

Ram Chand Vs. Union of India

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Court : Delhi

Decided On : Apr-15-1985

Reported in : 1976RLR171

Judge : S. Bharidare, J.

Acts : (Classification, Control & Appeal) Rules, 1952 - Rules 10 and 34; ;Central Civil Services (CCA) Rules, 1965 - Rule 9

Appeal No. : Civil Writ Appeal No. 724 of 1972

Appellant : Ram Chand

Respondent : Union of India

Advocate for Pet/Ap. : B.R. Saini and; C.K. Mahajan, Advs

Judgement :

S. Bharidare, J.

(1) C.C.S. (C.C A.) Rules, 1965 which repealed the Civilians in defense Services (C.C.A.) Rules of 1952 & did not contain any provision for delegation of functions by Competent Authority (Director of E.M. & E.) no more authorised Commandant, a delegate of the Director to impose penalty of removal and heave show cause notice and charge sheet issued by the commandant was not legal. Delegation of powers by the Director Em & E on 17.2.67 could not be availed of as the provision

under which it was made was not retroactive in operation. Constitution of India, Art. 226. An interim order (show cause notice and charge-sheet) can be challenged if it goes to the root of the matter. The petitioner was appointed as Tin and Copper Smith (Class-111 post) in the grade of Rs. 100-130 in 1960 in Ministry of defense. The appointment letter of the petitioner was issued by the Commandant who was delegated the power by the appointing authority. Since the petitioner was alleged to have violated Rule 3(ii) of the C.C.S (Conduct) Rules, 1964 because of his habitual absence without leave, an inquiry was instituted by respondent 2 and a charge-sheet was issued on 11.11.71. After the Inquiry Report was available a show cause notice dated 12.7.72 was issued to the petitioner who has challenged this notice and charge-sheet in this writ petition u/Art. 226 and 227 of the Constitution of India.

(2) A preliminary objection was taken by the counsel for the respondent that the petition is premature inasmuch as only a show cause notice had been issued when petition was filed and no final order had been passed by the respondent. There is no force in this contention because the point raised by the petitioner goes to the root of the matter and once that point is decided no disciplinary proceedings can proceed. Dismissing the petition on the preliminary objection may only lead to multiplicity of proceedings and further delay. The preliminary objection, therefore, deserves to be rejected.

(3) The main point urged by the counsel for the petitioner was that the show cause notice and the charge-sheet were not issued by the competent authority since both were issued by an officer subordinate in rank to the appointing authority. It was contended that though the appointment of the petitioner was made by the Commandant who was validly delegated powers u/s 10 of Civilians in defense Services (Classification, Control & Appeal) Rules, 1952 however in view of the coming into force of the Central Civil Services (CCA) Rules, 1965 (the 1965 Rules), the appointing authority of the petitioner was Director of Electrical, Mechanical & Engineering as provided in the Schedule. It was contended that in the Schedule to Rule 9 the appointing authority of an employee in Class- III would be the Director of E.M & E and since the Director of E.M.&E was; higher in rank than the Commandant the show cause notice and the charge-sheet could have

been issued only by the Director of E.M. & E and not the Commandant. It was contended that since the proviso to Rule 9 of 1965 Rules which gave the power to delegate was inserted only on 1.7.66 during the period of interregnum the petitioner got a vested right which could not be taken away by a subsequent amendment and delegation. It was contended that u/R 2(a) of the 1965 Rules the power to remove could be exercised by whoever is the higher authority at the time when the order of removal is made. It was submitted that since the Director E.M. & E was an officer higher in rank though he got the power to delegate his functions after the amendment of Rule 9 by addition of the proviso, he could not delegate the powers in respect of those employees who were appointed prior to the date the proviso was added. Learned counsel for the petitioner referred to The Judgment in : Dharam Dev v. Uoi : [1980]2SCR554

(4) On the other hand, learned counsel for the respondent contended that since by addition of the proviso in 1966 delegation of the functions could be made by the Director of E. M. & E to the Commandant and the said power was in fact delegated on 17.2.67, the show cause notice and the charge-sheet issued by the Commandant was valid and was made by the appropriate authority.

(5) In order to decide the dispute in the present case it will be relevant to refer to a few dates. The petitioner was appointed in 1960 by the Commandant who as a delegate exercised the power of the Director of E.M. & E who was the appointing authority. This function could be delegated by the Director of E M & E to the Commandant in view of the proviso to Rule 10 of the Civilians in defense Services (CCA) Rules, 1952. The petitioner continued to be in service till 1971 when the charge-sheet was issued to him. The Ccs (CCA) Rules, 1965 came into force on 1.12.65. However, the proviso to Rule 9 was added only on 1.7.66. Between the period 1.12.65 when the 1965 Rules came into force and 1.7.66 when the amendment was made to Rule 9 by addition of the proviso, the competent authority under Rule 2(a) of the 1965 Rules who would be empowered to remove the petitioner, would, be the Director of E M & E. Even after the amendment of Rule 9 whereby a power was given to delegate functions, in fact the delegation was only made on 17.2.67. Under Rule 34 which is the Repeal & Saving provision, all notifications and orders issued under the Civilians in defense Services (CCA)

Rules, 1952 stood repealed as they were inconsistent with 1965 Rules. thereforee, when the 1965 Rules came into operation on 1.12.65 the power to delegate u/R 10 of 1952 Rules automatically stood repealed since it was inconsistent with the 1965 Rules. The proviso to Rule 9 was not made retroactive in operation.

(6) Though, it is true that the petitioner was appointed by the an officer of rank of Commandant and the show cause notice was issued by an officer of the same rank there is some force in the contention of counsel for the petitioner that in view of the coming into force of the 1965 Rules on 1.12.65 the competent authority who could have issued the show cause notice and the charge-sheet would only be the authority mentioned in the Schedule. No doubt as held by the full Bench of this Court in *Management of D.T.U. v. B.B.L. Hajelay*, 1972 Slr 299 that the power to terminate flows from the power to create. However, in the present case the difficulty arises from the fact that Rule 34 of the 1965 Rules provided for repeal of all orders and ' notifications which were inconsistent with the 1965 Rules. thereforee, though the appointment of the petitioner was validly made by the Commandant who was the delegate of the competent authority under the Rules of 1952 that delegation became invalid as soon as the 1965 Rules came into force Fresh delegation could not be made only for the purposes of termination or removal of an employee. The delegation given in 1967 was for functions to be performed in future after the delegation order was made in 1977. Moreover, no delegation could be made only for removal of an employee. In view of Rule 2(a) of the 1965 Rules since the competent authority mentioned in the Schedule was higher in rank than the person who actually appointed the petitioner in 1960 the order of removal could be made only by the authority mentioned in the Schedule and not by the authority who had actually made the appointment. In fact there would have been no necessity to delegate the functions afresh if the proviso to Rule 9 was inserted in 1965 Rules on 1.12.65 itself when the 1965 Rules came into force. In view of the short intervening period of two years when the specific power of delegation was taken away, fresh delegation was necessary because the 1965 Rules had considerably changed the position in respect of the authority of the person who could appoint or remove Class-111 employees in the defense Service. Petition allowed.

