
(1956) 05 AHC CK 0020
In the Allahabad High Court

Kawaldhari Singh

APPELLANT

Vs

Indian Dominion (General Manager, East Indian Railway)

RESPONDENT

Date of Decision : 07-05-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Government of India Act, 1935 — Section 240, 277

Citation : (1956) 26 AWR 524 : (1957) 1 LLJ 445

Hon'ble Judges : B. Upadhyaya, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B. Upadhyaya, J.—This is a plaintiff's appeal arising out of a suit for a declaration that his removal from service was invalid and that he continued to be still in service.

2. The plaintiff was employed as an A grade fireman on the East Indian Railway and was last posted at Kanpur. The salary that he drew at the time of his removal was Rs. 60 per mensem besides allowances. On 25 May 1947 he was served with a chargesheet asking him to show cause as to why he was not found when called to work at 17-40 on 5 March 1947 and as to why he was absent from 5 March 1947 to 20 May 1947. In the same chargesheet he was called upon to show cause why he should not be punished. The nature of the punishment intended was not communicated in the notice. An explanation appears to have been submitted on the same day. The next day, that is, on 22 May 1947, the plaintiff was removed from service. The suit giving rise to this appeal was instituted on 1 April 1949 and in defence it was pleaded that the plaintiff's removal was valid and that the provisions of Section 80, Civil Procedure Code, not having been complied with, the suit was defective and not maintainable. The trial court found that the plaintiff's removal from service was right and that the provisions of Section 80, Civil Procedure Code, had not been complied with. The suit was, therefore, dismissed. This decision was affirmed in appeal by the lower appellate

court.

3. Learned Counsel for the appellant contends that the notice u/s 80 of the CPC was addressed to the Secretary of Central Government for Railway instead of being sent to the General Manager of the East Indian Railway as required by law. This notice, however, which was sent to the Secretary was sent by the Assistant Director, Railway Board, to the General Manager, East Indian Railway, and a letter was addressed by the Assistant Director to the plaintiff saying that the notice had been forwarded to the General Manager and further correspondence should be made with that office. It appears that no further correspondence was entered into, but from the reply received by the plaintiff from the Railway "Board it is evident that the notice was forwarded to the General Manager of the East Indian Railway and it must be taken to have reached him in the ordinary course of official business. Learned Counsel for the respondent has not addressed any argument in reply to those submissions and in the circumstances of this case the suit cannot be said to be defective for want of notice u/s 80 of the Code, of Civil Procedure.

4. The next point and the more important one is that relating to the validity of the order of removal. The plaintiff was an employee of the Government on the East Indian Railway on a temporary basis. The agreement, if any, under which he was employed is not on the record. Learned Counsel for the respondent concedes that Section 240 of the Government of India Act, 1935, was applicable both to temporary as well as permanent employees. Section 240(3) of the Government of India Act, 1935, requires that no member of a service of the Crown in India or holding any civil post under the Crown shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. The above provision has been construed by the Judicial Committee of the Privy Council in I.M. Lal case AIR 1948 P.C. 141 to require that two opportunities should be given to such persons. The first opportunity should be to meet the charges against the person concerned on facts and when the authorities have formed their views on the facts and are in a position to propose the punishment to be awarded, a second opportunity should be given to the employee to show cause why the punishment proposed should not be imposed on him. This second notice has been held to be essential. This view was affirmed in Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI), . Their lordships of the Supreme Court had also to consider in the latter case as to whether the rule enunciated by the Privy Council would be applicable to cases of "removal" as they were applicable, according to the plain language of the statute, to cases of "dismissal." At p. 374 Das., J., as he then was, observed:

It will, however, be noticed that in Sub-section (3) the word "removed" was not used, although that word occurred in Rule 55 and the other rules quoted above. It was, however, held in High Commissioner for India v. I.M. Lal 1948 P.C. 121 that removal was within Section 240(3) which conclusion implies that removal is

comprised within dismissal. The position, therefore, is that both under the rules and according to the last-mentioned decision of the Judicial Committee there is no distinction between a dismissal and a removal except that the former disqualifies for future employment while the latter does not.

It is thus laid down that the rule enunciated in I.M. Lal case AIR 1948 P.C. 141 requiring two opportunities to be given to an employee was applicable not only to cases of dismissal but also to those of removal from service. It appears that the provisions of Section 277(1) of the Government of India Act were not placed before their lordships of the Supreme Court. That provision clearly lays down:

...References to dismissal from His Majesty's service include references to removal from His Majesty's service.

This explains why the word "removal" was not expressly used along with the word "dismissal" in Section 240 of the Act. The statute says that "dismissal" would include "removal." It is thus evident that the rule enunciated by the Privy Council is applicable to cases of removal also, and thus to the plaintiff's case. In this particular case it is admitted that only one opportunity was given. He was never told that any particular punishment was proposed to be imposed on him and he had no opportunity of showing cause as to why that punishment should not be imposed.

5. Learned standing counsel appearing for the Union of India argues that while in this case the plaintiff was given a chargesheet to explain certain breaches of duty on his part, the order passed ultimately was not one of dismissal or removal but one of simple termination of service. It is argued that the plaintiff was a temporary employee and his service could be terminated by giving fourteen days' notice. He was given fourteen days' notice in the order terminating his services. Therefore, the order passed was not one of removal within the meaning of Section 240 of the Government of India Act, 1935, and the rule laid down by the Privy Council in I.M. Lal case was not applicable to the facts of the present case. The railway was competent to terminate the plaintiff's services without assigning any reason by simply giving him fourteen days' notice. Whatever be the reason which actuated the decision taken by the railway authorities, the railway authorities were under no obligation either to dismiss or to remove the plaintiff and, if they chose to merely terminate his service in the exercise of their powers as employers of a temporary employee, the order could not be assailed as bad in law. This stand was not taken in defence at the trial. The removal was challenged as bad in law because the plaintiff had not been given an opportunity to show cause against the punishment awarded and the defence taken was that he had been given an opportunity and that the order of removal was not invalid for the reason stated by the plaintiff. If the defendant wanted to take its stand on the fact that as an employer it was competent to terminate the service of the temporary employee by giving fourteen days' notice regardless of the plaintiff's conduct or the charges which he was called upon to explain, the defendant should have come forward with a specific plea to

that effect. It might have been necessary to adduce evidence of a different nature and as it is it does not seem to be open to the defendant to alter the nature of its defence. In the present case, it is not denied that the ultimate order terminating the plaintiff's service was the culmination of the proceeding which started with the chargesheet. The notice sent to the plaintiff by the railway authorities is styled as a notice of removal. It may be noticed that in the body of the notice some words are printed as applicable to those cases where services are to be terminated on the basis of the agreement between the parties. Those words have been expressly scored off. It appears difficult to hold in the circumstances of the present case that the order terminating the plaintiff's services was not the result of the proceedings started by the chargesheet served on the plaintiff and was not a removal within the meaning of Section 240 read with Section 277 of the Government of India Act, 1935. In this view of the matter it appears that the removal is bad in law and the plaintiff was admittedly not given this opportunity stated to be necessary by the Privy Council in I.M. Lal case and the plaintiff is consequently to be deemed to be still in service.

6. In the light of the above observations the appeal is allowed and the suit is decreed for relief (1) claimed in the plaint, namely, for a declaration that the plaintiff is still in service. The plaintiff is entitled to his costs throughout.

7. On behalf of the respondent leave to appeal has been asked for. In view of the fact that the question raised in this case might affect a large number of people, leave to appeal is granted.