
(1997) 03 AHC CK 0176
In the Allahabad High Court
Case No : Second Appeal No. 2658 of 1983

Fateh Singh	Vs	APPELLANT
Union of India (UOI)		RESPONDENT

Date of Decision : 10-03-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 41

Citation : (1997) 03 AHC CK 0176

Hon'ble Judges : R.K. Mahajan, J

Bench : Single Bench

Advocate : Prakash Gupta, for the Appellant; Jagannath Singh, for the Respondent

Final Decision : Allowed

Judgement

R.K. Mahajan, J.—This is a Second Appeal against the judgment and decree dated 10.8.1983 passed by Shri S. S. Gupta, IInd Additional District Judge, Agra arising out of suit No. 46 of 1977 by virtue of which the appeal was allowed setting aside the decree of the lower court which was to the effect that the Appellant be given alternative Job by the Respondent w.e.f. 14.3.1975 and the order of Job of Safaiwala which was offered to him is illegal.

2. This controversy has arisen from the following facts. Admittedly the Plaintiff Appellant's leg was amputated when he was serving as a "Rakshak" in the Railway Protection Force on 15.8.1981. He was at relevant time in Agra Cantt. and the accident took place at Mathura Junction. He received injuries from a shunting bogle and he suffered injuries resulting into amputation of leg. He remained under the medical treatment from 24.2.1975 to 14.3.1975 and he was declared fit for C-1 post and reported for duty. The case of the Appellant is that according to Medical Rules, he was to be given alternative job of Waterman, Waiting Room Attendant, Retiring Room Attendant, Office Peon or Watchman. He was given Job of Safaiwala which was not suitable. He served notice u/s 80, CPC

and thereafter instituted a suit for mandatory injunction and that the order dated 14.3.1975 is illegal invalid and he be absorbed in the alternative Job as required under law and as per choice given by him considering the nature of injuries.

3. It appears that during the pendency of the suit, he was discharged vide Ext. No. A-19 order dated 19.3.1977 with retrospective effect. The case of the Defendant-Respondent is that he was given alternative job of sweeper but he refused and ultimately there was no other course except to discharge him.

4. The trial court decreed the suit. The appellate court dismissed the suit on a technical ground that since the order of discharge has not been challenged, so the suit could not have been decreed with retrospective effect. However, the appellate court expressed the hope and trust that good sense would prevail on the Defendants to absorb him in a suitable job under the Rules.

5. Feeling aggrieved, the present Second Appeal is filed and the following question of law have been framed:

...Whether the Plaintiff-Appellant was entitled to decree in view of the provisions contained in Chapter 26 of Indian Railways Establishment Manual and as to whether the decision arrived by the lower appellate court is vitiated on account of the burden being case upon the Plaintiff Appellant to aver and establish the alternative suitable jobs available?

6. Learned Counsel for the Appellant Shri Prakash Gupta has submitted that the lower court has violated the provisions of Chapter XXVI of the Indian Railway Establishment Manual and has relied upon Rules 2601, 2604, 2606, 2609, 2610 and 2611 of the Indian Railway Establishment Manual.

7. Learned Counsel for the Railway Shri Jagannath Singh submitted that the suit for mere declaration does not lie. He further submitted that in the light of refusal of Job of Safaiwala the appellate court has taken correct view.

8. After hearing submission of both the parties, I am of the view that the appellate court fell into an error in interpretation of the Rules as well as dismissing the suit. During the pendency of the suit, the termination order was made and the Court can take into notice happening of subsequent events during the pendency of the suit. Since the Appellant's main grievance was that he was not given suitable job considering his nature of injuries, the Railway administration was not justified to refuse his request. It appears that Railway administration is bound by Rule 2606 which deals with the steps to be taken for finding alternative employment. In case the alternative job is not available for absorption in a jurisdiction, he has to resort Para (3) of Rule 2606. Para (3) of Rule 2606 is quoted with an advantage:

(3) It will be the responsibility primarily of the officer under whom the railway servant is directly serving to find suitable alternative employment for him. This will be done first by trying to find alternative employment in the officer's own district, sub-district, sub-division, office, workshop, etc. and a register, vide sub-

paragraph (7) below will be maintained for this purpose.

9. Para (7) of Rule 2606 of Indian Railway Establishment Manual also deals regarding the names of all railway servants eligible for appointment to alternative posts will be maintained by Headquarters, Divisional and District Offices and Offices of Assistant Officers in independent charge. These registers will contain not only the names of the staff of the particular Division but also the names notified to the officer concerned by other offices. This will not, however, absolve officers under whom the railway servant was last working from continuing their efforts to find employment.

10. Para (i) of Rule 2609 of Indian Railway Establishment Manual which deals regarding alternative employment to be suitable is quoted with an advantage:

(i) The alternative post to be offered to a railway servant should be the best available for which he is suited to ensure that the loss in emoluments is a minimum. The low level of emoluments should not, however, deter Officers concerned from issuing an offer of nothing better is available. The railway servant must be given an opportunity to choose for himself whether he should accept the offer or reject it.

11. Emphasis on word "choose" envisages the Railway servant for a choice and the railway administration in order to fill the post is to continue its efforts at different Head Quarters at different places. Admittedly, he is qualified to get an alternative job as this has not been denied by the Respondent No. 2. Since the Appellant was disabled and was suffering from amputation of legs. In ordinary course, he was offered to do the job of Safaiwala. It may not have suited him physically and he gave choice which the railway administration should have tried its best to search alternative Job for him. It is also the duty of the railway administration to afford or provide him assistance when he is in his bad days. The Rules are in consonance with Article 41 of the Constitution of India. Article 41 of the Constitution of India is quoted below with an advantage:

41. Right to work, to education and to public assistance in certain cases, -- The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Obviously the State is bound to help their employees when they are disabled and rules have been framed to give public assistance to him by way of offering employment.

12. In view of the discussion, I am of the considered view that the Defendant has not exhausted the entire procedure of finding an alternative job for him and he should have been given a job suitable to his disability, i.e., keeping in view of his choice and as such lower appellate Court's finding suffers from infirmity and are liable to be disturbed. I maintain the finding of the lower court. The finding of the

appellate court cannot be maintained as it is purely a technical view and it is also not supported by law at all. I also do not agree that suit for declaration does not lie. The suit in the present form is maintainable as the Respondent has been asked to perform his duties by offering alternative job of his choice.

13. In view of the aforesaid observations, the judgment of the lower court is maintained and the judgment of the appellate court is set aside and the Defendant is to expedite the offering of Job to the Appellant within four months from the date of passing of this judgment. The appeal is allowed.