

(1961) 03 BOM CK 0004

In the Bombay High Court

Case No : Misc. Petition No. 246 of 1959

M.P. Patil

APPELLANT

Vs

D.R. Khanna and Another

RESPONDENT

Date of Decision : 15-03-1961

Acts Referred:

Constitution of India, 1950 — Article 226
Railway Establishment Code — Rule 157

Citation : AIR 1965 Bom 267 : (1964) 66 BOMLR 773 : (1965) MhLj 44

Hon'ble Judges : Mody, J

Bench : Single Bench

Advocate : K.K. Singhvi, for the Appellant; D.S. Parekh, for the Respondent

Judgement

(1) By this petition the petitioner prays for a writ of Mandamus or writ in the nature of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution directing the respondents to post the petitioner in the Compilation Branch of the Central Railway at Bombay as a Senior clerk in the grade of Rs. 80-220 on a pay of Rs.192/- per month or some other suitable post in the said Branch and also to direct them to fix his seniority in the Complication Branch in accordance with the terms of the option exercised by the petitioner in or about July 1953. The 1st respondent is the present General Manager of the Central Railway. Originally, the 1st respondent was R. B. Lal who was the General Manager of the Central Railways when the petition was field but in view of the occupant of that post having changed D.R.Khanna has since been substituted in his place as the 1st respondent. The 2nd respondent is the Union of India.

(2) The petitioner joined the service of the Central Railway, which was then known as the G.I.P railway as a clerk class II in the Accounts Departments on the 16th May 1940 and on 9th May 1942 he was confirmed in that post. At the date of the petition the petitioner had continued to be in the service of the Central Railway. As from 1st January 1947 the petitioner was temporarily sent on deputation to the grain-shop organisation as a grain-shop checker in the grade of

Rs.60-160 as an administrative measure. By reason of the petitioner's said confirmation, however the petitioner acquired a lien on the post of a clerk in the Accounts Department. At that time the Accounts Department had within it a branch known as the Compilation Branch. In or about May 1953 the then General Manager of the Central Railway directed the separation of the Compilation Branch from Account Department, making the Compilation Branch a separate cadre under the direct control of the General Manager of the Central Railway. It appears that the General Manager passed an order Dated 14th May 1953 in that behalf. The same has been referred to in the letter dated 29th June 1953 addressed by the Financial Adviser and Chief Accountants Officer to the Controller of Grain Shops. Central Railway, a copy whereof is annexed as Ex. A to the petition. The heading in that letter dated 29th June 1953 shows that the letter refers to the subject of the transfer of the Compilation Branch from the Accounts Departments to the General Manager's Office. Para 1 of that letter states that in accordance with General Manager's office. Para 1 of that letter states that in accordance with the General Manager's orders vide No.22571/-R/GM dated 14th may 1953 the statistical section at Parel and at Seccondrabad had been transferred under the General Manager's office in charge, working under the administrative control of the Senior Deputy General Manager. That there was such an order made by the General Manager has not even disputed on behalf of the respondents . A copy of that order or the exact contents of that order have not been produced before me. I must, therefore, proceed on the footing that the said order was of the nature and had the contents as set out in that letter. From the first paragraph of that letter, together with the statements contained in the petitioned the affidavits, it is clear that prior to that order there was in the Accounts Department in branch or section known as the Compilation Branch or the statistical section but that by the said order the Compilation Branch was being transferred from under the Accounts Department to form a department under the General Manager working under the administrative control of the Senior Deputy General Manager working under the administrative control of the Senior Deputy General Manager . To effectuate such transfer of the entire compilation Branch from the control of the Accounts Department to that of the General Manager a re-adjustment had to be made as regards the staff and the said order makers provision for the same as is disclosed from the contents of the said letter dated 29th June 1953, For the purposes of this petition the contents of paragraph 2 are not relevant. Paragraph 3 deals with the staff other than that dealt with in paragraph 2 and the petitioner falls within that category of other staff. Paragraph 3 provides that the other staff of the accountants Department then working in the Accounts Department as well as those in the Compilation Branch transferred to the General Manager's office were being given by that letter an option either to opt for the Compilation Branch permanently or to remain in the Account Cadre. It opted for the Compilation Branch would not be permitted to appear for Appendix IIA and IIIA Examination of the Accounts Department (which were for promotion within the Accounts Department) and would have to seek promotion in the Compilation Branch itself by the usual the

Railway. The effect of this offer of option would be that a member of this offer of option working at the date of the order in the Accounts Department would have to exercise an option either to continue in the Accounts Department or to go into the Compilation Branch, if he opted to go into the Compilation Branch and was ultimately posted in that Branch he would become a member of the staff of the compilation Branch permanently and would not be permitted to improve his prospects and seek promotion in the Accounts Department by appearing for the two examination mentioned above. He would, however be entitled to promotion only in the Compilation Branch itself in the normal course. Paragraph 4 of that letter sets out the various posts together with their salaries which would be available for Department but who opted for the Compilation Branch and were thereafter transferred to the Compilation Branch. Along with that letter a persons to whom that letter was addressed including the petitioner. Paragraph 6 of the letter provides that the option of the employees should be communicated by 31st July 1953. The contents of the order as revealed by the contents of this letter therefore, indicate that the staff of the Accounts Department were given an option to continue in the Accounts Department or to go to the Compilation Branch and further that if the option was exercised in favour of the Compilation Branch two results were to follow. The first was that as from the dare of the exercise of the option the person exercising the option in favour of the Compilation Branch would cease to be entitled to appear for the said two examination or to be entitled to any promotion in the Accounts Department. The second result was that even if an employee exercised the option in favour of the Compilation Branch, he would not be immediately posted in that Branch. It has been stated across the Bat-and I see no reason to doubt the veracity of the same-that the compilation Branch was to be but a small section as compared with the entire Accounts Department and if a large number of employees who were on the staff of the Accounts Department opted to Be transferred to compilation Branch, all of them could not Be immediately transferred to the Compilation Branch although the loss of the right of promotion in the accounts Department was to be immediate. The wording of the letter show that it was for the general manager or the appropriate authority to fill up the available posts of vacancies in the compilation Branch. The various employees who so opted acquired the right to be so transferred and posted to the Compilation Branch but only as and when appropriate posts were available. It is quite clear that in practice the actual transfer to the Compilation Branch out of the persons who so opted would immediately be of only some of them and the rest would be transferred and posted into the compilation Branch subsequently from time to time as and when appropriate posts were available. But it is equally clear that having given an option to the members of the staff of the Accounts department with the conditions attached thereto and particularly the condition that upon the exercise of the option a member of the staff would immediately lose the right of promotion in Accounts Department and would have to look for promotion in the Compilation Branch, it was obligatory on the General Manager to transfer all persons who exercised the option in favour of the Compilation Branch subject, of

course, to appropriate posts in that Branch being available.

(3) It is common ground that before the specified date viz. the 31st July 1953 the petitioner opted in favour of the Compilation Branch and communicated the same to the General and communicated the same to the General manager. It is stated in paragraph 3 of the petition-and it has not been denied on the other side-that the option so exercised by the petitioner was accepted by the then General Manager and recorder in the petitioner's service register. At the time of the exercise of the option the petitioner was a permanent clerk class II and he had a lien on that post, it being his substantive post. It, therefore, follows that when the petitioner was actually posted into the Compilation Branch he would be entitled to a parallel post of a permanent clerk class II in the Compilation Branch.

(4) As stated earlier, since long prior to time when the petitioner was offered the said option, and the exercised that option, the petitioner was on deputation to the grain shop organisation of the Central Railway in the grade of Rs.60-160. As the petitioner was in the grain-shop department the secretary, Head Quarters Office, Personnel Branch of the Central Railway addressed a letter to the Controller of Grain Shop dated the 24th October 1953, a copy whereof is annexed as part of Ex. C to copy whereof is annexed as part of Ex.C to copy whereof annexed as part of Ex. C to the petition. It has been stated in the said letter that the eleven individuals named in that letter, which includes the petitioner, who were on the staff of the Accounts Department and who were at the date of the letter working in the department of the Controller of Grain Shops, had opted for the compilation Branch. It is further stated that there were at that time five vacancies of clerks in the office of the Compilation Officer, Parel and that the Secretary was, therefore, directed to ask the Controller of Grain Shops to arrange to release five of the said members of the staff of the Accounts Departments for filling up the said vacancies as early as possible. Thereafter there is an other letter addressed by the said Secretary to the Controller of Grain-shops which is dated the 9th December 1953 and it states that it had been decided that said eleven clerks of the Accounts Department who were then on deputation to the Grain-shop Organisation. These two letters clearly show that by those letters the said members of the staff of the Accounts Department who had opted for the Compilation Branch were being attempted to be posted to the appropriate posts in the Compilation Branch. These letters also show that vacancies had in fact occurred in the Compilation Branch which could appropriately be filled up by the said eleven persons including the petitioner and that the position was such that the General Manager could thereby discharge his obligation to the petitioner by appropriately posting him in the Compilation Branch, such obligation having arisen by reason of the said option having been exercised by the petitioner in favour of the Compilation Branch.

(5) To the said letter dated 9th December 1953, however, the Controller of Grain Shops sent a reply dated 9th January 1954, a copy whereof is annexed as part of Ex. C to the petition. The contents of that letter are material. Shortly stated, the

same are that according to the Controller of Grain shops it was not considered feasible to relieve any of the said eleven employees from his own department for transfer to Compilation Branch as it was considered essential in the interest of administration to retain the services of the said eleven persons in the Grain-shop Department, as they were considered "experienced senior staff". By that letter the Controller made an alternative suggestion that an equal number of substitute clerks be taken up in the Compilation Branch, But I am really not concerned with that alternative suggestion. What is material is that this] shows that the same could by that time have been transferred to appropriate post in the Compilation Branch to which the petitioner was legally entitled, were not in fact transferred because his services were considered to be essential at that time to the Grain-shop Department. the services of the petitioner were, therefore, retained in the Grain-Shop Department. The services of the petitioner were, therefore, retained in the Grain-shop Department till the end of June 1957 when the grain-shop Department was closed down. At the time of the abolition of that Department the petitioner was working as a senior clerk on deputation in the grade of Rs. 80-220 and was drawing a salary of Rs. 170/- per month. The petitioner was then relieved from Grain-shop Department and was instructed to go and report to the Compilation accordingly reported for duty to the Compilation Officer. The Compilation Officer, however and referred him to the secretary to the general Manager. The petitioner was the made to sit in the office of the General Manager for ten days without any work after which he was asked to work in the Accounts Department from 11th July 1957. Though he had been drawing salary of Rs.176/- per month in the scale of Rs.80-220 in the Grain-Shop Organisation, he was given a lower post of clerk class II on a salary of Rs.113/- per month in the scale of Rs. 60-130.

(6) Thereafter the petitioner made various efforts and approached various authorities of the Central Railway for being appointed on the appropriate post in the Compilation Branch but his services were continued to be retained in the grade of a clerk class II in the Accounts Department itself . It is under these circumstances that the petitioner filed this petition, the main relief being that he should be posted in the compilation Branch for which he opted. In the affidavit in reply to this petition filed on behalf of the General manager of the central Railway it has been stated that it was decided in or about the month of April 1957 that no more clerks form the Compilation Branch should be permitted to transferred to the Compilation Branch. the reasons for the Compilation Branch should be permitted to be transferred to the Compilation Branch. The reasons for that decision have been set out in that affidavit, but I am not concerned with those reasons. Broadly stated they relate to the exigencies of administration but such exigencies of administration do not make any difference to the position in law and I will not refer to the same any more.

(7) In paragraph 5 of the petition as also in other paragraphs of the petition a contention has been put forward that the petitioner, having opted for the compilation Branch, acquired a lien on a post in the Compilation Branch and that,

therefore, he had a right to hold a post in the said Compilation Branch. In answer to this contention Mr. Parekh, the learned Counsel for the respondents, pointed out the definition of "lien" contained in rule 2003(14) of the Indian Railway Establishment Code, Vol. II., as appearing in the Reprint thereof 1951. It is not disputed that the petitioner's service were governed by the said Indian Railway Establishment Code. That rule define "lien" as the title of a railway servant to hold substantively either immediately or on the termination of a period or periods of absence, a permanent post, including a tenure post, to which he has been appointed substantively. It was pointed out by Mr. Parekh and that was the position as already observe by me earlier that even if the petitioner exercised to hold substantively the post of a clerk class II in the accounts Department till he was in fact transferred and posted by the General Manager or the appropriate authority to the appropriate post in the Compilation Branch. His substantive post being in the Accounts Department he had a lien on that post and not on a post in the Compilation Branch. In view of the said definition of "lien" Mr. Singhvi, the learned counsel for the petitioner, did not pursue that contention of the petitioner any more. But in any event, as already stated by me even if that contention had been pursued the same would have had to be negated by me in view of the said definition.

(8) This Petition had come up for hearing before me some months back and at that time Mr., Parekh had urged a contention that the matters in this petition are not justiciable in view of the provisions of articles 309 and 310 of the Constitution. In that behalf Mr. Parekh had placed great reliance on the case of R. Venkata Rao v. Secy of state for India in other decisions on the subject Mr. Singhvi had then stated that it had just then come to his a judgment which was directly relevant on the was conclusive on that point. I therefore adjourned this case as a report of that judgment was not available then. the same has since been available and that is the judgment D/-25-11-1960 of the Supreme Court in Civil Appellate Jurisdiction, Civil Appeal No.119 of 1959: The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya, . That judgment completely negatives Mr. Parekh's contention about the matters in this petition being not justiciable. After Mr. Singhvi read the material portions of the judgment, in reply to my question Mr. how he could in any question Mr. Parikh stated that he was not able to show how he could in any possible way canvass that supreme Court. In my opinion that judgment conclusively shows that the matters in this petition are justiciable and I do not propose to he has not conceded the point has not been able to advance a single argument to show why that judgment does not conclude this particular contention raised by him.

(9) I must now turn to examine the legal position in this case. What was or rather What is, the legal right of the petitioner in this case? He was an employee of the Union of India in the Central Railway. He was a permanent employee and his services were governed by the provisions of the Indian Railway Establishment code as appearing in the reprint thereof of 1951. Rule 157 of that code empowers the General manager of Indian Railways to make rules with regard to

non-gazetted railway servant under their control provided they are not inconsistent with any rules made by the president or the Railway Board. It is common ground that the petitioner was a non-gazetted railway servant and that therefore the General manager had the power to make rules which would be applicable to the petitioner which would be applicable to the petitioner what I have to consider is what is the position in law of the said order made by the General Manager dated 14th May 1953, the contents whereof have been referred to in the said letter dated 29th June 1953. In my opinion, that order must be held to be a rule made by the General Manager in exercise of his said power under the said rule 157. In my opinion, that order must be held to be a rule made by the General manager in exercise of his said power under the said rule 157. The said rule 157 does not lay down any particular form of any formality to be complied with by the General manager when making rules in exercise of the power under that rule. Rules would be general in nature, i.e they would concern a body of persons and not to any particular individual or individuals by name . The said order concerns a particular section of the employees of the Central Railway. A new department viz. a compilation Branch was being set up under the direct control of the General Manager and the work which that branch was doing was being taken away from the Accounts Department. To achieve that result the staff had to be transferred in various ways and to effectuate the same rules had to be framed issued the said order containing general directions. It is true that what was framed was an order and not rules by the General Manager in exercise of his power under the said rule 157. If that order be treated as rules, which I do the same would be binding not only on the Manager under the Statutory Rules, Viz., the Indian Railway Establishment Code. Therefore, on the exercise of the said option and the acceptance thereof by the General Manager., the petitioner acquired a legal right to be transferred to the Compilation to which the petitioner would be entitled in accounts Department. It is true as stated by me earlier, that the actual transfer or rather the posting of the petitioner into the Compilation Branch would be done at some time subsequent to the exercise of the option as and Branch. The said right of the petitioner imposed a corresponding legal obligation on the general Manager of the Central Railway, As a matter of fact even Mr. Parekh admitted and that is clearly the position that on the exercise of the said option by the petitioner he lost all rights to promotion in the accounts Department and was to look for promotion only in the Compilation Branch. The said two letters addressed to the Controller of Grain Shops clearly show that an appropriate post was available even as early as 1953-54 when the General Manager could discharge his said legal obligation by posting the petitioner to the appropriate post in the Compilation Branch. It is not as if the General Manager was not in a position to discharge his said legal obligation because of the non-availability of an appropriate in the Compilation Branch. It is not as if the general manager was not in a position to discharge his said legal obligation because of the non-availability of an appropriate in the Compilation Branch. It is not as if the General Manager was not in a position to discharge his said legal obligation because of the non-availability of appropriate in the Compilation Branch. As a

matter of fact the legal right of the petitioner was denied to him because his service were considered essential in another department he has under the circumstances which have since transpired, been completely denied that legal right. It is the statement made on behalf of the General Manager and I see no reason to distrust it-that the General manager came to his said decision in April 1957 of making no further posting in the Compilation Branch out of the persons who had exercised the said option in favour of the Compilation Branch be cause of some administrative exigencies. But whatever the reason may be, the fact remains that the General Manager has taken that decision which has resulted not only in a compiler denial of the petitioner's legal right but in grave injustice to him. It also cannot go unnoticed that because another department of the railway, namely the grain shop department for the rest of his life. A situation has a risen that because another department of the railway, namely the grain shop department considered the petitioner's services essential he has been deprive of all prospects of future promotions. I do not for a moment intend to suggest that the General Manager reached his said decision as far back as April 1957, the same was not communicated to the petitioner, nor was the petitioner in any way informed about the same till the petitioner came to know about it by reading the said affidavit in reply which is dated as late as 17th December 1959. In my opinion, therefore, it was clearly incumbent in law upon the General Manager to have posted the Petitioner to an appropriate post in the Compilation Branch. The General Manager has failed to discharge that duty. The petitioners, therefore, entitled to an appropriate writ which in this case would be a writ of Mandamus.

(10) I, therefore order that a writ of Mandamus do issue against the 1st respondent that he do post the petitioner in the Compilation Branch of the central Railway on such post as the petitioner would be entitled to on the basis of the option exercised by the petitioner in July 1953 and accepted by the then General Manager of the Central Railway as stated in paragraph 3 of the petitioner and that the 1st respondent do fix according to law the seniority of the petitioner in the Compilation Branch. The respondents to pay the costs of the petitioner of this petition. In view of this duration of the hearing of this petition, I fix the costs at Rs.300/- plus the usual court fees.

(11) Petition allowed.