

the order of the condonation of break is challenged to be a *mala fide* one. No such plea has been raised on behalf of respondent No. 3. Once on merits there is justification for break in service of a Government servant of a cadre being condoned and the break so condoned incidentally and indirectly affects as a consequence of that order of condonation the rights of other Government servants in that cadre, they shall have no *locus-standi* to have that order rescinded.

(12) In the result, the appeal is allowed, the judgment of the single Judge is set aside, the impugned order, dated October 24, 1969 is quashed and order of condonation of break in the service of the appellant, dated July 16, 1965 is restored. There will, however, be no order as to costs.

GURDEV SINGH, J.—I agree.

B. S. G.

CIVIL MISCELLANEOUS.

Before R. S. Narula, J.

LEKH RAJ,—Petitioner.

versus

GENERAL MANAGER, NORTHERN RAILWAY, BARODA HOUSE, NEW DELHI, ETC.,—Respondents.

Civil Writ No. 371 of 1967.

January 19, 1972.

Indian Railway Establishment Code, Volume I—Rules 1735 and 1736—Order passed by Divisional Personnel Officer—Whether can be reconsidered suo moto by Divisional Superintendent or Chief Personnel Officer under rule 1736—Powers of revision and review conferred by the rule—Difference between—Stated—Non-mention of the relevant statutory rule in the order passed thereunder—Whether invalidates the order.

Held, that a combined reading of the rules 1735 and 1736 of Northern Railway Discipline and Appeal Rules, contained in the Indian Railway Establishment Code, Volume I, shows that much wider powers are vested in the President of India under the former rule than the limited powers which

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are vested in the authorities named in the latter rule. If the same power is vested by two separate rules in two different authorities, the vesting of power in the higher authority does not exclude the jurisdiction of the lower authority to exercise the same power when it has been specifically vested in such lower authority by a statutory rule. Hence rule 1736 of the Rules squarely authorises the Divisional Superintendent and the Chief Personnel Officer to reconsider on their own motion the order that had been passed earlier by the Divisional Personnel Officer. (Para 3).

Held, that the power of revision conferred by the first sentence of rule 1736 on the authorities named therein is different than the power of review vested in those authorities by virtue of the second sentence of that rule in three respects viz. (a) whereas those authorities can revise even an original order imposing a penalty, they can review only an appellate order; (b) whereas the revision has to be only of some order passed by an officer subordinate to the revising authority, the power of review vests in the authority which passed the order under review or his predecessor; and (c) whereas the grounds on which an order may be revised are not limited in any manner, the power of review is circumscribed by the limitations laid down in the rule itself i.e., if either fresh light is thrown on the case or the conduct of the employee establishes a case for mitigation of the penalty imposed. (Para 9).

Held, that the mere non-mention of the relevant statutory rule in the order passed under that rule does not invalidate the order, which is otherwise valid. (Para 9).

Petition under articles 226/227 of the Constitution of India praying that writ order or direction be issued quashing the orders of Respondent No. 2 conveyed to the petitioner through Respondent No. 4,—vide his letter dated 15th September, 1966 and further praying that costs of the petition be also awarded.

R. P. Bali, Advocate, for the petitioner.

H. S. Gujral, Advocate, for the respondents.

JUDGMENT

NARULA, J.—The order of the Chief Personnel Officer, Northern Railway, dated September 15, 1966 (Annexure 'H') removing the petitioner from Railway service with effect from September 16, 1966, in exercise of his powers to enhance the lesser penalty which had been earlier imposed on the petitioner for his having obtained passes and P.T.Os. for his brother and sister,

during the life-time of his father, by making a false declaration that his father was not alive has been impugned in this petition under Article 226 and 227 of the Constitution on the ground that no such power is vested in respondent No. 2 (the Chief Personnel Officer, Northern Railway) and that such a power vests only in the President of India under rule 1735 of the Indian Railway Establishment, Code Volume I. The facts giving rise to the petition lie in a narrow compass and are really not disputed at this stage.

(2) Statement of charges, dated May 16, 1964 (extract Annexure 'A') was served on the petitioner on May 17, 1964. There was a regular inquiry in which the petitioner participated. The Inquiry Officer submitted his report Annexure 'B' absolving the petitioner of the other charge, which is no more relevant, but holding him guilty of the charge of which Annexure 'A' is a copy. Thereupon, notice, dated October 22, 1965, (Annexure 'C') was served on the petitioner to show-cause why he should not be removed from service. Petitioner submitted his detailed explanation and representation, dated October 30, 1965 (Annexure 'D') in reply to the show-cause notice. By order, dated November 17, 1965 (Annexure 'E'), the petitioner was reduced to the next lower post (Cabinman) for two years and it was directed that his reduction would also affect his future increments. Petitioner admittedly did not prefer any appeal against the abovementioned order of punishment. The Chief Personnel Officer, Northern Railway, decided that the punishment given by the Divisional Personnel Officer in November, 1965 was inadequate. Under his orders, the Chief Personnel Officer issued a fresh show-cause notice to the petitioner (Annexure 'F') on March 16, 1966, wherein it was stated that the gravity of the petitioner's offence was such as to warrant a severer form of punishment and the petitioner was called upon to show-cause, in writing, why the enhanced penalty of removal from service should not be imposed upon him. Annexure 'G' to the writ petition is a copy of the detailed reply submitted by the petitioner to the show-cause notice Annexure 'F'. After considering the reply, the impugned order was passed by the Chief Personnel Officer, Northern Railway, on September 15, 1966. Petitioner claims to have preferred an appeal against that order and has filed a copy of the alleged appeal, dated October 8, 1966, as Annexure 'I' to the petition. Petitioner has not produced in this case any acknowledgment showing the actual filing of the appeal. Mr. R. P. Bali submits that it was not sent by post, but handed over to some Clerk whose signatures he has got on a copy of the memorandum of

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appeal. Even that copy has not been filed. The respondents have stated that no such appeal is traceable on their records. No counter-affidavit has been filed in reply to the said averment contained in the written statement of the respondents. Be that as it may, the fact remains that the petitioner served a notice of demand, dated January 17, 1967 (Annexure 'J') on the General Manager, Northern Railway, and, not having got any redress from the Railway Authorities, ultimately filed this petition on March 14, 1967. In the affidavit of the Assistant Personnel Officer No. 1 of the office of the Divisional Superintendent, Northern Railway, New Delhi, it has been stated that the original punishment of reversion for a period of two years was not considered adequate by the Chief Personnel Officer, Northern Railway, because the gravity of the offence (charge) was such as to warrant a severer form of punishment and that the said Officer was competent under rule 1736 of the Northern Railway Discipline and Appeal Rules to revise the orders passed by the Divisional Personnel Officer. As already stated, it has been deposed in the return that no appeal, dated October 8, 1966, or of any other date, addressed to the General Manager is found on the records of the case. Regarding the petitioner's defence on merits to the effect that he was ignorant of the rules, it has been averred in the written statement that the petitioner's pleading ignorance of the rules because of being illiterate is not acceptable particularly when he had himself declared that his father was not alive when he was actually alive. A copy of rule 1736 has been filed by the respondents as Annexure 'R/' to their return.

(3) Mr. R. P. Bali, the learned counsel for the petitioner, has firstly contended that in the presence of rule 1735 of the above-mentioned Rules, the Divisional Superintendent or the Chief Personnel Officer had no jurisdiction to *suo motu* enhance the punishment which had been imposed on the petitioner and that such a power vests exclusively in the President of India. Rules 1735 and 1736 are quoted below:—

"1735. Notwithstanding anything contained in these rules, the President may, on his own motion or otherwise, after calling for the records of the case, review any order which is made or is appealable under these rules and after consultation with the Commission, where such consultation is necessary—

(a) confirm, modify or set aside the order;

- (b) impose any penalty or set aside, reduce, confirm or enhance the penalty imposed by the order;
- (c) remit the case to the authority which made the order or to any other authority directing such further action or inquiry as he considers proper in the circumstances of the case; or
- (d) pass such other orders as he deems fit :

Provided that—

- (i) an order imposing or enhancing a penalty shall not be passed unless the person concerned has been given an opportunity of making any representation which he may wish to make against such enhanced penalty ;
- (ii) if the President proposes to impose any of the penalties specified in clauses (iv) to (vii) of sub-rule (1) of rule 1707 in a case where an inquiry under rule 1708 has not been held, he shall subject to the provisions of rule 1719, direct that such inquiry be held and thereafter on consideration of the proceeding of such inquiry and after giving the person concerned an opportunity of making any representation which he may wish to make against such penalty, pass such orders as he may deem fit.

1736. (1) The Railway Board, a General Manager and any officer not below the rank of a Deputy Head of Department or a Divisional Superintendent specified in this behalf by the General Manager shall have the power on their/his own motion or otherwise to revise any order passed by an authority subordinate to them/him. They/he shall also have the power to reconsider an earlier order passed on appeal by them/him or by a predecessor if on a subsequent date either fresh light is thrown upon the case or by his conduct the employee has established a case for mitigation of the penalty imposed:

Provided that no action under this sub-rule shall be initiated more than six months after the date of the order to be

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reviewed unless it is proposed to reduce or cancel the penalty imposed.

- (2) When an authority referred to in sub-rule (1) above proposes to enhance the penalty imposed on a railway servant, otherwise than as the result of an appeal preferred to him, he shall communicate his intention to the railway servant concerned, with the reasons therefor, and call upon him to show cause as to why the enhanced penalty should not be imposed. After considering the reply of the railway servant to this communication, he shall pass such orders as he thinks fit."

The reading of the above-quoted rules would show that much wider powers are vested in the President of India under rule 1735, than the limited powers vested in the authorities named in rule 1736. In any event, if the same power is vested by two separate rules in two different authorities, it cannot be argued that the vesting of that power in the higher authority excludes the jurisdiction of the lower authority to exercise the same power though it has been specifically vested in such lower authority by a statutory rule. The notice for enhancement was admittedly issued within six months. It has neither been suggested in the petition nor argued before me that the Divisional Superintendent or the Chief Personnel Officer had not been specified by the General Manager for purposes of rule 1736. Nor has it been suggested that the rank of the Chief Personnel Officer is below that of a Deputy Head of a Railway Department. In these circumstances, rule 1736 appears to squarely authorise the Divisional Superintendent and the Chief Personnel Officer to reconsider on their own motion the order that had been passed earlier by the Divisional Personnel Officer (Annexure 'E'). It is not disputed that the Divisional Personnel Officer is an authority subordinate to the Chief Personnel Officer as well as subordinate to the Divisional Superintendent. The first contention of Mr. Bali is, therefore, devoid of any force.

(4) It is then contended that the impugned order (Annexure 'H') is liable to be set aside as it was not a speaking order particularly when a statutory right of appeal against that order is provided by the Rules. Admittedly, no such point was taken in the writ petition. Annexure 'H' to the petition is not a copy of the whole order whereunder the impugned penalty was imposed on the petitioner.

It is a mere communication of the operative part of the order. The petitioner did not apply for a copy of the order. He claims to have preferred an appeal against that order without having obtained a copy thereof. Even in the alleged petition of appeal (of which he has filed a copy with this writ petition) no grievance was made of the order not being a speaking one or of the copy thereto not having been supplied to him. The communication Annexure 'H' clearly stated that the penalty mentioned therein had been awarded to the petitioner under orders of the Chief Personnel Officer. That shows that Annexure 'H' does not even purport to be the original order of punishment, or a copy of the whole of that order. Mr. Bali submits that the reasons supporting the order should be available in the order itself and it cannot be argued, to support the validity of an order of imposition of penalty, that the grounds are available in the file. That is not the position here. The grounds have not to be reconstructed from the file but could have been found from the order itself if the petitioner had either obtained its copy or taken up a ground of this type in the writ petition which would have necessitated the respondents to produce a copy of the whole order. I do not consider, if fair to permit the petitioner to take up this point for the first time at the hearing of the petition without having given any suggestion of such an argument in the writ petition,

(5) Mr. Bali has next submitted that the power of enhancement of penalty imposed on a Railway employee can be exercised only if some fresh light is thrown upon the case. For this proposition, he has relied on the judgment of the Allahabad High Court in *Harbans Lal Arora v. Divisional Superintendent, Central Railway, Jhansi and others* (1), and on the judgment of the Calcutta High Court in *Shri Swadesh Bhushan Ghose v. Chief Commercial Superintendent, Eastern Railway and others* (2). Rule 1725 (a) of the Railway Establishment Code Volume I was being dealt with in both those cases. The language of rule 1736 has already been noticed. The first sentence in the rule authorises the authorities to exercise a power of revision of orders passed by officers subordinate to them. That power is not circumscribed by any limitation. The second sentence in the rule vests in the same authorities a power of reviewing their own earlier orders passed in appeal. This power of review of the earlier appellate orders of those very authorities is subject to the limitation of fresh light being thrown upon the matter in case

(1) A.I.R. 1960 All. 164.

(2) A.I.R. 1961 Cal. 93.

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of enhancement and subsequent conduct of the employee establishing a case for mitigation in case of reduction in the penalty. I see no justification whatever to import into the statutory power of revision the limitations placed by the rule on the power of review when the rule making authority has made a conscious departure in the one case against the other.

(6) In order to understand the reasoning and impact of the judgments of the Allahabad and Calcutta High Courts, it is necessary to reproduce rule 1725(a) because of the slight distinction in the manner of punctuation between that rule on the one hand and rule 1736 on the other:—

“1725(a) The Railway Board, a General Manager, and any officer not below the rank of a Deputy Head of Department, a Divisional Superintendent, specified in this behalf by the General Manager, shall have the power, on their/his own motion or otherwise to revise any order passed by an authority subordinate to them/him and shall also have the power to reconsider an earlier order passed on an appeal by them/him or by a predecessor, if on a subsequent date either fresh light is thrown upon the case or by his subsequent conduct the employee has established a case for mitigation of the penalty imposed.”

It would be noticed that the power of revision and review were joined together in rule 1725 in one sentence. Now the two powers have been separated into two distinct sentences in the rule. If the judgment of the Calcutta High Court is read by keeping this fact in view, it would be found that the change in the rule, which applies to the petitioner, has made it impossible for him to avail of the reasoning of the Calcutta High Court. Sinha, J. of the Calcutta High Court dealt with this point in the following words:—

“Clause (a) of Rule 1725 gives power to the officers mentioned therein to revise any order passed by an authority subordinate to them. Reading clause (a) as it stands it appears to me that it is possible to interpret it by saying that such an authority would be entitled to revise any order passed by a subordinate authority or reconsider an earlier order, if on a subsequent date, either fresh light is thrown

upon the case, or by his subsequent conduct the employee has established a case for mitigation of the penalty imposed. In this view of the matter, both the power of revision and reconsideration would be dependent on two things. Either there must be fresh light thrown upon the matter or by his subsequent conduct the employee merited a mitigation of the penalty. If this be the proper interpretation, then the orders passed in this case must at once be declared bad, because the conditions are not satisfied. It is however, argued that the power of revision is unqualified and the two conditions qualify only the power of reconsideration. This interpretation would have been acceptable if there was a comma after the word 'subordinate to them/him. Unfortunately the comma is after the word 'predecessor' and it is arguable that both revision and reconsideration have been made subject to these conditions."

The learned Judge of the Calcutta High Court expressed some doubt in the matter of interpretation of rule 1725 placed on that rule by the Allahabad High Court in *Harbans Lal Arora's case* (1), but proceeded to make the rule issued in the case absolute by observing that it was not necessary to decide this point (interpretation of rule 1725) finally as the petitioner had never been heard in his defence and the case had been decided against him both at the first stage and at the appellate stage merely upon reading the papers.

(7) The Allahabad High Court, while referring to rule 1725, noticed this distinction between the manner of exercise of the two powers in the following words:—

"Thus, this rule gives a two-fold power to the Railway Board, General Manager or the Divisional Superintendent. They can revise any order passed by a subordinate authority. This may be called the revisional power. They can also review their own orders or those of any predecessor. This may be called the power of review, which however, can be exercised only if some fresh facts come to light or if the employee by his subsequent conduct has proved that he deserves a mitigation of the penalty imposed on him."

In *Harbans Lal Arora's case* (1), the initial order of his removal from service had been revised by a higher authority and he had been

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directed to be reinstated. Harbans Lal was actually reinstated in pursuance of that order. Thereafter, a fresh order imposing punishment on him was passed. It was in those circumstances, that it was held that the power of revision under rule 1725 had exhausted itself as soon as the petitioner had rejoined duty and that any subsequent review of the order of unconditional reinstatement of Harbans Lal Arora and revival of the old charges and resurrection of the old inquiry could only be done if fresh facts had come to light. This was said regarding the stage of review and not regarding the earlier exercise of the power of revision. The case before me is of revision and not of review.

(8) I am personally inclined to agree with the view of the Allahabad High Court in *Harbans Lal Arora's case* (1). With the greatest respect for the learned Judge of the Calcutta High Court, who decided *Sri Swadesh Bhushan Ghose's case* (2). I think that the mere punctuation in the rule does not result in a different interpretation thereof. Punctuation has normally to be ignored in the interpretation of a statutory provision. In any event, the language of the rule, with which we are concerned (rule 1736), leaves no doubt in the matter of the scope of the two parts of the rule being different. The only ground on which the correctness of the judgment of the Allahabad High Court in *Harbans Lal Arora's case* (1), was doubted by the learned Judge of the Calcutta High Court has ceased to exist in the present case. I am, therefore, of the view that neither the judgment of the Allahabad High Court nor of the Calcutta High Court is of any avail to the petitioner.

(9) It is lastly contended by Mr. Bali, that the impugned order does not specifically refer to rule 1736. I do not consider this to be a fatal defect in the order. I am unable to subscribe to the proposition that an order passed by a competent authority, in exercise of the power vested in it by a statutory rule, should be set aside merely because it does not refer to the particular rule under which the power has been exercised.

For the reasons already recorded it is held that:—

- (i) the power of revision conferred by the first sentence of rule 1736 on the authorities named therein is different than the power of review vested in those authorities by

virtue of the second sentence of that rule in three respects viz.—

- (a) whereas those authorities can revise even an original order imposing a penalty, they can review only an appellate order;
 - (b) whereas the revision has to be only of some order passed by an officer subordinate to the revising authority, the power of review vests in the authority which passed the order under review or his predecessor; and
 - (c) whereas the grounds on which an order may be revised are not limited in any manner, the power of review is circumscribed by the limitations laid down in the rule itself, i.e., if either fresh light is thrown on the case or the conduct of the employee establishes a case for mitigation of the penalty imposed; and
- (ii) the mere non-mention of the relevant statutory rule in the order passed under that rule does not invalidate the order, which is otherwise valid.

(10) No other point has been argued in this case. This writ petition, therefore, fails and is dismissed though without any order as to costs.

B. S. G.

INCOME TAX REFERENCE

Before D. K. Mahajan and Prem Chand Jain, JJ.

R. B. LALA JODHA MAL KUTHIALA AND SONS, SIMLA—

Applicant.

versus

THE COMMISSIONER OF INCOME TAX, DELHI-3, NEW DELHI,—

Respondent.

Income Tax Reference No. 28 of 1971.

January 19, 1972.

Income-tax Act (XI of 1922)—Section 22—Income-tax Act (XLIII of 1961) —Sections 271 and 297—Assessee firm registered under Income-tax Act,