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Chhatar Singh Vs. the Union of India (Uoi) and ors.

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Court : Rajasthan

Decided On : Sep-05-1966

Reported in : AIR1967Raj194; (1968)ILLJ483Raj

Judge : D.S. Dave, C.J. and; Kan Singh, J.

Acts : [Constitution of India](#) - Articles 52, 53, 74, 77 and 311(2); Government of India (Allocation of Business) Rules, 1961 - Rule 2; [General Clauses Act, 1897](#) - Sections 3(8) and 3(23)

Appeal No. : Civil Writ Petn. No. 73 of 1966

Appellant : Chhatar Singh

Respondent : The Union of India (Uoi) and ors.

Advocate for Def. : L.R. Bhansali and; M.M. Vyas, Adv.

Advocate for Pet/Ap. : Chandmal Lodha, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

:

The President is satisfied that the retention of Shri Chattar Singh, Assistant Engineer, Northern Railway Jodhpur, in service is prejudicial to National security and that the said Shri Chattar Singh ought to be removed from service.

(2) The President is further satisfied under Sub-clause (c) of the proviso to Clause (2) of Article 311 of the Constitution that in the interest of the security of the State, it is not expedient to hold an enquiry in the case of the said Shri Chattar Singh.

(3) Accordingly, the President hereby removes the said Shri Chattar Singh from service with effect from the 22nd January, 1966.

By order and in the name of the

President of India.

Sd/- P. B. Jain

15-1-66,

(P. B. Jain)

Deputy Director, Railway Board.'

The order has been issued in the name of the President of India and has been authenticated by a Deputy Director of the Railway Board. In accordance with S. O. No. 2297 dated 3rd November, 1958, made by the President regarding the authentication of orders and other instruments, in exercise of his powers under Clause (2) of Article 77 of the Constitution, in the case of orders and other instruments in the Ministry of Railway a Secretary, Additional Secretary, Joint Secretary, Deputy Secretary, under Secretary or Assistant Secretary or a Director or a Joint Director or Deputy Director or Assistant Director of the Railway Board was authorised to authenticate the orders of the President.

The order Ex-12, having been authenticated by a Deputy Director of the Railway Board is thus properly authenticated according to Article 77 of the Constitution. Article 77(2) inter alia provides that the validity of an order or instrument which is properly authenticated shall not be called in question on the ground that it is not an

order or instrument made or executed by the President. To our mind, it is, therefore, not open to the petitioner to argue that this is not the order of the President. Nor do we find any substance in the petitioner's contention that the satisfaction that is contemplated for such an order was required to be the personal satisfaction of the President.

5. In *Emperor v. Sibnath Banerji*, AIR 1945 PC 156, in dealing with an order issued under the then Defence of India Rules where it was only the Additional Home Secretary who dealt with the matter and the case had in fact not gone to the Governor, but it was noted in the order that was issued under Rule 26 of the Defence of India Rules that the Governor was satisfied, their Lordships of the Privy Council held that the Governor need not be personally satisfied as to the matters set out in Rule 26 of the Defence of India Rules and there was no ground to exclude the ordinary methods by which the Government's executive business was carried on.

Mr. Lodha, learned counsel for the petitioner, realising the weight of this decision submitted that where the law provides for a particular matter to be dealt with by the Government as such the same could be dealt with according to the business rules and if a Government order has been issued in the proper form in the name of the President or the Governor, as the case may be, then the same cannot be questioned on the ground that it is not the order of the President or the Governor, but he maintains, that the validity of that order is still open to question on other grounds. Mr. Lodha is right in saying that the Government order, though issued in proper form in the name of the President or the Governor and duly authenticated can still be questioned on grounds other than that about the authorship of the order but, as held by their Lordships of the Privy Council in *Shibnath Banerji's* case, AIR 1945 PC 156, referred to above, there will be a presumption about the correctness of the recitals contained in the order relating to the carrying out of the conditions necessary to the valid making of the order. The presence of the recitals in the order will place a difficult burden on the person who wants to challenge their correctness.

The order Ex. 12 recites in clear terms (1) that the President was satisfied that the retention of Shri Chattar Singh, Assistant Engineer, Northern Railway in Jodhpur was prejudicial to national security; and (2) that in the interest of the security of the State it was not expedient to hold an enquiry in the case of Shri Chattar Singh. We have already held that the personal satisfaction of the President was not necessary. All that was necessary to see in the circumstances was whether the case had been dealt with according to the business rules. Our attention was invited by learned counsel for the respondents to S. O, 196 entitled Government of India (Allocation of Business), Rules 1961 made by the President in exercise of his powers under Clause (3) of Article 77 of the Constitution. Rule 2 thereof provides that the business of the Government shall be transacted in the Ministries Departments Secretariat and offices specified in the first schedule of these Rules (all of which are to be referred as the 'Departments' in these rules). The following matters have been allocated to the Ministry of Railway (Railway Board) pertaining to Government Railways :--

'All matters, including those relating to the Railways revenues and expenditure but excluding Railway Inspectorate and Railway Audit.'

6. It is clear from this that all matters relating to Railways have been allocated to the Ministry of Railways and we have no doubt that a question regarding the removal of a Railway employee falls within the ambit of this allocation. Thus, we have no doubt in our mind that the petitioner's case could be dealt with in the Ministry of Railways. We have also no doubt that, as is evident from the affidavit of the respondents, the case was dealt with by the Minister of Railways according to the business rules and it was only when the Minister was satisfied that the retention of Shri Chattar Singh in service was prejudicial to national security and that holding of an enquiry was inexpedient in the interests of national security that the order Ex. 12 was passed. We are, therefore, satisfied that the disposal of the matter by the Railway Minister was in order and it was not necessary that the President should have been personally satisfied about the desirability of retention in service of the petitioner or about the non-holding of the enquiry.

7. We may now consider the contention of Mr. Lodha whether the action that is contemplated in Article 311(2)(c) is something different from the executive business of the Government so that it cannot be dealt with under the business rules and it is the President who alone has to deal with the matter personally, The Constitution that the people of India have given unto themselves is democratic in character. It has established a Sovereign Democratic Republic. According to the democratic structure envisaged thereunder there is distribution of powers between the three limbs of the State namely, the Executive, the Judiciary and the Legislature. Article 52 of the Constitution which occurs in Chapter I headed as the 'Executive' states that there shall be a President of India. Article 53 provides that the Executive power of the Union shall be vested in the President and shall be exercised by him, either directly, or through officers subordinate to him, in accordance with this Constitution.

Article 74 provides that there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. It also lays down that the question whether any and if so, what advice was tendered by the Ministers to the President, shall not be enquired into in any Court. Unlike what was laid down in the Government of India Act, 1935, in relation to the functions of the Governor of a Province, the Council of Ministers under Article 74 is to aid and advise the President in the exercise of his functions without any exception and this means the various functions of the President as the Chief Executive Functionary of the Union and it will undoubtedly include, in our view, the President's function under Article 311 of the Constitution. Under Article 77(3) the President is required to make rules for the more convenient transaction of the business of the Government of India and for the allocation among Ministers of the said business. The expression 'business of the Government of India' occurring in this Article is comprehensive enough to include the exercise of executive power of the Union including the functions under Article 311 of the Constitution.

8. Their Lordships of the Supreme Court had occasion to point out in *Ram Jawaya v. State of Punjab*, AIR 1955 SC 549, as to what is comprehended within the expression 'executive power' of the State. They laid down that 'ordinarily executive power connotes the residue of Governmental functions that remain after legislative

and judicial functions are taken away, subject of course, to the provisions of the constitution or of any law.' Though their Lordships have observed that it may not be possible- to frame an exhaustive definition of what the term 'executive function' means and implies yet, by and large, according to their Lordships 'executive function' comprised both 'the determination of the policy as well as carrying it into execution, the maintenance of order, promotion of general and economic welfare, the direction of foreign policy, in fact, the carrying of and supervision of the general administration of the State.' In adopting this definition their Lordships discarded the narrow meaning given to the term 'executive function' by some political writers that it means only execution of laws. Thus, in our view, matters dealt with under Article 311 could be disposed of in the manner contemplated by Article 77 of the Constitution which deals with the conduct of Government business and, to our mind, the expression 'Government business' will mean in the generic sense the exercise of the executive authority of the Union and this will certainly comprise the discharge of the executive function of the President under Article 311 of the Constitution.

9. The term 'President' cannot be divorced from the expression 'Government of India' occurring in Article 77. In the first instance, [General Clauses Act, 1897](#), has been made applicable for the interpretation of the Constitution and the term 'Government' thereunder means the President in relation to Union affairs. Apart from this, in the democratic set up which has been brought about, the Council of Ministers is comprehensively and commonly referred as the Government, with President as the constitutional head who is bound to accept the advice of his Ministers. In this regard we may make a reference to the judgment of their Lordships of the Supreme Court in *P. Joseph John v. State of Travancore-Cochin*, AIR 1955 SC 160, where dealing with the Government of the Travancore-Cochin State their Lordships observed that the term 'Government' meant the Council of Ministers under the democratic set up and the Rajpramukh was only a constitutional head and was bound to accept the advice of his Ministers.

10. We may now refer to *Narendra N. Das v. State of West Bengal*, AIR 1962 Cal 481, cited by learned counsel for the respondents. The learned Judge dealing with almost an identical question, as has arisen before us, observed as follows :--

'The satisfaction contemplated in proviso (c) to Clause (2) of Article 311 to the effect that in the interest of security of the State it is not expedient to give any opportunity to a Government servant to show cause against any disciplinary action intended to be taken against him is not the personal satisfaction of the Governor. The 'satisfaction' contemplated is the satisfaction of the Government. Security of the State is the most essential executive act of the State and as such is a matter which is a responsibility not of the Governor but that of the Government. Deprivation of an opportunity to a Government servant to show cause against any disciplinary action to be taken against him is clearly an act of and in relation to the security of the State. Such an act cannot but be the responsibility of the Government and not the personal responsibility of the Governor.'

The order dismissing a Government servant under Article 311 issued in the name, of the Government and duly authenticated by a Secretary of the Government in such a case is in compliance with Article 166(2).'

This view accords with our own.

11. We may now turn to the question whether in the circumstances of the case the President was justified in dispensing with the enquiry against the petitioner. Now the satisfaction contemplated by Article 311(2)(c) is the subjective satisfaction of the competent authority. In other words, it is the satisfaction of that authority about the retention of the employee in service being prejudicial to national security or whether it is about the expediency of the dispensing with the enquiry in the interest of the security of the State. It is common knowledge that Jodhpur region had to pass through difficult times during the period 6th September to 23rd September, 1965. Bombardment of Jodhpur by air commenced about the 3th of September, 1965 and it continued upto the 22nd of September, 1965. These are facts of which we can take judicial notice. It is also common knowledge that Gadra Road was subjected to enemy action during the period. It was during such an emergency that the petitioner was asked to proceed to Barmer and the fact is that he did not do so for one reason or the other. As such we find ourselves unable to hold that enquiry into the fault, if any, on the part of the petitioner had no reasonable connection with the security of India.

12. We are, therefore, unable to go into that question about the sufficiency of the data on which the competent authority felt satisfied; about the necessity of passing an order Under Article 311(2)(c) against the petitioner, Ever since the House of Lords decided *Liversidge v. Anderson*, 1942 AC 206, it has consistently been held in India also that the state of a person's mind cannot be determined by the objective test and as long as the competent authority acts in good faith its satisfaction cannot be enquired into in a Court of law. We may only mention the latest case that was brought to our notice at the bar namely, *Mohammad Azam v. State of Hyderabad (Now Andhra Pradesh)*, AIR 1958 Andh Pra 619, which has reviewed the previous authorities beginning from 1942 AC 206. As pointed out in that case, the only ground on which the order can thus be challenged is on the basis of mala fides on the part of the authority, because if mala fides are there the competent authority, cannot be said to have honestly satisfied itself about the necessity of passing The order.

13. The petitioner has only made a vague allegation about mala fides on the part of the respondents. He has, however, not stated who was that person that was animated by ill will or bad faith towards him and, in our view, there is no substance whatsoever in this plea.

14. Having considered the matter we are not satisfied that the order Ex. 12 suffers from any flaw. The writ petition is, therefore, hereby dismissed, but in the circumstances of the case we leave the parties to bear their own costs.