
(2004) 02 AHC CK 0136

In the Allahabad High Court

Case No : Second Appeal No. 519 of 1986

Union of India through the General Manager, Northern Railway	APPELLANT
Vs	
Tejpal Singh	RESPONDENT

Date of Decision : 03-02-2004

Acts Referred:

Railway Protection Force Act, 1957 — Section 6, 9

Citation : (2004) 02 AHC CK 0136

Hon'ble Judges : Ghanshyam Dass, J

Final Decision : Allowed

Judgement

Ghanshyam Dass, J.—The instant second appeal is being preferred by the defendant Union of India against the judgment and decree dated 31101985, passed by the then III Addl. District Judge, Moradabad in Civil Appeal No. 457 of 1982, arising out of judgment and decree dated 20882 passed by the then Civil Judge, Moradabad in Original Suit No. 20 of 1979, Tej Pal v. Union of India.

2. The plaintiff Tej Pal brought the suit against Union of India before the trial Court for declaration that the order of removal from service of the plaintiff dated 12977 passed by Assistant Security Officer, Northern Railway, Moradabad is illegal, inoperative and void and also for grant of decree of Rs. 5,600 being the arrears of salary and allowances.

3. The plaintiff was appointed on 24121957 in Railway Protection Force and while posted as Senior Rakshak at Laskar Station in Moradabad Division, he was suspended and charge sheeted for gross negligence of duty for which enquiry was held. He was found guilty and order of removal from service was passed. The order of removal was challenged on the factual as well as legal ground consisting of competency of punishing authority. The suit was contested by the defendant denying the assertions made by the plaintiff. It was alleged that the charge of gross negligence of duty was proved and he was removed from service by the competent authority after affording due opportunity of hearing. The plaintiff had also preferred departmental appeal and the same was dismissed by

the competent authority.

4. After hearing the parties, the learned trial Court dismissed the suit. It was held that the plaintiff was removed from service by the competent authority since the Assistant Security Officer had the power to remove the plaintiff from service. The order of dismissal of suit was challenged before the first appellate Court. The appeal was allowed by the first appellate Court by the order impugned and the suit of the plaintiff was decreed in toto.

5. The first appellate Court held in its judgment and order impugned that punishment of removal from service cannot be imposed by an authority subordinate to one by whom he was appointed. Since the appointment letter was not brought on record, the plaintiff was deemed to have been appointed by General Manager. The removal had been made by the officer below the rank of General Manager and hence removal is bad in law. It has been further held that the Railway Protection Force Act (23 of 1957) came into force on 10/9/1959 after publication in Gazette of India of 1959. It was not in existence on the date of appointment i.e. 18/12/1957. No doubt the first entry was made in the service book under the initial of Assistant Security Officer but this by itself could not mean that the appointment itself was made by Assistant Security Officer since Railway Protection Force Act itself had not come into existence.

6. I have heard the learned counsel for the parties and have gone through the record.

7. The only substantial question of law in the instant appeal is as to whether the order of removal from service in question has been passed by a competent authority or it is in violation of Article 311 of the Constitution of India.

8. The learned counsel for the appellant relied upon the law laid down by Hon'ble Supreme Court in the case reported in AIR 1993 SC 205, *Union of India v. Rajendra Singh*, and submitted that the Assistant Security Officer was competent to remove the plaintiff from service under the provisions of Railway Protection Force Act, 1957 and Railway Protection Force Rules, 1959. He submitted that the plaintiff was initially appointed as Rakshak by the Assistant Security Officer and hence he could be removed by the same authority under law.

9. The learned counsel for the respondent submitted that case relied upon by the learned counsel for the appellant (*supra*) does not apply to the facts of the present case since the plaintiff was appointed as Rakshak on the date when Railway Protection Force Act or Rules had not come into existence. He further submitted that provisions of Railway Protection Force Act and Rules are not made applicable with retrospective effect and that being so the plaintiff could not be removed by the Assistant Security Officer.

10. Having considered the law laid down by Apex Court I feel that the instant case is fully covered by the decision of the Apex Court (*supra*).

11. Hon'ble Supreme Court in the case (*supra*) has held that Rule 20 is not ultra

vires to Section 6 of the Act by observing as under:

A bare reading of the Act, particularly Section 6, will show that the Act contemplates that the appointment of members of the Force shall rest with the Chief Security Officer who is supposed to exercise powers in accordance with the Rules made under the Act. The proviso to Rule 6 contemplates other authorities being authorized for making the appointment as may be delegated to such officers by the Chief Security Officer. Therefore, there can be no doubt that the Act contemplates appointment of members of the Force not only by the Chief Security Officer but also by others. The question, therefore, arises is, what is the meaning of the expression 'appointment of members of the Force shall rest with the Chief Security Officer'? The expression 'rest' in this section conveys the idea of overall control of appointment resting with the Chief Security Officer subject to the provisions of the Rules. As we have stated earlier Section 6 of the Act contemplates appointment of members of the force by such authorities as may be authorized. The proviso to Section 6 contemplates specifically written order of delegation by the Chief Security Officer but this does not derogate from the power of the rule making authority to confer the said power. The section and the proviso in our opinion do not rest the power of appointment merely with the Chief Security Officer. What is contemplated is that the Chief Security Officer will have overall control in the matter of appointment and that control be exercised in accordance with the Rules. If the Rules provide for appointment by other superior officers, it cannot be said to be in derogation of the Act or the purpose of the Act?

12. A bare reading of Section 9 of the Act also shows that it is only subject to the provisions of Article 311 of the Constitution and to such rules as the Central Government may make under the Act, that any superior officer could exercise the powers mentioned in Section 9(1)(i) of the Act. If only the Chief Security Officer, who is one of the superior officers, alone have the powers of dismissal on the hypothesis that he alone was competent to appoint members of the Force then Section 9 of the Act would not have been worded in the manner it has been so enhanced.

13. It is clear from Section 21 of the Act that the power of the Central Government for making the rules is for carrying out the purposes of the Act. One of the purposes of the Act surely is recruitment of members of the force and, therefore, the Rules could provide for the appointing authority so long as it is not in derogation of the express provisions of the Act. Section 6 does not contemplate that the order of appointment cannot be made by any other person other than the Chief Security Officer.

14. In view of the aforesaid decision, the removal of the plaintiff cannot be said to be bad in the eye of law. It is true that the Railway Protection Force Act and Rules had come into existence in the year 1959 but the same are to be held applicable to the present case of the plaintiff since he was removed in the year 1977. The plaintiff was required to file appointment letter but the same was not

filed. He could not take the benefit out of his own lapses nor it could be inferred from this circumstance that the plaintiff should be deemed to have been appointed by the General Manager. The observation made by the first appellate Court in this respect is not acceptable. Moreover, initial appointment does not make any difference in the case in hand in view of Railway Protection Force Act, 1957 and the Railway Protection Force Rules, 1959. The plaintiff who was removed from service in the year 1977, is fully governed by the aforesaid Act and Rules and that being so he cannot be held to have been removed by a incompetent authority. The Rakshaks are appointed by Assistant Security Officer and hence they are removable by the same officer as provided under Rule 20 and this provision is not ultra vires to Section 6 of the Act.

15. Keeping in mind the totality of the case and the facts and circumstances as brought on record and the observations made above. I conclude that the plaintiff had been removed from service by a competent authority and that being so the learned appellate Court below was in error in allowing the appeal and decreeing the suit of the plaintiff for declaration as sought. The result is that the appeal is liable to be allowed.

16. The appeal is accordingly allowed and the judgment and decree of the appellate Court below is set aside and that of trial Court is restored. No order as to costs.