(1969) 04 DEL CK 0017

In the Delhi High Court

Case No : Civil Writ Petition No. 331 of 1968

Nanak Singh APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 24-04-1969

Acts Referred:

Citation : AIR 1970 Delhi 71

Hon'ble Judges : T.V.R. Tatachari, J;H.R. Khanna, J

Bench : Division Bench

Advocate : Wazir Chand Chopra, for the Appellant; R.B. Nanak Chand, for the Respondent

Judgement

T.V.R. Tatachari, J.—The petitioner, Nanak Singh, has filed this writ petition under Art. 226 of the constitution of India, praying for the issuance of a writ of mandamus, directing the respondents to forebear from giving effect to their order to retire the petitioner with effect from 24-4-1968, and further directing them to retain the petitioner in service till he attains the age of 60 years, or for the issuance of a writ of certiorari quashing the aforesaid impugned order.

2. The petitioner was born on 24-4-1910. He was appointed as a Clerk, Grade Ii, in the Audit Department of the Northern Western Railway on 4-8-1927. Later, the Audit & Accounts Departments were separated, and as a consequence thereof he was transferred to the Accounts Department of the aforesaid Railway. He was confirmed as Clerk, Grade Ii, provisionally on 1-4-1930, and finally on 30-12-1930. Thereafter, he passed the prescribed Departmental examination of the Accounts Department in November, 1943, and he was promoted to the post of Junior Inspector of Station Accounts in June, 1944. Subsequently, on 24-12-1958 he was promoted to the post of Senior Inspector of Station Accounts, and later he was confirmed in the said post with effect from 21-3-1960 in the grade of Rs. 435-20-575. While he was working as Senior Inspector of Station Accounts, Traffic Accounts Department, Northern Railway, Delhi-Kishanganj, Delhi, the General Manager, Northern Railway, published in the

Northern Railway Gazettee on 16-11-1967 an announcement (Annexure ''A'') to the effect that the petitioner would be retired from service with effect from 20-4-1968 i.e. on his attaining the age of 58 years. Thereupon, the petitioner claiming that he was a ministerial servant, and that having entered service prior to the year 1938, was entitled to remain in service till he attained the age of 60 years as per Clause (2) (b) of Rule 2046 (F.R. 56) of the Indian Railway Establishment Code, Volume Ii, filed the present writ petition praying for the reliefs already set out above.

.3. The Rule 2046 (2) relied upon by the petitioner reads as under:-

"2046 (F.R. 56) (2) (a) Except as otherwise provided in this Rule, every Railway servant shall retire on the day he attains the age of 58 years.

(B) A ministerial Railway servant who entered Government service on or before the 31st March, 1938, and held on the date-

(i) a lien or a suspended lien on a permanent post, or

(ii) a permanent post in a provisional substantive capacity under clause (d) of Rules 2008 and continued to hold the same without interruption until he was confirmed in that post.

"Shall be retained in service till the day he attains the age of 60 years."

4. The respondents in the writ petition are (1) Union of India represented by the General Manager, Northern Railway, (2) The Financial Adviser and Chief Accounts Officers, Northern Railway, (3) The Deputy Chief Accounts Officer, Traffic Accounts, Northern Railway and (4) the Railway Board, Ministry of Railways, Government of India. The contention of the respondents is that the petitioner was a permanent holder of the post of Senior Inspector of Station Accounts, but the said post was not a ministerial post and the petitioner was not a ministerial servant and the Clause 2046 (2) (b) of the Indian Railway Establishment Code, Volume, Ii, did not apply to the petitioner, and that his retirement at the age of 58 years was quite in accordance with Rule 2046 (F.R. 56) (2) (a). The petitioner, admittedly, entered Government service before 31-3-1938 and held on that date a lien on a permanent post, viz., the post of Clerk, Grade Ii, in which he was confirmed on 30-12-1930. But, in order to get the benefit of the provision in Rule 2046 (2) (b), he had to be a ministerial Railway servant. Thus, the controversy between the parties is as to whether the petitioner was ministerial servant or not.

5. The term ''ministerial servant'' is defined in Rule 2003 (F.R. 9) (17) of the Indian Railway Establishment Code, Volume Ii, as under:-

"Ministerial servant means a Railway servant of a subordinate service whose duties are entirely clerical and any other class of servants specially defined as such by general or special order of a competent authority."

According to first part of the definition, in order that an employee of the Railway can claim to be a "entirely clerical." Shri Chopra, the learned counsel for the petitioner, did not contend, in our opinion rightly, that the duties of a Senior Inspector of Station Accounts are "entirely clerical" because his duties include inspection also. The second part of the definition, however, provides that any other class of servants may be specially defined as ''ministerial servants'' by a general or special order of a competent authority, and Shri Chopra''s contention is that the Senior Inspectors of Station Accounts were, in fact, specially defined as ''ministerial servants'' by the competent authority. It has, Therefore, to be seen whether there was such a special definition by an order of the competent authority.

6. According to Rule 2303 (F.R. 9) (5), "competent authority" in relation to the exercise of any power under the Rules, means the President or any authority to which such power is delegated in Appendix 32, Serial No. 1 in Appendix 32 in the Indian Railway Establishment Code, Volume Ii (second Reprint) 1951, shows that the power of the President to declare a railway servant to be a ministerial servant was delegated, with reference to Rule 2303 (5) to all Heads of Departments. However, Rule 2283 (S.R. 310) (b) in the said Code of 1951 provided that-

"any power delegated by the Appendix Xxxii to a Head of a Department may be exercised by the Railway Board."

Thus the competent authority for making a declaration that a Railway Servant was a ministerial servant was the Railway Board.

7. In 1951, the Railway Board made a declaration No. E. 48RTI/9/2, dated 1-8-1951 (Annexure ''B'' to the writ petition), whereby certain categories of Railway servants were declared as ministerial for the purpose of Rule 2046 (2). Senior Inspectors of Station Accounts were nor among the categories so declared in 951.

8. In 1958, Vol. Ii of the Indian Railway Establishment Code was reprinted (3rd Reprint) embodying all corrections and amendments made up to that year. In 1959, a revised edition of Volume I of the Code was issued. As stated in the prefatory note to the revised edition, certain Appendices of the earlier Code were removed from the revised edition and embodied in the Indian Railway Establishment Manual, which was issued separately. The said Manual was published in 1960 embodying the aforesaid Appendices and "All administrative orders of Code, rules and allied Establishment matters issued by the Railway Board from time to time and current on 31st March, 1959." In the prefatory note to the Manual, it was stated that "the provisions of this Manual do not supersede the Rules contained in any of the Indian Railway Codes and in case of conflict, the latter should prevail. This Manual may not be referred to as the final authority and a reference should always be made to the original orders on the subject." Chapter I of the Manual is divided into sections ''A'' to ''G''. Section ''B'' bears the heading "Rules for the recruitment and training of Class Iii, Class Iv and workshop staff". It is subdivided into sub-sections (I) to (IV). The rules in sub-sections (I) to (III) apply to Class Iii and workshop and artisan staff. Sub-

section (III) deals with the recruitment and training of the staff in various Departments. One of them is the Accounts Department (IXth) and paragraphs 48 to 57 relate to the same. Paragraph 48 to 52 are given the heading "Ministerial Staff (Accounts Department)." Paragraph 53 and 54 are given the heading "Accounts Department (Cash and Pay Branch.)" Paragraphs 55 to 57 are given the heading "Other Ministerial staff on Railways". The heading and paragraph 48 run as under:-

"IX. Ministerial Staff (Accounts Department).

48. The Classes included in this group and the normal channel of their promotion are as under:-

Clerks Grade Ii (Rs. 60-130) \\ Clerks Grade I (Rs. 80-220) \\ \\ \\ \\ Sub-Head (Rs. 160-250) Stock Verifier (Rs. 160-250) \\ \\ Senior Sub-Head (Rs. 200-300) Stock Verifier (Rs. 200-300) \\ \\ Junior Accountant (Rs. 200-350) Junior Inspector of Station \\ Accounts/Stores Accounts Senior Accountant (Rs. 350-500) (Rs. 200-350) \\ Senior Inspector of Station Accounts/Stores Accounts (Rs. 350-500)".

Shri Chopra relied upon the heading "Ministerial Staff", and contended that as Senior Inspector of Station Accounts was shown in the diagram in the aforesaid paragraph, the description in the heading should be regarded as a declaration by the Railway Board that Senior Inspectors of Station Accounts are ministerial servants. On the other hand, Shri Nanak Chand, the learned counsel for the respondents, contended that the diagram given in paragraph 48 was not intended to be a declaration or special definition within the meaning of the second part of the definition of ministerial servant in Rule 2003 (17), but was intended only to show the normal channel of promotion for the classes of officers included in the diagram. He also referred to paragraph 15, which is in sub-section (III) of Section ''B'' in the Manual. It runs as under:-

"15. The diagram showing normal channels of promotion which are reproduced in this sub-section are illustrative and not exhaustive and they should not be taken to exclude classes not specifically mentioned, which, it may be the recognised practice for a particular administration to admit to any of the groups shown. It shall, moreover, be open to the administration to transfer staff from one grade to another for which they may be fully qualified, but care must be taken to avoid hardship to staff already in the latter group."

At the end of the Manual is Appendix X with the heading "Concordance." It purports to show that authorities for the paragraphs occurring in the various Chapters of the Indian Railway Establishment Manual. The authorities for paragraphs 48 to 52 are stated in the concordance as "Railway Board''s Letters Nos. E(NG) 56/DE-III dated 20th December 1956, No. E(S)I - 57 C.P.C. 40 dated 7th March, 1957, and Case No. E 56 (Manual) I/I-B." Shir Nanak Chand produced the said letters and the Case mentioned in the Concordance for perusal by the Court. The two letters do not contain any reference to ministerial staff mentioned in the heading for paragraphs 48 to 52. The file relating to the Case No. E-56 mentioned in the Concordance merely contains the original drafts of paragraphs 48 to 52, etc., prepared prior to the publication of the Manual. Thus, the authorities mentioned in the Concordance do not throw any further light on the question under consideration. Paragraph 15 referred to by Shri Nanak Chand is also not of any help as it merely states that the diagrams should not be taken to exclude classes not specifically mentioned therein. We have thus only the description as "Ministerial Staff (Accounts Department)" in the heading to paragraphs 48 to 52. The question is as to whether the said description amounted to a declaration or special definition within the meaning of the definition of "Ministerial Servant" in Rule 2003 (17) of the Code.

Shri Chopra contended that it amounted to such a declaration in view of the words used in paragraph 48 of the Manual. He pointed out that immediately after the heading, the paragraph commenced with the words "the classes included in this group" and then stated that the normal channel of promotion of the said classes was as shown in the diagram set out thereafter, and that the words "this group" referred, in the context, to the ministerial staff in the Accounts Department mentioned in the heading. He further pointed out that this view is further supported by the heading "other Ministerial Staff on Railways" to paragraphs 55 to 57, that the said paragraphs dealt with three categories, namely (1) Office Clerks (2) Typists and (3) Stenographers, that the duties of these three categories were entirely clerical, and that was why they were grouped under the heading "other Ministerial Staff on Railway", and that reading the heading "Ministerial Staff (Accounts Department)" to paragraphs 48 and 52 and the heading "Other Ministerial Staff on Railways" to paragraphs 55 to 57 together, it is clear that the Railway Board which published the Manual intended to describe the group of classes mentioned in the diagram in para 48 as "Ministerial staff" and it was only after describing the same in that manner that the Railway Board proceeded to state in para 48 that the normal channel of promotion of the said classes was as set out in the diagram given in that paragraph.

There appears to be some force in the contention of Shri Chopra that the use of the words "Ministerial Staff" in the heading to paragraphs 48 to 52 did amount to a declaration specially defining the various classes in the diagram mentioned in paragraph 48 as "Ministerial servants" within the meaning of the 2nd part of the definition of "Ministerial Servant" in R. 2003 (17) of the Indian Railway Establishment Code. But, we consider that it is not necessary to express our opinion on the said contention as the paragraph 48 was subsequently substituted by a new paragraph with a different heading.

On 26-7-1962, the Railway Board issued a correction slip No. 67 whereby paragraph 48 was substituted by the following paragraph:-

"Ministerial and Non-Ministerial Staff. (Accounts Department)

48. The Classes included in the group and the normal channel of their promotion are as under:-

CLERKS., Gr. Ii (Rs. 110-180) \\ CLERKS Grade I (Rs. 130-300) \\ \\ \\ Sub-Heads Stock Verifiers (Rs. 210-380) (Rs. 210-310) \\ \\ \\ \\ Junior Accountants Junior Inspectors Junior Inspectors (Rs. 270-435) of Station Accounts of Stores Accounts \\ (Rs. 270-435) (Rs. 270-435) \\ \\ \\ Senior Accountants Senior Inspectors of Senior Inspectors (Rs. 435-575) Station Accounts of Stores Accounts (Rs. 435-575) (Rs. 435-575)."

It has to be noted that the heading was changed into "Ministerial" and "Non-ministerial staff". The new heading merely indicates that the classes of employees mentioned in the diagram include both ministerial and non-ministerial staff, and does not specify which of them are ministerial staff and which are non-ministerial staff. While the previous heading was worded in a positive manner, the new heading is neutral.

Shri Chopra argued that while there was a positive declaration in 1960 that the classes of employees mentioned in the diagram were ministerial servants, the new heading does not make any specific declaration to the contrary and, Therefore, the earlier declaration should be held to have continued to be in force. We are unable to accept this argument. It is true that the new heading is, as already stated, neutral. But, the fact remains that the old heading was substituted by the new one, and, Therefore, it cannot be regarded to have continued in force. Even if the old heading had amounted to a declaration, the effect of the correction made in 1962 was to cancel the earlier declaration made in 1960 and substitute the new heading which, even according to Shri Chopra, does not amount to a declaration but was neutral, and no declaration has been made specially defining Senior Inspectors of Station Accounts as ministerial servants after 26-7-1962. It was open to the Railway Board which was the competent authority either to declare or not to declare a class of Railway employees as ministerial servants, and, as such, had undoubtedly the power to cancel or change its earlier declaration, even if there was one. In fact, Shri Chopra did not question the said power of the Board. He however, contended that if the old heading had amounted to a declaration, even though the Board had the power to cancel or change its earlier declaration, it could do so only after giving notice to the petitioner affording him an opportunity to show cause against the proposed change, and as no such opportunity was given to the petitioner, the order cancelling the earlier declaration should be quashed as being in violation of principles of natural justice and the provision in Art. 311 of the Constitution. This contention also is not tenable.

The declaration of a class of the Railway employees as "Ministerial Servants" as envisaged by the second part of the definition in Rule 2003 (17) is a matter of policy, and it is entirely for the Railway Board to formulate its policy. It is also open to the Railway Board to change its policy from time to time, and when it does so change its policy and cancels its earlier declaration, it only exercises the power vested in it without reference to any particular individual. In the present case, even if the old heading had amounted to a declaration as contended by Shri Chopra, the Railway Board cancelled the same and substituted in its place a new heading which was neutral, and the effect of the change was general and was applicable to all Senior Inspectors of Station Accounts. Further the power of the Board to declare certain classes of Railway employees as "Ministerial" is by virtue of the power conferred upon it by Rule 156 of the Railway Establishment Code, Volume I, to make rules of general application to Railway servants under its control, read with Rule 2003 (5) and Serial No. 1 in Appendix Xxxii in the Code, Volume II. Therefore, when in exercise of the said power the Board either makes a declaration or cancels an earlier declaration affecting a class of employees in general, no question of giving a notice to the employees to show cause against the proposed action of the board arises, nor any question of violation of principles of natural justice or the provisions of Art. 311(2) is involved. It follows from the above discussion that the petitioner was not a ministerial servant and was not, Therefore, entitled to the benefit of the provision in Rule 2046 (F.R. 56) (2)(b) of the Indian Railway Establishment Code, Volume II.

9. Another contention of Shri Chopra was that the Senior Accountants in the Accounts Department of the Railway are, admittedly, ministerial servants, that the Senior Inspectors of Station Accounts and the Senior Accounts perform the same job and functions, that the incumbents of both the posts comprise of personnel recruited through common examination with common syllabus, that there should not, Therefore, be any discrimination shown against the Senior Inspectors of Station Accounts in the matter of the age of compulsory retirement is hit by Art. 16(1) of the constitution. This contention is based upon the averments made by the petitioner to that effect in his writ petition.

In answer to the said averments, it was stated in the counter-affidavit of Shri G.P.Gupta, filed on behalf of the respondents, as follows:-

"The post of Senior Accountant neither corresponds to the post of Senior Inspector of Station Accounts nor involves similar functions nor it is comprised of personnel recruited through an examination with common syllabus. It is also submitted that the duties of the Senior Accountant are altogether different from those of the Senior Inspectors of Station Accounts. The former comprise purely of ministerial duties in the office whereas the duties of the latter are entirely out-door and comprise of inspection of the accounts at stations. The rules for the Appendix Iii examination which is qualifying examination for promotion to the rank of Accountants, Inspectors of Station Accounts and Inspectors of Stores Accounts, are given in Appendix Iii to the Indian Railway Establishment Manual (copy at Annexure III). As would be seen there from whereas the candidates for accountants group have the option of appearing for any combination of optional papers shown in para 2 (A), those for Inspectors of Station Accounts have to take the combination of additional papers shown in para 2 (B) of the above

Appendix. The duties of Inspector of Station Accounts being out-door are analogous to those of Inspectors of Stores Accounts and Stock verifiers in the Accounts and Commercial Inspectors and Traffic Inspectors of the Executive Departments. None of these have been classified as ministerial at any time."

In his rejoinder, the petitioner reiterated that the function of a Senior Inspector of Station Accounts and a Senior Accountant are similar, that the former conducts checks of Railway accounts at stations, while the latter conducts checks of Railway accounts in the office, that a Senior Inspector of Station Accounts is also deputed to work in the Railway office as Superintendent of the Inspection Section when he performs all the ministerial duties of a Senior Accountant, that similarly a Senior Accountant while conducting inspection of stations, etc., performs the same functions as of the Senior Inspectors of Station Accounts, that as regards the syllabus for the qualifying examination, each candidate has to appear in two compulsory and two optional papers, that the compulsory subjects for both the Inspectors of Station Accounts and Accountants are common, that in regard to optional subjects, one of the two optional subjects, the paper on "Traffic Accounts", is also common, that only the second optional paper is different for the two posts which does not make any material difference at all that the scale of pay for both the categories is identical, and that while making promotions to the next higher grade, viz., Class Ii, Service (Assistant Accounts Officer), a combined seniority list of Senior Accountants and Senior Inspectors of Station Accounts is prepared and both are treated at par for all intents and purposes, and on promotion as Assistant Accounts Officers, they may be posted in any branch of the Accounts Department without any bar or distinction.

10. On a consideration of the respective averments of the parties, it cannot be said that Senior Accountants and Senior Inspectors of Station Accounts are similarly situated. Even according to the petitioner, there is a difference in the second option paper in the qualifying examination for the two posts. It is true that there is some similarity between the posts in certain respects, viz., the scale of pay and promotion to the next higher grade of Class Ii, Service (Assistant Accounts Officer). But, the functions and duties of the two posts are basically different, in that the functions and duties of a Senior Accountant are essentially of a clerical nature, while the functions and duties of a Senior Inspector of Station Accounts mainly involve inspection and supervision. It cannot, Therefore, be said that Senior Inspectors of Station Accounts and Senior Accountants are similarly situated, and consequently the difference in the treatment by the board in the matter of age of retirement of the incumbents in the two posts cannot be held to be vocative of the provision in Art. 16(1) of the Constitution of India. The contention of the learned counsel cannot, Therefore, be accepted.

11. For the foregoing reasons, the writ petition fails and is dismissed. In the circumstances, we make no order as to costs.

12. Petition dismissed.

