STATE OF HARYANA

v.

N. C. TANDON

April 14, 1977

[V. R. KRISHNA IYER, R. S. SARKARIA AND JASWANT SINGH, JJ.]

Prevention of Corruption Act, Section 6(1)(2)—*Sanction for prosecution—Validity of—Authority empowered to sanction—Delegation of power to sanction.*

Central Civil Services (Classification, Control and Appeal) Rules 1965—*Rule* 10—*Power delegated to the Chief Engineer of Command—Whether can be exercised by the zonal Chief Engineer.*

The respondent was convicted for an offence under section 5(2) read with s. 5(1)(d) of the Prevention of Corruption Act, 1947 and section 161 of the I.P.C. The conviction was set aside by the High Court on the sole ground that the sanction for his prosecution was not accorded by a competent authority. The respondent was a Civilian in the Defence Services in the rank of temporary Superintendent, Building and oRads Grade I. The prosecution case was that he had accepted illegal gratification of Rs. 300/- from one Brij Bhushan Lal, Contractor, as a motive or reward for doing an official act. The sanction for the prosecution of the respondent was accorded by Brig. Naresh Prasad, Chief Engineer, North Western Zone, Chandigarh.

The High Court held that Brig. Naresh Prasad had no authority under the relevant rules either plenary or delegated to appoint a person to a post in class III service at the time when he passed the order for sanction of prosecution. That such a power was delegated to him subsequently. The learned Judge held that the authority was the Chief Engineer, Western Command and not the Zonal Chief Engineer.

Section 6(1) of the Prevention of Corruption Act provides that no Court shall take cognizance of the offence in question alleged to have been committed by a public servant except with the previous sanction of the officer enumerated in clauses (a), (b) and (c) of that section. Sub-section 2 of section 6 further provides that where for any reason whatsoever any doubt arises whether the previous sanction as required under sub-section (1) should be given by the Central or State Government or any other authority such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

The appellant contended that by an order communicated by letter dated 27-4-1956 (subsequently reiterated in letter dt. 23-1-1963) made under rule 10, the Engineer-in-Chief had empowered all Chief Engineers in Military Engg. Service to make first appointments and that the operation of the said order was preserved by the saving clause in rule 34(1) of the 1965 Rules. The appellant further contended that the fetter placed on the power given to the Chief Engineers in the matter of removal or dismissal of Class III servants operates only in case of persons appointed by the Engineer-in-Chief and not where he was appointed by the Chief Engineer of a Command. In the present case, the respondent was appointed not by Engineer-in-Chief but by the Chief Engineer, Western Command.

The respondent contended that the order dated 27-4-1956 expressly delegates the power of making first appointments only to the Chief Engineers of the three commands then in existence and of the other departments specified therein. In 1956, when the order was made there were no zonal Chief Enginers, which

A came into existence in December, 1962 as a class apart working under the overall administrative control of the Chief Engineers of Commands. A general delegation of the power in favour of the Chief Engineers of Commands as a class cannot by any reckoning amount to a delegation in favour of the Zonal Engineers also working under the control of the Chief Engineers of Commands. Secondly, the letter dated 23-1-1963 was not issued under the signature of the Engineer-in-Chief nor can it be construed as a delegation of the power of appointment under rule 10. Alternatively, the power delegated by the B Engineer-in-Chief to the Chief Engineers was a qualified one inasmuch as no power was given to them to dismiss or remove a Government servant of Class III service.

Dismissing the appeal,

HELD : (1) Unless a different intention appears the power to appoint to an office includes the power to dismiss or remove from that office as provided C in s. 16 of General Clauses Act. The post which the respondent was holding is a post of Class III service and the members of the service are governed by Central Civil Services (Classification, Control and Appeal) Rules, 1965. 1965 Rules repeal the earlier 1952 Rules and any notification or orders issued thereunder in so far as they were inconsistent with the 1965 rules. Under rule 10, appointments to Class III and Class IV Civilian Service are to be made by the officers empowered by the Engineer-in-Chief. Thus the appointing authority is competent to delegate the power of appointment. [596 B, C, G-H, 597D]

D (2) A perusal of the letter dated 27-4-1956 communicating the order of the Engineer-in-Chief shows that it is addressed to the Chief Engineers, Southern Command, Eastern Command and Western Command. On the date of this letter there were only 3 Commands; two Commands were created subsequently. There were no Zones or Zonal Chief Engineers at that time. Therefore, the Chief Engineers to whom the powers have been delegated under this letter could only be the Chief Engineers of the Commands as a class and it would cover Chief Engineers of the Commands which were subsequently created. But it E would not include the Chief Engineers of Zone. Zonal Chief Engineers have to work under the Command and technical control of Chief Engineers of Commands. Zonal Chief Engineers are a class apart from the Chief Engineers of Commands. They are under the administrative control of the Chief Engineers of Command. Thus the delegation is to the Chief Engineers of Commands and not to the Zonal Chief Engineers. [600 A-B, F-H 601 A-B]

(3) The letter dated 23-1-1963 is not signed by the Engineer-in-Chief. It F appears to have been signed by some other person for Engineer-in-Chief. Nor does it purport to have been issued pursuant to any separately passed order of the Engineer-in-Chief expressly delegating the powers of appointment to posts in Class III service under Rule 10. There is nothing in the letter to show that the delegation was to the Zonal Chief Engineers. On the contrary, para 8 of the letter talks of the Command Chief Engineers. The way in which the Engineer-in-Chief has construed the letter is not relevant. [601 G-H, 602AB]

G (4) Brig. Naresh Prasad, Zonal Chief Engineer was not competent to remove the respondent and as such, the order sanctioning the prosecution of the respondent was bad in law. [602 C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 126 of 1977.

Appeal by Special Leave from the Judgment and Order dated the H 12-1-1976 of the Punjab and Haryana High Court in Crl.A. No. 583/72

R. N. Sachthey and *H. S. Marwah* for the Appellant.

Hardyal Hardy and S. K. Sabbarwal for Respondent. A

The Judgment of the Court was delivered by

SARKARIA, J.—This appeal by the State is directed against a judgment of the Punjab and Haryana High Court setting aside the conviction of the respondent herein in respect of offences under ss.5(2) read with s.5(1)(d) of the Prevention of Corruption Act, 1947 and 161, Penal Code on the sole ground that the sanction for his prosecution had not been accorded by a competent authority. B

N. C. Tandon, respondent was a civilian in the defence service in the rank of temporary Superintendent Building and Roads, Grade I. It was alleged that he had accepted illegal gratification of Rs. 300/- from one Brij Bhushan Lal, Contractor on 11-3-1971 as a motive or reward for doing an official act. The Contractor was at the material time doing the construction of main sewers in Chandigarh Cantonment near Panchkula. The respondent's duty was to supervise that construction. The respondent, it is alleged, demanded the bribe as a reward for recording correct measurements. Brij Bhushan Lal did not, in fact, want to pay the gratification. He therefore informed the Special Police Establishment authorities who on 10-11-1971 trapped the accused and allegedly recovered the tainted money from his possession. C D

The sanction for the prosecution of the accused was accorded by Brig. Naresh Prasad, Chief Engineer, North Western Zone, Chandigarh on 24-6-1971. The Special Judge, Ambala tried and convicted the accused on the aforesaid charges and sentenced him to one year's rigorous imprisonment and a fine of Rs. 1,000/-.

Tandon appealed to the High Court. The appeal was heard by a learned Single Judge who held that on 24-6-1971, when Brig. Naresh Prasad Chief Engineer, North Western Zone passed the order of sanction for prosecution, he had under the relevant Rules, no plenary or delegated power to appoint to a post in Class III Service and that such a power was delegated to Chief Engineers of Zones for the first time on 14-1-1972. The learned Judge noted that the authority competent to appoint the accused-respondent on 24-6-71, was the Chief Engineer Western Command, Simla, and not the Zonal Chief Engineer. He therefore concluded that the sanction for prosecution of the accused had not been given by the competent authority. On this short ground, the High Court allowed Tandon's appeal, without going into the merits of the case. E F

At the outset, we may notice the general principles which govern the sanction for prosecution in such cases. G

Sub-section(1) of s. 6 of the Prevention of Corruption Act says :

> "No court shall take cognizance of an offence punishable under s. 161 (or sec. 164) or section 165 of the Indian Penal Code, or under sub-section (2) (or sub-section (3A) of section 5 of this Act, alleged to have been committed by a public servant, except with the previous sanction of the authorities enumerated in clauses (a), (b) and (c) of that section." H

A Sub-section (2) of the section provides :

> "Where for any reason whatsoever any doubt arises whether the previous sanction as required under sub-section (1) should be given by the Central or State Government or any other authority, such sanction shall be given by that Government or authority "which would have been *competent to remove* the public servant from his office at the time when
B the offence was alleged to have been committed."
>
> (emphasis added)

Thus the test as indicated in this sub-section, for judging the competency of the authority giving the sanction is, whether at the time of the alleged commission of the offence, it had the power to *remove* the public servant from his office.

C

Another principle to be borne in mind is, that unless a different intention appears, the power to appoint to an office includes the power to dismiss or *remove* from that office (vide s. 16, General Clauses Act).

We may further clear the ground and have a short, swift look at the relevant statutory rules. It is common ground that the post of
D Superintendent, Grade I (B & R) which the accused was temporarily holding, is a post of Class III Services, and the members of this Service are governed by Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short, hereinafter called 1965 Rules). The 1965 Rules were promulgated on November 20, 1965. Rule 34 of the 1965 Rules repealed the earlier Rules of 1952 and any notification or orders issued thereunder "in so far as they are inconsistent with
E (the 1965 Rules)". One of the provisions of the 1952 Rules, which is relevant for our purpose, and which has substantially been reproduced in the 1965 Rules, is Rule 10. It reads as under :

> "10. All first appointments to Class I and Class II Services shall be made by the Government. All first appointments to Class III and Class IV services shall be made by the authorities specified in column 3 of Schedule
F IV in respect of posts mentioned against them *or by officers empowered in this behalf by such authorities.*"
>
> (emphasis added).

Schedule IV referred to in the Rule ran as follows :

"Schedule IV (Vide Rules, 10, 11, 12, 14 and 19).

G Sl. No.	Posts	Appointing Authorities in respect of Class III and Class IV posts (vide rule 10).	Authority empowered to impose penalties (i), (ii), (iv) and (v) of rule 13 for Class II Officers (Vide r. 14)
H 1 to 7	. . . . .	..	..
8.	Posts in lower formation under E-in-C's Branch	E-in-C	C. Es. of the Commands.
	×	×	×."

The former Rule 10 as recast into Rule 9 of the 1965 Rules reads as below : A

"9(1) All appointments to Central Civil Services (other than General Civil Service) Class II, Class III and Class IV shall be made by the authorities specified in this behalf in the Schedule. B

Provided that *in respect of Class III* and Class IV Civilian Services, or civilian posts in the Defence Services *appointments may be made* by *officers empowered* in this behalf *by* the *aforesaid authorities.*

(emphasis added)

(2) All appointments to the Central Civil Posts,Class II, Class III and Class IV included in the General Central Civil Service shall be made by the authorities specified in this behalf by a general or special order made, by the authorities specified in this behalf in the Schedule." C

It may be noted that both under the old Rule 10 and the Proviso to new Rule 9(1), the appointing authority is competent to delegate the power of appointment in respect of Class III Service. D

Rule 13 enumerated these penalties which could be imposed upon the servants subject to the Rules :

(i) Censure. E

(ii) Withholding of increments or promotion.

(iii) Reduction to a lower post or time-scale or to a lower stage in a time-scale.

(iv) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders; F

(v) Suspension.

(vi) Removal from the civil service of the Government, which does not disqualify from future employment.

(vii) Dismissal from the civil service of the Government which ordinarily disqualifies from future employment. G

(viii) Compulsory retirement...."

Rule 14 of 1952 Rules specified who could impose these penalties. It provided :

"14(1) Any of the penalties specified in rule 13 may be imposed on any person subject to these rules by the Government or by the appointing authority. H

A (2) Without prejudice to the provisions of sub-rule (1), any of the penalties specified in clauses (i), (ii), (iv) or (v) of rule 13 may be imposed.

(a) ....

(b) in the case of members of Class III and IV services
B by the authority empowered in this behalf by the appointing authority.

Explanation.—In this rule the expression "appointing authority" includes an officer empowered under Rule 10 to make first appointments to Class III and Class IV Services."

C Rules 11 and 12 of the 1965 Rules correspond to Rules 13 and 14 of 1952 in all material aspects, excepting two, namely, (1) Suspension has been taken out of the category of penalties, and (2) the Explanation appended to Rule 14 has been omitted because in the 1965 Rules, the subject matter of that Explanation has been made a part of the definition of "Appointing Authority" given in Rule 2(a).

D The main submission of Mr. Sachthey, learned Counsel for the appellant is that by an order communicated per letter, dated 27-4-1956, made under Rule 10 of the 1956 Rules, (subsequently reiterated in letter dated 23-1-1963) the Engineer-in-Chief had empowered *all* Chief Engineers in Military Engineering Service to make first appointments, *inter alia,* to posts in Class III Service, and that the operation of the
E aforesaid order was preserved and continued by the saving clause in Rule 34(1) of the 1965 Rules. On these premises, it is maintained, that the High Court was wrong in holding that the Chief Engineer of the North-Western Zone, Chandigarh was not the 'appointing authority competent to remove the accused from service.

As against this, Mr. Hardyal Hardy, learned Counsel for the respon-
F dent submits that the order, dated 27-4-56, expressly delegates the power of making first appointments, only to the Chief Engineers of the three Commands, then in existence, and to the other authorities specified therein. It is pointed out that in 1956 when this order was made, there were no Zonal Chief Engineers which came into existence on reorganization in December 1962, as a class apart, working under the overall administrative control of the Chief Engineers of Commands. The point
G pressed into arguments is that a general delegation of the power in favour of Chief Engineers of Commands, as a class, cannot, by any reckoning, amount to a delegation in favour of the Zonal Chief Engineers, also, working under the control of the Chief Engineers of Commands.

Mr. Hardy has further submitted that the letter dated 23-1-1963 has not been issued under the signature of the Engineer-in-Chief, nor
H can it, by any stretch of language, be construed as a delegation of the power of appointment under Rule 10. In the alternative, it is submitted the power delegated by the Engineer-in-Chief to the Chief Engineers was a qualified one inasmuch as no power was given to them to dismiss

or remove a Government servant of Class III Service. It is maintained that by the aforesaid letter, the Chief Engineers were empowered to impose only minor penalties other than that of dismissal and removal. It is urged, in view of this restricted delegation in the matter of inflicting penalties, it cannot be said that on the principle underlying Sec. 16 of the General Clauses Act power of appointment will automatically include the power to remove the person appointed from his office.

In reply, Mr. Sachthey has pointed out that the fetter placed on the power given to the Chief Engineers by the letter dated 27-4-56, in the matter of removal or dismissal of Class III servants, operates only in case of persons appointed by the Engineer-in-Chief, and not where he was appointed by the Chief Engineer of a Command. It is pointed out that in the instant case, the accused was appointed not by E-in-C but by the Chief Engineer, Western Command, Simla.

The main question that falls to be considered is, whether the E-in-C's order communicated through letter, dated 27-4-1956, can be construed as a valid delegation of the power of appointment to posts in Class III Service to Zonal Chief Engineers, which came into existence on re-organization in December, 1962?

The material part of this letter reads as under:

"To

The Chief Engineer,
Southern Command, Poona
Eastern Command, Lucknow
Western Command, Simla

x x x

Subject : Civilians in Defence Services (Classification, Control and Appeal Rules, 1962).

With reference to Rule 10 of the Civilians in Defence Services (Classification, Control and Appeal) Rules, 1962, I hereby authorise the authorities mentioned hereunder to make first appointments to Class III and IV Services to the extent indicated below :

Authority	Posts
(a) Chief Engineers	All posts with the exception of permanent appointments to the following categories : (i) Superintendent, B/R Grade I.
(b) CWO, NDES	

* * *

2. Under Rule 14(b) of CDS (CC&A) Rules, 1952 the undermentioned authorities are empowered to impose penalties referred to in Rule 13 ibid, to the extent indicated below :—

(a) Chief Engineers and CWO, NDES	Penalties at (i), (ii), (iv) and (v) of Rule 13 on Class III employees in respect of whom E-in-C is the appointing authority."

A perusal of this letter will show that it is (among others) addressed to the Chief Engineers, Southern Command, Eastern Command, Lucknow, and Western Command, Simla. On the date of this letter there were only three Commands; two commands were created subsequently. There were no Zones or Zonal Chief Engineers at that time. Therefore, the Chief Engineers to whom the powers have been delegated under this letter could only be the Chief Engineers of the Commands, as a class. Since the delegation has been to the Chief Engineers of the Commands, as a class, it will cover the Chief Engineers of these Commands, also, which were subsequently created. But, the question is will it take in Chief Engineer of Zones and amount to a delegation of power in their favour, too, on their creation six years later in 1962? Answer to this question will depend on whether the Chief Engineers of Zones belong to the same class holding the same rank and exercising same administrative powers and control as the Chief Engineers of Commands?

At the final hearing, we had asked Shri Sachthey, to make available to us the official order, regulations and like material throwing light on this aspect of the problem. From the material furnished by him, it appears that the decision to reorganize the Military Engineering Service was taken by the Government in December, 1962. Pursuant to that decision, the Zones were created and Engineering Services in each Zone were placed under the charge of a Chief Engineer, of that Zone. Chandigarh area was also made North-Western Zone, for this purpose.

This reorganisation took effect from January 1, 1963. The main object of creation of Zonal Chief Engineers as stated in C-in-C's letter No. 66161/II/E2A, dated 13-12-1962, was to "effect maximum possible decentralisation and thereby achieve speed and efficiency in the planning and execution of work services."

As is apparent from the letter dated 22/26-12-1962 from the Engineer-in-Chief, the Zonal Chief Engineers have to work "under the command and technical control of CEs Commands for the planning and execution of works." E-in-C's letter, No. 6161/II/E2A, dated December 13, 1962 addressed to the Chief Engineers, Commands and others, also, makes it clear that under the re-organized set up, "C.E. located at each Command H.Q. will be responsible for all engineer matters in the Command, administration and training of engineer troops and for the coordination of works. Under the Command and technical control of this Chief Engineer there will be number of CEs/CsWE... on zonal basis."

These two letters unmistakably show that the zonal Chief Engineers are a class apart from the Chief Engineers of Commands. Although extensive financial powers have been delegated to the Zonal Chief Engineers, which are almost the same as that of the Chief Engineers of the Commands, the fact remains that they are under the overall administrative control of the Chief Engineer of the Commands concerned.

In this view of the matter the scope of the delegation of the powers made under the letter dated 27-4-1956, must be construed as a delegation only to the Chief Engineers of Commands, as distinguished from the Chief Engineers of Zones which were then not even in embryo.

This takes us to the letter dated January 23, 1963 from the Army H.Qrs., E-in-C's Branch. In the first place, this letter is not signed by the E-in-C. It appears to have been signed by some other person "for E-in-Chief"; secondly it does not purport to have been issued pursuant to any separately passed order of the E-in-C expressly delegating under Rule 10, the powers of appointment to posts in Class III Service. The opening sentence of this letter, no doubt, refers to HQ Letters No. 66161/II-E2A, dated 8 Dec. 1962, para 4 and even No. of 22 Dec. 1962, which we have already noticed. There is nothing in them which delegates the powers of appointment to any posts to the Zonal Chief Engineers. On the contrary, para 8 of this letter says "All Class III and IV personnel will be provided by the Command CE and will continue to be borne on the strength of that Command for purposes of (a) All documentation (b) Temporary promotion (c) Permanency (d) Retrenchment and reversion (e) Pension-progress by the Unit but *overall control by the Command CE.*" (Emphasis added)

Mr. Sachthey has placed great stress on para 12 of this letter which says :

> "The normal powers of Chief Engineer in all matters relating to appointments, punishments etc. vest with each Zonal Chief Engineer in accordance with this HQ letter No. 27304/EID(2) dated 27th April 1956. In exercising these powers it will be necessary to consult CE Command prior to recruitment and replacements."

The argument advanced on behalf of the appellant is that the very authority that had issued the letter dated April 27, 1956 has construed it as delegating the powers of appointment, punishment etc. to the Zonal CEs. also, and therefore, the Court should accept that interpretation.

We are unable to accept this argument. We have already pointed out that this letter, dated 23-1-63, has not been issued under the signature of the same authority from which the order, dated 27-4-56, had emanated. It does not *ex facie* show that any order, apart from that dated 27-4-56, had been passed by the Engineer-in-Chief under Rule 10. For reasons given earlier, we have no hesitation in holding that the assumption made in Paragraph 12 of this letter extracted above, to the effect that the Zonal Chief Engineers were vested with powers of appointments, punishments etc. in accordance with H.Q. letter dated 27 April 1956 was clearly incorrect, Perhaps, that was why on 14-1-1972, the necessity of making a proper order delegating such powers to Zonal Chief Engineers and others, under Rule 9 was felt by the Engineer-in-Chief.

A No other order of the Engineer-in-Chief made prior to 24-6-1971 under Rule 10 of 1952 Rules or under Rule 9(1) of the 1965 Rules delegating the power of appointment to posts in Class III Services, has been placed before us. We have therefore no alternative but to hold that on 24-6-1971, Brig. Naresh Prasad, Zonal Chief Engineer, North Western Zone, Chandigarh, was not competent to remove the accused-respondent, Tandon, from the post of Superintendent, B&R B Grade I, Chandigarh and as such, the order sanctioning the prosecution of the respondent was bad in law.

In view of this finding, we do not think it necessary to examine the alternative contention advanced by Shri Hardy. The case fails because there is no valid sanction, as required by the law. Obviously, this does not preclude a fresh prosecution for the same offence—but C it is a matter for the State, in the circumstances of the case, to consider whether prosecution should be launched against the respondent or not. We make this observation only to remove a possible misapprehension.

In the result, the appeal fails and is dismissed.

P.H.P. *Appeal dismissed.*