
(1963) 08 GAU CK 0013
In the Gauhati High Court

Purnendu Mohan Sen

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-08-1963

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : AIR 1967 Guw 28 : (1968) 2 LLJ 148

Hon'ble Judges : G. Mehrotra, C.J.;C. Sanjeevarao Naidu, J

Bench : Division Bench

Judgement

G. Mehrotra, C.J.—This is plaintiff's appeal. The plaintiff-appellant, at alleged by him, was appointed as assistant pay clerk, accounts department, in Bengal-Assam Railway, by the Financial Adviser and the Chief Accounts Officer, with the approval of the General Manager, with effect from 1 May 1947. Bengal-Assam Railway was merged into Assam Railway and now it is represented by North-eastern Railway. Under the Indian Railway Establishment Code, an employee is liable to enter into an agreement, and it is alleged that the plaintiff also executed an agreement. The duty of the plaintiff was to distribute salary of the railway employees. With effect from 1 April 1951, the appellant was transferred to Badarpur as the district pay clerk No. 7. Along with him two other clerks were working at Badarpur.

2. Generally the payment is to be made between the second and fourth day of each month by the plaintiff after the necessary funds are applied by the authorities. Cheques for the sum of Rs. 1,02,280-14-0 were sent by the authorities to be encashed from the Silchar Treasury for payment of the salaries for the month of November 1952. The cheques could not be cashed by the appellant till 4 December 1952. After his return from Silchar in the evening of 4 December 1952, the plaintiff started making payments. It appears that he discovered some shortage in the amount. Then he reported the matter to the railway authorities. Then a final check-up was done by the audit-inspector and the shortage was found to be Rs. 15,960. On 6 December 1952, the authorities

were accordingly informed. The plaintiff was thereafter put under suspension with effect from 9 December 1963. He was also prosecuted criminally, but he was, however, acquitted.

3. After his acquittal, the departmental enquiry was smarted against him. On 16 July 1963 a chargesheet was given to the plaintiff under the signature of the Chief Cashier for Deputy Chief Accounts Officer. The plaintiff was required to show cause why he should not be dismissed from service. The departmental enquiry proceeded and ultimately the plaintiff was dismissed from service under the orders of the Deputy Chief Accounts Officer with effect from 31 March 1954. The plaintiff went up in appeal against that order which was rejected. The present suit has been filed by the plaintiff for a declaration that the order of dismissal is ultra vires and that the plaintiff continues to be in service of the railway. He also claimed arrears of pay. Farther, the order passed by the Financial Adviser and Chief Accounts Officer, dated 19 October 1954, directing the recovery of the sum of Rs. 15,960 had been challenged. The plaintiff further challenged the order passed by the General Manager forfeiting his assets with the Rail-way Administration, namely, his security deposit of Rs. 4,000 with an interest of Rs. 600 and Government contribution of Rs. 176 to his provident fund. The plaintiff claimed a sum of Rs. 1,953-8-0 as balance of plaintiff's pay and allowance due up to the end of November 1954, and a further sum of Rs. 1,000 as compensation for loss for non-payment of plaintiff's dues in time and as damages for his sufferings mentally, physically and in reputation for wrongful dismissal. The Court below dismissed the plaintiff's suit.

4. Mainly the contention of the appellant is that he has been dismissed by an authority subordinate to the appointing authority and thus Article 311 of the Constitution has been violated. It is further urged that according to Para. 1704 of the Indian Railway Establishment Code, hereinafter referred to as the Code, the Deputy Chief Accounts Officer had no power to dismiss the appellant. The only authority which could dismiss the appellant was the General Manager, Divisional Superintendent or any head of a department, and as such, the order of dismissal is ultra vires. It is also contended that no reasonable opportunity was given to the appellant to show cause against the charge and thus Article 311(2) was violated. It is also urged that no opportunity was given to the appellant in accordance with the provisions of Paras. 1704 and 1705 of the Code. Lastly it is urged that the order of the General Manager directing forfeiture of the security amount and the contribution of the railway is not warranted by any provisions of the Code or of the terms of the agreement.

5. We do not think that there is any substance in any of the contentions raised by the appellant. The appointment letter (Ex. 1) dated 16 June 1947 was issued under the signature of the Divisional Accounts Officer, Bengal-Assam Railway, Guahati. This letter is as follows:

Purnendu Mohan Sen, son of late Hari Mohan Sen, VIII, Nowpara, Thana Narsingdi, District Dacca, at present of Noonmati Rd., GHY, is appointed as

assistant pay clerk; GHY, on Rs. 50 in the grade Rs. 40-2--60 with effect from 1 May 1947.

This has approval of General Manager....

This letter clearly shows that the appointment was made by the Divisional Accounts Officer, Bengal-Assam Railway. The appellant, however, has relied up in the letter issued by the General Manager to the Financial Advises and Chief Accounts Officer on 17 May 1947, by which the age-bar of the appellant was waived. The latter stated that in the circumstances stated the age-bar of the appellant is hereby waived and he may be appointed as assistant pay clerk on Rs. 50 per month in the scale of Rs. 40-2-60 as a temporary measure subject to the approval by Subordinate Service Commission in due course. On 80 May 1947, another letter was issued under the signature of the Financial Adviser and Chief Accounts Officer in this letter also it is stated that Purnendu Mohan Sen may be appointed as a temporary assistant pay clerk on a salary of Rs. 60 per month with effect from the date he actually reports for duty. The contention of the appellant is that the letter of the General Manager is the real appointment letter and not the one issued by the Divisional Accounts Officer on 16 June 1947.

6. In our opinion, there is no substance in this contention. The letter issued by the General Manager was only removing the age-bar and the letter issued by the Chief Accounts Officer was only authorizing the Divisional Accounts Officer to appoint the appellant as the assistant pay clerk. The appointment was, in fact, made by the Divisional Accounts Officer by his letter dated 18 June 1947 (Ex. 1). It cannot be doubted that the Deputy Chief Accounts Officer is superior to Divisional Accounts Officer, and thus the order of dismissal passed by the Deputy Chief Accounts Officer is a valid order and the provisions of Article 311(1) have not been violated in this case. In this connexion the contention of the appellant, however, is that as the appointing authority is the Chief Accounts Officer, the letter should be so interpreted as to mean that the appointment was, in fact, made by the Chief Accounts Officer and not the Deputy Chief Accounts Officer. The real question is the interpretation of the letters of appointment and after considering all these letters we are of opinion that the appointment was made under the letter dated 16 June 1947 by the Divisional Accounts Officer and thus the dismissal order was passed by an authority superior to the authority which appointed the appellant.

7. The next contention is that under Para. 1704 the Deputy Chief Accounts Officer had no power to impose a penalty of dismissal against an employee. Paragraph 1704 of the Code is as follows:

1704.* * * (ii) The General Manager, in respect of railway servants under his administrative control, may impose any of the penalties specified in rule 1702 and may, subject to any conditions he may consider necessary, delegate to the authorities subordinate to him power to impose these penalties except the withholding of provident fund contribution and gratuity and the reduction or

withholding of pensions, subject to the following provisos-

(a) that in respect of railway servants, other than inferior servants with less than seven years" service, the power of dismissal shall not be delegated to an authority lower than a head of a department or a Divisional Superintendent or, in relation to the Northwestern Railway, a Deputy General Manager

The Deputy Chief Accounts Officer is undoubtedly not the head of the department, but the General Manager made certain subsidiary rules and under the subsidiary Rule 1, Para. 1704, an appendix was attached to that rule. From appendix 3. it is clear that the Deputy Chief Accounts Officer was empowered to pass an order of dismissal. It is not disputed by the appellant that if the subsidiary rules are applicable to the facts of the present case, the Deputy Chief Accounts Officer had power to dismiss the appellant, but the contention is that these subsidiary rules have no statutory force. The subsidiary rules have been framed by the General Manager in exercise of the powers conferred on him under Para. 1726 of the Code, and it cannot be laid that these subsidiary rules have no statutory force. Besides this, it should also be noted that Clause (a) of Rule 1704, Rule 1, applies only to railway servants other than interior servants with less than seven years" service, and admittedly the appellant had not served for seven years at the time when the order of dismissal was passed against him and if he is an inferior servant with less than seven years" service, this clause is not attracted in his case. Sri Modhi, who appears for the railway, has also drawn our attention to a correction slip by which Para. 1704, Rule 1, has been amended and in the proviso (a) under Sub-rule (11) the words "Junior administrative officer " have been substituted for the words "head of a department or a Divisional Superintendent or, in relation to the Northwestern Railway, a Deputy General Manager." As the Deputy Chief Accounts Officer is a Junior administrative officer, he had power to dismiss the appellant.

8. It is vary strongly contended by the appellant that the principles of natural justice were violated in this case and no reasonable opportunity was given to the appellant to show cause against the charges. On 15 July 1953 a chargesheet was supplied to the appellant. This is marked as Ex. 13. Under this, he was charged with gross negligence of duty resulting in loss of Government money under Rule 1706 of Establishment Code, Vol. I. He was called upon to show cause by written explanation within seven clear days from the date of receipt as to why he should not be dismissed from service and his assets with the railway confiscated. He was also given a right to ask for personal heaving. In response to this charge, he tent his reply on 31 July 1953. In his reply, he has stated that during the payment on the 4th evening he saw that Sri D. P. Singha started payment of the loco-running staff just behind him near his cash safe, which due to his ill-luck was kept unlocked, though the scheduled date of payment is 5th to 7th in every month for the loco staff, one day earlier in the pay office instead of loco-shed. He has farther stated on his explanation that as soon as he could realize that some money had been stolen from his safe, then and there he informed the higher

authority and the police. This, according to him, will prove that he was very careful and never showed the slightest sign of negligence. His statement in the reply itself that the safe was kept unlocked shows that he was careless and did not discharge his duty properly. If he had not been careless, there was no possibility of any loss to the railway.

9. Again, on 2 September 1953 he was allowed to go to Gorakhpur and appear personally before the Deputy Chief Accounts Officer. It appears that on 8 September 19(sic)3 before the Deputy Chief Accounts Officer some agreement was arrived at between the appellant and the Deputy Chief Accounts Officer. But that was not a final agreement between the parties. It was only a tentative proposal which the Deputy Chief Accounts Officer thought was reasonable in the circumstances. The appellant then wrote several letters to the Financial Adviser and the Chief Accounts Officer drawing his attention to the agreement and to take action to implement the same. The Financial Adviser then wrote a letter to the appellant on 23 December 1953 intimating to him that after considering his explanation on 31 July 1953 to the chargesheet, dated 16 July 1953, it was decided to dismiss him from service. He was given seven clear days' time from the receipt thereof to show cause why the proposed penalty should not be inflicted on him. It was also stated therein that any representation that the appellant may make in that connexion would be taken into consideration before passing the final orders.

10. On 4 January 1954, the appellant again wrote another letter to the Financial Adviser and Chief Accounts Officer, in which he pointed out his earlier explanation and again reiterated that the whole thing happened because the payment was delayed and that there was a lot of rush. He again referred to his earlier explanation, which clearly shows that he was negligent in not keeping the safe locked. Again on 29 January 1954 another letter was sent to the appellant under the signature of the Chief Cashier intimating to him that he was to be heard in person by the Deputy Chief Accounts Officer on 10 February 1954. He was allowed to take the assistance of another person at the time of his defence as desired by him. On 10 March 1954 his statement was recorded by the Deputy Chief Accounts Officer and in his statement he has stated that if there had not been any crowd, the fact that his safe was open would not have caused the loss. In that statement he has also admitted that the safe was kept unlocked by him. As he could not obtain the assistance of anybody on 10 February 1954, he further asked for an assistance, and by a letter dated 23 February 1954, he was again informed that although he had already been heard in person and had been given an opportunity to be heard a second time on 10 February 1954, he was to present himself at Gorakhpur for the second hearing on or before 10 March 1954, failing which his case would be dealt, with ex parte, and on this basis his abatement was recorded on 10 March 1951, to which we have already referred to.

11. In view of these facts, it is clear that the appellant was given ample

opportunity to defend himself. The grievance of the appellant is twofold. Firstly, he contends that before the authorities made up their mind to award the punishment of dismissal, they should have made a proper enquiry, and at no proper enquiry was held before the authorities made up their minds, the provisions of Article 311 of the Constitution were violated in the present case. It should be pointed out that before the chargesheet was submitted, a committee consisting of three persons enquiry into the matter in the presence of the appellant, and as a prima facie case was found against the appellant, proceedings were started on the chargesheet dated 15 July 1953. It is true that after the enquiry had been made and the authority came, to the tentative conclusion as to the nature of the punishment to be awarded a second opportunity is to be given to the appellant. But, in the present case, we are of opinion that the appellant was given sufficient opportunity at all the stages. Chargesheet was given to him on 15 July 1953. He was asked to be personally present. He gave his explanation on 31 July 1953, and on that basis the authorities formed a tentative opinion that he should be dismissed. Thereafter, he was given a notice to show cause against the preposed punishment. He, thereafter, personally appeared, his statement was recorded and he was also given an opportunity of taking assistance of another persons he liked. In view of all this, it cannot be said that sufficient opportunity was not gives to him. The appellant has firstly contended that there was no enquiry at all, but, we have pointed out, there was some enquiry made in this case. Secondly, he contends that in the course of that enquiry no sufficient opportunity was given. There is no substance in these contentions either.

12. It, is lastly contended in this connexion that there was no evidence against the petitioner and that it was far the department to show that the appellant was negligent before he could be dismissed. As there was no evidence to support the negligence of the appellant, no sufficient opportunity was given to the appellant to show cause. As we have already referred, the explanation of the appellant and the statement made by him before the enquiring officer will show that he admitted that the safe was kept unlooked. Then conduct of his itself constitutes negligence on his part, and no farther evidence was needed to establish his negligence. In view of his own evidence, no further evidence was necessary to establish his negligence. In fact, his defence was that in view of the rush and in view of the fact that the payment of the salary had to be delayed as the cheques were not cashed in time, he could not take as much care as was expected of him. In these circumstances, no further evidence was needed to establish his negligence. The order thus does not suffer from any infirmity an suggested by the appellant.

13. It is then contended that there was violation of the provisions of Para. 1706 of the Code. The requirements of Para. 1706 are the same as that of Article 311(2) of the Constitution, and if for the purposes of Article 311; sufficient opportunity was given, it cannot be said that there was any violation of the provisions of Para. 1706 of the Code.

14. The last point urged by the appellant, in our opinion, has no substance. Admittedly the appellant gave a security of Rs. 4.000 as he had to handle cash, and if the cash was found short, the General Manager, as the controlling authority, had full power to order forfeiture of the amount of security and other contributions made by the railway.

15. There is, therefore, no force in this appeal and it is dismissed, but in the circumstances of the case, the parties will bear their own costs in this appeal.