

A.F.R.

RESERVED

Reserved on 15.12.2022

Case :- SECOND APPEAL No. - 676 of 1991

Appellant :- Union Of India And Others

Respondent :- Ramdhani Prasad

Counsel for Appellant :- Amresh Singh, Arvind Kumar Goswami, Lalji Sinha, Sidheshwari Prasad, Tarun Verma, Vivek Kumar Rai

Counsel for Respondent :- Malik Syed Uddin, R.K. Shahi, S.K. Om

Hon'ble Vivek Chaudhary, J.

1. By the present second appeal, the appellant is challenging the judgment and order dated 07.12.1990 passed by the learned Additional District Judge, Gorakhpur in Civil Appeal No. 30 of 1989 (Ramdhani Prasad and others vs. Union of India and Others).
2. Brief facts of the case are that the respondent in this second appeal was appointed to the post of 'Rakshak' in Railway Police Force by the order dated 04.12.1979, under the warrant of the Chief Security Officer. The respondent was thereafter suspended by an order dated 15.11.1982, signed by Assistant Commandant No. 7 Battalion, Railway Protection Special Force, Lumding-Assam, without serving him any chargesheet. During the suspension, the respondent shifted to his village where he fell ill and had to be admitted to the Railway Hospital, Gorakhpur from 29.12.1982 to 07.03.1983. In the meantime, a departmental enquiry was initiated against the respondent in his absence on 01.01.1983. On

26.02.1983 a show cause notice was sent to the respondent which returned as unserved due to unavailability of the receiver. On 18.03.1983, the Adjutant/Assistant Commandant, Railway Protection Special Force, Lumding- Assam passed an order of removal of respondent from service. When respondent came to know about his removal order, he appealed it before the Commandant, Railway Protection Special Force, Lumding- Assam, which was dismissed on 07.11.1984.

3. Against the said orders, the respondent filed the original suit bearing No. 2662 of 1986 (Ramdhani vs. Union of India and two others) seeking relief that the order dated 18.03.1983 passed by the Adjutant, Railway Protection Special Force, Lumding- Assam and order dated 07.11.1984 passed by Assistant Commandant, Railway Protection Special Force, Lumding- Assam be set aside and he be declared a member of the Railway Protection Special Force. The suit by the plaintiff-respondent was dismissed. Against the judgment of the Trial Court, the plaintiff-respondent filed an appeal which is decided in his favour. Aggrieved by the order of the first Appellate Court, the defendants have filed this second appeal.
4. Learned Counsel for the defendant-appellant assails the judgment of the First Appellate Court on the ground that the Appellate Court was wrong in holding that the respondent could not be removed by the Assistant Commandant/Assistant Security Officer as the plaintiff-respondent is appointed by the order of Chief Security Officer. He supports the finding of the Trial Court that the respondent was appointed by the order of the Assistant

Commandant and therefore he could be removed by the Assistant Commandant/Assistant Security Officer.

5. Heard Counsel for the parties and pursued the record with their assistance.
6. In this second appeal following substantial question of law is framed-"*Whether Assistant Security Officer/Assistant Commandant/Adjutant has power to pass an order of removal from the service against the plaintiff-respondent who was appointed on the post of 'Rakshak' by the order of the Chief Security Officer ?*"
7. Counsel for the defendant-appellant contends that the Trial Court has given a finding that the plaintiff-respondent was appointed by the Assistant Commandant/Assistant Security Officer and therefore Assistant Security Officer is empowered to pass an order of dismissal however, the First Appellate Court has wrongly reversed it. A perusal of the case records shows that the Appellate Court has reversed the said finding of the Trial Court by referring to Paper No. 65 Ka, the appointment letter of the plaintiff-respondent issued by the Chief Security Officer. Paper No. 26 Ga, which is held as the appointment letter by the learned Trial Court is infact a posting letter issued by the Assistant Commandant for posting of the plaintiff-respondent after the completion of his training. Learned Counsel for the appellant could not dispute the said documents.
8. Counsel for the defendant-appellant has placed before this court **Rule 20** and **Schedule 1** of the **Railway Protection Force Rules, 1959** (hereinafter referred as "the Rules, 1959"), which provides the appointing

authority for different member/cadre of the Railway Protection Force. It reads,

"20. Powers of appointment.- *The powers of superior officers to appoint members of the Force shall be as specified in Schedule I."*

**Schedule I
(Rule 20)
Powers of Superior Officers to make appointments to
the Force**

Chief Security Officer	Security Officer	Assistant Security Officer
<i>All Members of the Force</i>	<i>Sub-Inspectors, Assistant Sub-Inspectors, Head Rakshaks, Senior Rakshaks, Rakshaks</i>	<i>Senior Rakshaks</i>

Learned counsel for the appellant submits that Assistant Security Officer/Adjutant is also empowered under the Rules, 1959 to appoint a Rakshak in the Railway Protection Force. He further relies on **Rule 43** and **Schedule II** of the Rules, 1959 which provide for the disciplinary authority empowered to impose penalty and pass disciplinary orders for specific cadre of members of the Railway Protection Force. Rule 43 and relevant portion of the Schedule II reads,

"43 Disciplinary Authority.- *The disciplinary authority in respect of a member of the Force for the purpose of imposing any particular penalty or the passing of any disciplinary order shall be the authority specified in this behalf in Schedule II in whose administrative control the member is serving and shall include any authority superior to such authority."*

Schedule II
(See rules 40 and 43)

Schedule of disciplinary authorities and their powers to pass different disciplinary orders in respect of different classes and grades and ranks of members of the Force.

Sl. No	Nature of Disciplinary Order	Inspector-General	Chief Security Officer	Security Officer	Assistant Security Officer
1.	<i>Suspension</i>	<i>All Members of the Force</i>	<i>All Members of the Force</i>	<i>All Members of the Force</i>	<i>All Members of the Force of and below the Class of Sub-Inspectors</i>
2.	<i>(a) Dismissal</i>	<i>Do.</i>	<i>Do.</i>	<i>All members of the Force except Inspectors and Sub-Inspectors.</i>	<i>No powers.</i>
	<i>(b) Removal</i>	<i>Do.</i>	<i>Do.</i>	<i>Do.</i>	<i>Senior Rakshaks and Rakshaks.</i>

Learned counsel for the appellant further submits that by joint reading of Rules 20 and 43 along with the Schedules I and II, it is clear that a Rakshak of Railway Police Force can be removed by an Assistant Security Officer/Adjutant even if the Rakshak was appointed under the hand and seal of a Chief Security Officer. He also relies upon the judgment of the Supreme Court in the case of **Union of India and another vs. Chandra Pal Pandey; AIR 1993 SC 205.**

9. Counsel for the plaintiff-respondent supports the

judgment of the First Appellate Court. He argues that it is a settled law that order of dismissal/removal can only be passed by an authority equivalent to or superior to the appointing authority. Assistant Security Officer being subordinate to the Chief Security Officer can not pass an order of removal of the plaintiff-respondent. He relies upon the judgment of the Supreme Court in the case of **Krishna Kumar vs. Divisional Assistant Electric Engineer and Others; (1979) 4 SCC 289.**

10. Contention of the counsel for the appellant that the Assistant Security Officer is empowered to appoint a Rakshak, therefore, he can also pass an order for removal of any Rakshak does not paint a complete picture. No doubt an Assistant Security Officer can remove a Rakshak from service but it has to be first seen who was the appointing authority of such a Rakshak. Protection afforded to an employee by Article 311(1) of the Constitution provides that an order of removal/dismissal from service can only be passed by the appointing authority or any other authority senior to the appointing authority. In the present case the plaintiff-respondent was appointed by the Chief Security Officer and removed by the Assistant Security Officer, who is subordinate to the Chief Security Officer in the hierarchy of the Railway Police Force, this does not satisfy the protection afforded to an employee by the Article 311 of the Indian Constitution.

11. The judgment of the Supreme Court in **Chandra Pal Pandey (supra)** relied upon by the counsel for the appellant is distinguishable from the facts of the present

case. In that case, the primary issue was, whether the Chief Security Officer alone was empowered to appoint Rakshaks and therefore any appointment of Rakshak under the hand and seal of Assistant Security Officer was illegal. Relevant paragraph 14,15,16 and 19 of the aforesaid judgment reads as under,

"14. 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 Section 6 contemplates other authorities being authorised 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 the members of the Force by such authorities as may be authorised. 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 purposes of the Act.

15. 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 has 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 enacted.

16. 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.

19. *In this view of the matter we are of the view that since both the contesting respondents in the aforesaid two cases were appointed by the Assistant Security Officer who could also remove them and, therefore, their dismissal has not been in violation of Article 311 of the Constitution of India or the Act.*

In Chandra Pal Pandey (Supra), the Rakshak whose service was dismissed by the Assistant Security Officer was also appointed by the Assistant Security Officer and therefore his dismissal was ordered by the appointing authority. Unlike in the present case where not only the dismissing officer is different but is junior/subordinate to the appointing authority.

12. Furthermore, even if the power of appointment is later extended to subordinate officers, the constitutional protection to an employee under Article 311 was operational right from the date of his appointment. For finding out the appropriate authority eligible to pass an order of removal/dismissal, the state of affairs as they existed on the date of appointment are relevant. The law in this regard is settled by the Supreme Court in **Krishna Kumar (supra)**, in paragraph 6 and 7 it has been held as under,

"6. *Besides, delegation of the power to make a particular appointment does not enhance or improve the hierarchical status of the delegate. An Officer subordinate to another will not become his equal in rank by reason of his coming to possess some of the powers of that another. The Divisional Engineer, in other words, does not cease to be subordinate in rank to the Chief Electrical Engineer merely because the latter's power to make appointments to certain posts has been delegated to him.*

7. Since the appellant was appointed by the Chief Electrical Engineer and has been removed from service by an order passed by Respondent 1 who, at any rate, was subordinate in rank to the Chief Electrical Engineer on the date of appellant's appointment, it must be held that Respondent 1 had no power to remove the appellant from service. The order of removal is in patent violation of the provisions of Article 311(1) of the Constitution."

13. First Appellate Court was right in allowing the appeal of plaintiff-respondent. In its judgment, the First Appellate Court has rightly applied the protection extended to an employee inherent in Article 311(1) and reversed the judgment of the Trial Court.

14. In light of the above observation this second appeal is **dismissed**. Judgment dated 07.12.1990 by the First Appellate Court is affirmed.

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(Vivek Chaudhary,J.)

Order Date :- January 12, 2023

Arjun/-