

Before :—Jawahar Lal Gupta. J.

KULTAR DEV KALSI,—Petitioner.

versus

CENTRAL INSTITUTE OF HAND TOOLS AND
OTHERS,—Respondents.

Civil Writ Petition No. 14821 of 1990.

1st May, 1991.

Central Civil Services (Classification, Control & Appeal) Rules, 1965—Rls. 15, 16(b), 29, 44(xi) & 44-A—Suspension—Challenge to—Rules providing for appointment of Secretary only by Governing Council—Secretary named as an 'Authority' of Society under the Rules/Regulations—Under Rules, president competent to delegate his functions to Principal Director—In absence of express provision for Governing Council to delegate its power/function to Principal Director, order passed by him in exercise of delegated power is without jurisdiction and liable to be quashed.

Held, that the Secretary is one of the authorities of the Society under the Rules. The appointment has to be made by the Governing Council only. The Governing Council has no power of delegation and such a power is not referable to the provisions of Rule 44 or Rule 44(A). Therefore, a function entrusted to an authority must be performed by that authority only and that too in the exercise of its own judgment. It can delegate its function only if there is a specific power to do so. Such a power is lacking in the present case. In view of the finding that the action of the Principal Director was without jurisdiction, I, therefore, allow this petition and quash the orders of suspension passed by him.

(Paras 9, 15 & 16)

Civil Writ Petition under Articles 226/227 of the Constitution of India praying that your Lordship may kindly be pleased :—

(i) to call for record of the case;

(ii) to issue a writ, order or direction in the nature of Certiorari quashing the impugned orders Annexure P-25 & P-26 respectively;

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- (iii) to issue any other writ, order or direction, which your Lordships may deem fit in the interest of justice, equity and fair play;
 - (iv) to direct the respondents to release the subsistence allowance since August, 1990 with interest;
 - (v) to dispense with filing certified copies of the Annexures P-1 to P-26 attached with the petition;
 - (vi) to dispense with service of advance notices to the respondents;
 - (vii) to award costs of the petition in favour of the petitioner.

It is further prayed that respondent No. 3 may be restrained from taking any action in pursuance to order Annexures P-25 & P-26 during the pendency of the writ petition.

G. S. Satni and T. P. Singh, Advocates, for the petitioner.

M. L. Bhargav, Advocate and Mr. G. S. Sawhney, Advocate, for the respondents.

JUDGMENT

Jawahar Lal Gupta, J.

The paper book is undoubtedly voluminous. The question arising in the case is, however, short. The petitioner, who is working as a Secretary in the Central Institute of Hand Tools, Jalandhar, questions the competence of the Principal Director of the Institute to suspend him and to charge-sheet him. According to the petitioner it is only the Governing Council, which could have passed these orders. Is it so ?

(2) A few facts relevant for the determination of the controversy may be noticed. The petitioner started his career as a Commissioned Officer in the Indian Army in the year 1969. He was promoted to the rank of Captain and in 1976 he left the Indian Army to join as Deputy Regional Director in Employees' State Insurance Corporation. In April, 1982 the petitioner left the services of the Corporation to join as Administrative Manager in the Central Tool Room, Ludhiana (an Undertaking of the Government of India). While working as such he applied for the post of Secretary in the

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Central Institute of Hand Tools, Jalandhar. On his selection, he joined the post on December 31, 1985. The letter of appointment was actually issued to the petitioner on November 26, 1985 by the Principal Director of the Institute. It is the claim of the petitioner that his appointment had been duly approved by the Governing Council.

(3) The petitioner has made lengthy averments to suggest that respondent No. 3 was not happy with him and had threatened him on various occasions. In pursuance of this design, the petitioner alleges that respondent No. 3 passed an order of his suspension on April 30, 1990. Thereafter respondent No. 3 issued a charge-sheet on October 8, 1990. Copies of these orders have been placed on record as Annexures P-25 and P-26 respectively. Both these orders have admittedly been passed by the Principal Director. The validity of these orders has been challenged *inter alia* on the grounds of lack of jurisdiction and *mala fides* of respondent No. 3. The petitioner avers that these orders have been passed under the Central Civil Services (Classification, Control and Appeal) Rules, 1965. It is his case that these orders have not been passed by the competent authority.

(4) A detailed written statement has been filed by the Principal Director on behalf of the respondents in which besides controverting the allegations of *mala fides*, copies of resolutions of the Council have been produced to suggest that the action was within the jurisdiction of the respondents and that there was no violation of the rules.

(5) Mr. T. P. Singh, learned counsel for the petitioner has contended that the Institute has framed rules called "Rules and Regulations of the Central Institute of Hand Tools Jalandhar". He submits that under Rule 16 (b) it has been categorically provided that the Secretary shall be appointed by the Governing Council. He contends that since the Governing Council alone is the Appointing Authority of the Secretary, the Principal Director had no jurisdiction to pass the orders impugned in this petition. On the other hand, Mr. M. L. Bhargava, learned counsel for the respondents has contended that the Governing Council in exercise of its powers under the rules had delegated the powers to the Principal Director by specific resolutions. He submits that the powers having been validly delegated, the challenge to the jurisdiction of respondent No. 3 was wholly unfounded and could not be sustained.

(6) For resolving the controversy, it is apt to notice the relevant provisions of the rules, which run as under :—

“Rule 2 : Definition.—In these rules and regulations :—

- (a) “Society” means the Central Institute of Hand Tools Jalandhar.
- (b) “President” means the President of Society nominated by the Government of India under Rule 4.
- (c) “Governing Council” means the body constituted under Rule 30 (b).
- (d) “Principal Director” means the Principal Officer appointed by the Government of India under Rule 16(a).
- (e) “Secretary” means Secretary appointed under Rule 16(b).”

“Rule 15 : Authorities of the Society.—The following shall be authorities of the Society :—

1. The President of the Society.
2. The Governing Council.
3. The Principal Director.
4. The Secretary; and
5. Such other authorities as may be constituted as such by the Governing Council.”

“Rule 16 : Office of the Society :—

- (a) The Principal Director shall be the Principal Executive Officer of the Society. He shall be appointed by the Government and the terms of his office and other conditions shall be determined by the Government provided that all or any of the functions of the Director may be exercised by such officers of the Society as may be delegated in that behalf by the Governing Council.

(b) The Principal Director will be assisted by the Secretary and such other officers as may be appointed by the Governing Council from time to time. *The Secretary shall be appointed by the Governing Council.*

(emphasise supplied).

“Rule 29 : The President may, in writing, delegate such of his powers as he may consider necessary to the Principal Director and/or Secretary.”

“Rule 30 : *The Governing Council* :—

(a) The affairs of the Society shall be managed, administered, ~~directed~~ and controlled, subject to Rules and Regulations and bye-laws and orders of the society, by the Governing Council and orders/directives received from the Government of India, shall be binding on the Governing Council.

(b) The Governing Council of the society for the purpose of Societies Registration Act No. 21 of 1860 shall be constituted by the Government of India for a period not exceeding three years.

While constituting the Council, the Government of India may also give due representation to persons having specialised knowledge of matters relating to Hand Tool Industry. The Governing Council shall be composed of the following :—

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|---|-------------------|-----------------|
| 1. DC, SSI | <i>Ex Officio</i> | <i>Chairman</i> |
| 2. to 4. Representatives of the Central Government including a representative of the Integrated Finance Wing, Ministry of Industry. | | Member |
| 5. A representative of the State Government of Punjab. | | Member |
| 6 to 8 Representatives of the Assn. of user Industries. | | Member |

1. DC, SSI	<i>Ex Officio</i>	<i>Chairman</i>
	9 to 11 Representatives of the Manufacturers of Hand Tools.	Member
	12. Representatives of TDA/EEPC.	Member
	13. Representative of the UNIDO/UNDP	Observer
	14. General Manager, Central Tool Room, Ludhiana.	Member
	15. Principal Director/Director of the Institute.	Member-Secretary

The Property of the society shall be vested in the Governing Council and in any proceedings, civil or criminal may be described as the property of the Governing Council. In any proceedings, the society may sue or be sued in the name of the Secretary or such other members as have in reference to the matter concerned, be appointed by the Governing Council for the occasion."

"Rule 43 : The Governing Council shall have the management of all the affairs and funds of the Society and shall have the authority to exercise all the powers of the Society subject to such limitations in respect of expenditure as the Government of India may from time to time impose."

"Rule 44 : Subject to the provision of the Memorandum of Association the Governing Council shall have full powers and authority to do all acts; matters, things and deeds which may be necessary and expedient for the purpose of the Society and without any manner derogating from the generality of their powers particularly in the following :—

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(xi) To lay down procedures for appointment of officers and staff under the Society; and terms and tenure of

appointment, emoluments, allowances and rules and discipline and other conditions of service for the officers and staff of society."

"Rule 44-A : The Governing Council shall have full powers to make such bye-laws as they may think essential for the regulation of the business of the Society and in particular with reference to :—

1. The keeping of accounts;
2. Preparation and sanction of Budget Estimates;
3. Sanction of expenditure;
4. Entering into contracts;
5. Appointment of staff and determination of their conditions of service; and
6. Any other purpose that may be necessary."

"Rule 50 : *Functions and Powers of the Principal Director :*

The Principal Director shall prescribe, on behalf of the Council the duties of all officers and staff of the Society and shall exercise such supervision and disciplinary control as may be necessary in accordance with these rules."

"Rule 51 : It shall be the duty of the Principal Director to coordinate and exercise general supervision over all the activities of the Society."

"Rule 52 : The Principal Director shall be responsible for the day-to-day management of affairs of the Society and shall exercise his powers under the direction, superintendance and control of the Chairman of the Governing Council."

"Rule 53 : *Functions and Powers of the Secretary.*

- (a) The Secretary shall be *ex-officio* Secretary of the Governing Council and such other committees or bodies as may be determined by the Council.

- (b) The Secretary shall maintain a record of the proceedings of the Society and of the Governing Council and shall perform such other functions and duties as may be determined by the Governing Council."

"Rule 59 : Alteration of the Rules :—

The prior sanction of the Government of India shall be obtained before the Rules and Regulations of the Society and amendments to them are brought into force. The said rules and regulations save and except Rule 60 may be altered at any time by a resolution passed by a majority of the members of the Society."

(7) Mr. T. P. Singh appearing for the petitioner contends vehemently that under Rule 15 the Secretary is one of the authorities of the Society and under Rule 16 (b) the appointing authority of the Secretary was only the Governing Council. He further points out that under rule 29, provision has been made for enabling the President to delegate his powers to the Principal Director and/or the Secretary. He points out that there is no provision in the rules authorising the Governing Council to delegate any of its functions to a subordinate authority. He further points out that the Principal Director had been given limited powers under the Rules to prescribe duties of officers and staff of the Society and to exercise supervision and disciplinary control over them. He submits that the Principal Director has no disciplinary control over any authority of the Society.

(8) A perusal of the rules shows that the Secretary is one of the authorities of the Society and the appointment to this post can be made by the Governing Council only. Further more, while the rules authorise the President to delegate such of his powers as he may consider necessary, there is no provision authorising the Governing Council to delegate any of its functions/powers to a subordinate authority or officer. Could the Governing Council still delegate any of its functions ?

(9) Mr. M. L. Bhargav suggests that the power vested in the Governing Council under Rule 44 (xi) to lay down procedures for appointment of officers and staff under the Society includes the power of delegation. I regret my inability to accept this argument.

Firstly, there is no provision for delegation. In fact, the provision of Rule 29 clearly shows that wherever the rule making authority wanted to provide for delegation it has done so. The rule making authority in its wisdom has chosen to confer the power of delegation only on the President and none else. In view of this position, I am inclined to take the view that the rule making authority did not intend to authorise the Governing Council to delegate its powers. Further more, the contention of the learned counsel for the respondents that the power exists in clause (xi) of Rule 44 is also devoid of merit. A perusal of this provision would show that the Governing Council is competent to lay down procedures for appointment of officers and staff under the Society. It can lay down the term and tenure of the appointment etc. in respect of the officers and staff only. The Secretary does not belong to the category of officers and staff. He is one of the authorities. While exercising powers under Clause (xi) of Rule 44 the Governing Council is not competent to prescribe conditions of service governing the authorities prescribed in Rule 15. Similarly, under Rule 15, the Principal Director has been authorised to prescribe the duties of the officers and staff of the Society. Even the supervision and disciplinary control has to be in respect of the officers and staff only. Mr. Bhargav also relied on Rule 44 (A) to contend that the Governing Council had power to make bye-laws relating to the appointment of staff and determination of their service conditions. Since the Secretary does not belong to the category of "staff", but is an authority, the provisions of Rule 44 (A) are of no assistance in the matter. A harmonious reading of the rules leads me to conclude that the Secretary is one of the authorities of the Society; the appointment has to be made by the Governing Council only; the Governing Council has no power of delegation and such a power is not referable to the provisions of Rule 44 or Rule 44 (A).

(10) It is next contended by Mr. Bhargav that the Governing Council had by its resolutions at Annexures R.2 and R.3 delegated the powers to the Principal Director. The resolution at Annexure R.2 reads as under :—

"In the Agenda Item No. 5 a proposal for delegating the Administrative and Financial powers to the Principal Director, Central Institute of Hand Tools, Jalandhar were proposed for approval of the Governing Council.

In the Minutes of the Governing Council it was resolved that the Principal Director, Central Institute of Hand Tools may continue to exercise the powers as vested in the General Manager, Central Tool Room, Ludhiana."

(11) A perusal of the above resolution would show that the proposal was limited to the delegation of administrative and financial powers only. I am of the view that the administrative power may not always include the disciplinary control. Even if the administrative power is deemed to include the disciplinary control, the above resolution was beyond the authority of the Governing Council inasmuch as it had no power of delegation. So far as the resolution at Annexure R. 3 is concerned, it is of no use for resolving the controversy because by this resolution the Governing Council had only adopted the rules of the Central Tool Room Ludhiana for the purpose of governing its own staff.

(12) It is also contended by Mr. Bhargav that the petitioner had in fact been appointed by the Principal Director. He referred to the copy of the order at Annexure R. 7. The petitioner has filed a replication, in which detailed reference has been made to show that the sequence of events to the appointment of the petitioner had been duly approved by the Governing Council. Complete sequence of events was mentioned to point out that even the constitution of the Selection Committee had been duly ratified by the Governing Council. The respondents filed a reply to the replication. In para 1 of the additional affidavit filed in reply to the replication, it has been *inter alia* averred as under :—

"As already stated in the written statement, under the Memorandum of Association and Rules and Regulations of the Central Institute of Hand Tools, *the appointing authority of the petitioner is the Governing Council.* However, the Governing Council had delegated its powers to the Principal Director and the appointment of the petitioner was made by virtue of these delegated powers."

Further in paragraph 3 of the additional affidavit, it has been *inter alia* averred as under :—

"Minutes of the Sixth Meeting of the Governing Council held on 12th September, 1986, as reproduced by the petitioner,

would clearly show that the petitioner had been appointed before the said meeting was held.. The Minutes further show that the Governing Council had *only noted the fact* of appointment of the petitioner and no approval was accorded because it was not required.”

(13) From a reading of the above averments it appears that the matter regarding the appointment of the petitioner to the post of Secretary was placed before the Governing Council and it had noted the appointment. Surely if the Council had any reservation regarding the appointment, it could have disapproved. I, however, cannot persuade myself to hold that the appointment was not approved. When the Governing Council did not object to the appointment it shall be deemed to have accorded its approval to the appointment of the petitioner. I am further of the view that the approval would relate back to the date of original appointment. In my view the appointment had been approved by the Governing Council and was thus in accordance with the rules.

(14) In any case, the validity of the petitioner's appointment is not in issue in the present case.

(15) I, therefore, hold that a function entrusted to an authority must be performed by that authority only and that too in the exercise of its own judgment. It can delegate its function only if there is a specific power to do so. Such a power is lacking in the present case.

(16) In view of the finding that the action of the Principal Director was without, jurisdiction, it is not necessary to go into the other contentions raised in the petition. I, therefore, allow this petition and quash the orders at Annexures P-25 and P-26. The petitioner shall also be entitled to his costs, which are assessed as Rs. 2,000.

R.N.R.

Before : V. K. Bali, J.

ASHISH HANDA AND ANOTHER,—Petitioners.

versus

THE DISTRICT MANAGER, TELEPHONES, CHANDIGARH AND ANOTHER,—Respondents.

Civil Writ Petition No. 1338 of 1991.

11th September, 1991.

Constitution of India, 1950—Art. 226—Tatkal Scheme—Release of telephone connections of principle of 'First come first served'—Irregular distribution of application forms—Method of working