied on the provision of Regns. 4, 7, 9, 12, 40, 47 and 768(6) Of the Police Regulations, hereinbefore quoted, and contended that the District intelligence Branch was a department of the District Police and Superintendent was the controlling authority of the district and was subject only to the inspection by the Deputy Inspector-General of Police and that appointment of subordinate clerks was to be made only by the District Superintendent. He argued the Hallway Police constituted a district of Police Administration and the Superintendent of Government Railway Police, Sealdah, was the appointing authority for the petitioner. He next contended that the petitioner belonged to the rank of subordinate clerks in a District Police Office and not to the rank of

typist in the Criminal investigation Department and the intelligence Branch and so far as the petitioner was concerned the Superintendent of the Government Railway Police was both his appointing authority and disciplinary authority, under the schedule to the Bengal Subordinate Services (Discipline and Appeal) Rules, 1936, in trying to get rid of the inconvenient admission contained in Para. 3 of the first affidavit-in-opposition to the effect that respondent, Special Superintendent of Police, was the appointing authority of the petitioner, the learned standing Counsel caused the Superintendent, Government Railway Police, to file a supplementary affidavit alleging as follows:

In the premises I say that the post of the petitioner comes within District Police Offices and not Criminal Investigation Department or Intelligence Branch and I am the authority to impose penalties. In any event I say that under Rule 5 of the said rules I am the person to make the first appointment of a subordinate clerk and therefore I have the power to take disciplinary action against him by virtue of Rule 9 of the said rules.

30. Mr. Mitter also wanted to ignore Rule 12 of the "Intelligence Branch Manual of instructions" as merely administrative instructions, having no statutory force and not having the effect of overriding the provisions of Rule 5 of Bengal Subordinate Services (Discipline and Appeal) Rules or Regn. 768 of the Police Regulations. Lastly, he relied on the following entry in the service book of the petitioner which runs as follows:

Temporary typist Sri Rajat Kanti Sarmadhikary of District Intelligence Branch, Sealdah, having been declared medically fit and his age being within the prescribed limit at the time of his first appointment in Government service is with effect from 1 March 1960 absorbed in one of the three posts of typist sanctioned permanently in G.O. No. 5171 p1, dated ? December 1959.

He will remain on probation for one year with effect from the date of his absorption (IB. order No. 51 of 1960) forwarded under No. 9988 dated 25 March 1960 (D.O. No. 716, dated 31 March 1960).

(Sd.) [Illegible],

Supdt, Govt. Rly. Police, D.I.B., Sealdah.

31. Relying on the aforesaid endorsement in the service book Mr. Mitter contended that the petitioner was appointed against one of the posts sanctioned by the Government for the District Intelligence Branch by the Superintendent, Government Railway Police, and not by the respondent Special Superintendent of Police.

32. The arguments advanced by the learned standing Counsel do not appear to be convincing. In the first place the Superintendent, Government Railway Police, in his affidavit-in-opposition, dated 21 December 1961, frankly admitted that the respondent Special Superintendent of Police (I) was the authority who had appointed the petitioner as one of the typists on probation but contended that

after the appointment, the petitioner came within his disciplinary jurisdiction, when posted in the District intelligence Branch. That statement in the affidavit-in-opposition was affirmed as true to his knowledge. Curiously enough he attempted to take a different stand in his supplementary affidavit-in-opposition, dated 18 April 1962, in which he tried to arrogate to himself the competency to appoint the petitioner. This second statement strangely enough is not affirmed in any manner in the affidavit and I, therefore, place little reliance on the unaffirmed statement in the supplementary affidavit-in-opposition contradicting¹ the affirmed statement in the original affidavit-in-opposition. On the admission that the respondent Special Superintendent was the appointing authority of the petitioner his disciplinary authority was also the same special Superintendent, under the provision of the schedule to the Bengal Subordinate Services (Discipline and Appeal) Rules.

33. The learned standing Counsel may be right in contending that Rule 12 of the intelligence Branch Manual of instructions is merely an administrative instruction and if it was opposed to Rule 5 of the Bengal Subordinate Services (Discipline and Appeal) Rules or Regn. 768(b) of the Police Regulations (both hereinbefore Quoted) it must not be overemphasized. But Rule 5 of the Bengal Subordinate Services (Discipline and Appeal) Rules is of irrelevant consideration in this context, because according to the argument made both on behalf of the petitioner and the Superintendent, Government Railway Police; the petitioner came under the schedule and did not hold an appointment not coming under the schedule. Rule 768(b) no doubt provides that appointment of subordinate clerks shall be made by the Superintendents. The schedule to the Bengal Subordinate Services (Discipline and Appeal) Rules also provides for appointment of subordinate clerks in the District Police Office to be made by Superintendents. But the question is whether the petitioner, a typist, comes under genus of subordinate clerks. Rule 768 itself recognizes a difference between different categories of clerks, namely, head clerks reader clerks and subordinate clerks. The schedule to the Bengal Subordinate Services (Discipline and Appeal) Rules also recognizes a difference between clerks and typists, for example, in the Special Branch of the Police, appointments which may be made by the Deputy Commissioner of Police, Special Branch, are described as "head assistant, assistants, clerks, stenographers and typists." Therefore, without further indication anywhere, it may not be proper to include typists under the genus of subordinate clerks. If typists are not subordinate clerks, then Regn. 768 (6) of the Police Regulations has no application in the case of the petitioner. Then again there is internal indication in the Regn. 768 (b) itself that the petitioner was not appointed under the provision of that regulation. The second sub-paragraph of Regn. 768 (6) provides that subordinate clerks shall be on probation for two years and on the expiry of this period shall be confirmed by the Superintendent, if found suitable. In the case of the petitioner the order of appointment No. 51 of 1960 (hereinbefore quoted) shows that he was appointed on probation for one year only. If the petitioner had been appointed under Regn. 768 (6), his period of

probation had to be for two years and not for one year only (as appears from Government order No. 51 of 1960, hereinbefore Quoted). In view of all these bold that Rule 12 of Intelligence Branch Manual of instructions is not opposed either to schedule to Bengal Subordinate Services (Discipline and Appeal) Rules or to Regn. 768 (6) of the Police Regulations and there is no bar to the said instruction being followed. That instruction clearly shows that so far as typists are concerned they are to be appointed by the Special Superintendent of Police (I), Intelligence Branch, and after appointment are to be allotted for service, amongst other places, to the different District intelligence Branches. There may be some purpose behind making such centralized appointments of personnel like typists, who are to be skilled workers. I do not find any bar to so doing in anything contained in the Police Regulations or in the Bengal Subordinate Services (Discipline and Appeal) Rules. I further hold that such appointments were being made by the respondent Special Superintendent (I) and the petitioner was also appointed by him against one of the posts sanctioned by the Government, under the instructions contained in the Rule 12 of the Manual of instructions.

34. I do not attach much importance to the entry in the service book of the petitioner, as to his appointment, made by the Superintendent, Government Railway Police (D.I.B.) at Sealdah. That endorsement (hereinbefore quoted) merely makes a note of Government Order 51 of 1960 and does not amount to an independent order of appointment of the petitioner.

35. On the facts revealed in the case, I have to hold that respondent Superintendent, Government Railway Police at Sealdah, was riot the appointing authority for the petitioner and under the schedule to the Bengal Subordinate Services (Discipline and Appeal) Rules was not competent to initiate either disciplinary action or action to terminate his probationer ship. The notice serviced on tie petitioner dated 18 September 1961, calling upon the petitioner to show cause why he shall not be discharged from probationer ship was beyond the power of the respondent Superintendent of the Government Railway Police to make and deserves to be quashed. I order accordingly.

36. In view of my findings above, it is not necessary for me to consider in detail two other arguments made by Mr. Sen, namely:

(i) that respondent, Superintendent of the Government Railway Police, was biased against the petitioner and should not hold the enquiry against the petitioner; and

(ii) that the suspension order allowing one anna per month as the subsistence allowance was an instance of vindictiveness and should be quashed on that ground.

Since I hold that the Superintendent of the Government Railway Police is not the disciplinary authority so far as the petitioner is concerned he can neither hold an enquiry against the petitioner nor suspend him. The order of suspension also is,

therefore, quashed as made without jurisdiction

37. I have, however, to note that the subsistence allowance of the petitioner has been increased from one anna per month to a reasonable sum and that grievance of his no longer subsists. I also note an assurance which the learned standing Counsel was prepared to give, namely, that even if this rule failed, the respondent Superintendent of the Government Railway Police would not have personally enquired into the case against the petitioner.

38. For the reasons aforesaid I make this rule absolute. The order of suspension of the petitioner and the order, dated 13 September 1961, calling upon the petitioner to show cause why he should not be discharged from probationer ship are both quashed and the respondent Superintendent of Government Railway Police is restrained from taking any disciplinary action or action for the discharge of the petitioner from his probationer ship.

39. Let writs of certiorari and mandamus accordingly issue.

40. This order is without prejudice to any action that the appointing authority of the petitioner may like to take against the petitioner in respect of the allegation against him.

41. There will be no order as to costs in this rule.