

(1962) 01 AHC CK 0014
In the Allahabad High Court
Case No : S.A. No. 2027 of 1952

Pushkar Datt

APPELLANT

Vs

Union of India (UOI), New Delhi and Another

RESPONDENT

Date of Decision : 09-01-1962

Acts Referred:

Government of India Act, 1935 — Section 240(3)

Citation : AIR 1963 All 441 : (1962) 4 FLR 165 : (1962) 1 LLJ 685

Hon'ble Judges : D.P. Uniyal, J

Bench : Single Bench

Advocate : Maheshwari Dayal, M.H. Beg, G. Kumar Kashi Nath, K.N. Tripathi and Chaturbhuj Sahai, for the Appellant; J. Swarup, for the Respondent

Final Decision : Allowed

Judgement

D.P. Uniyal, J.—This is an appeal by the plaintiff against the decision of the Civil Judge reversing the decree of the Munsif and dismissing the suit.

2. The facts of the case were shortly these. The plaintiff Pushkar Dutta was employed as a fitter in the office of the Divisional Superintendent, East Indian Railway, Allahabad, since 7-5-40. He absented himself from duty without leave from 14-10-47 to 3-11-47. When he returned to work on 4-11-47 he was served with a charge-sheet (Ex. B) and was called upon to show cause why he should not be punished with the penalty specified in Item 6 of the List for unauthorised absence from duty from 14-10-47 to 3-11-47. The penalty specified in Item 6 of the List was removal from service. The plaintiff wrote out his explanation on the charge-sheet itself the same day saying that his brother was seriously ill and hence he was unable to attend his duty. No fresh notice, or opportunity was given to the plaintiff in regard to the action proposed to be taken against him by the defendant. He was instead served with an order (Ex. D) dated 19/23-12-47 which is in a printed form and is headed "Removal Notice". The notice (Ex. D) served on the plaintiff reads as follows:

"As your services are no longer required by the Administration you are hereby removed from service by my order and you are hereby given ... one month's pay in lieu of notice your services will accordingly terminate on the forenoon/afternoon of 21-12-47.

(sd) Superintendent Power"

3. The words "in terms of your agreement and conditions of service" were scored out from the removal notice Ex. D served on the plaintiff, which clearly indicated that the termination of the plaintiff's service was not on the basis of the agreement or conditions and terms of his service.

4. After the plaintiff had been removed from service he instituted the present suit for a declaration that his removal from service was illegal, void and inoperative as he had been removed from service without giving him an opportunity to show cause against the said removal.

5. The suit was contested by the Union of India and it was pleaded that the removal of the plaintiff from service was lawful and that he had been given reasonable opportunity to show cause against the said removal. It was further contended on behalf of the defendant that the plaintiff could not challenge the termination of his service as he had accepted one month's pay in lieu of notice in accordance with the terms and conditions of his service.

6. The learned Munsif accepted the plaintiff's case and held that he had not been given reasonable opportunity as required u/s 240(3) of the Government of India Act, 1935 and that the order terminating his service was illegal,

7. The learned Civil Judge also came to the finding that the plaintiff's removal was not in accordance with the terms and the conditions of his service but was by way of punishment. On the question as to whether the plaintiff had reasonable opportunity or not to show cause against his proposed removal the learned Civil Judge held that in the particular circumstances of the case the plaintiff must be considered to have been given reasonable opportunity to show cause against the action proposed against him. On these findings he dismissed the suit.

8. The learned counsel for the plaintiff-appellant contended that the plaintiff had not been afforded reasonable opportunity within the meaning of Section 240(3) of the Government of India Act against the action proposed to be taken by the defendant in regard to him and further, that the removal order (Ex. D) did not specify any reasons for termination of his service. He urged that the plaintiff being a permanent employee of the East Indian Railway the defendant's action in terminating his service amounted to punishment and it was obligatory on the part of the defendant to afford the plaintiff an opportunity of showing cause against the action proposed.

9. Section 240 provides :

"Except as expressly provided by this Act, every person who is a member of the civil service of the Crown in India or holds any civil post under the Crown in India

(3) No such person as aforesaid 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."

10. The charge sheet (Ex. B) required the plaintiff to show cause why he should not be removed from service for unauthorised absence from 14-10-47 to 3-11-47. In the charge-sheet no time was specified within which the plaintiff was required to submit his explanation. We know, however, that the plaintiff's explanation was taken the same day and is noted in the charge-sheet itself. After the plaintiff had offered his explanation for his absence no further notice was given to him to show cause against the action proposed to be taken against him by the defendant as required by Section 240(3) of the Government of India Act.

11. It was not denied that reasonable opportunity was not given to the plaintiff to show cause against the punishment proposed to be awarded to him by the railway authorities. It was, however, contended on behalf of the Union of India that the termination of the plaintiff's service was in accordance with Para 148 (3) of the State Railway Establishment Code, Volume I. Sub-Para (3) of Para 148 reads thus:

"Other (non-pensionable) railway servants: The service of other (non-pensionable) railway servants shall be liable to termination on notice on either side for the periods shown below....."

It is provided therein that the services of permanent non-gazetted employees shall be liable to termination in accordance with the above Sub-para by one month's notice. Sub-para (4) further provides that-

"in lieu of the notice prescribed in this rule, it shall be permissible on the part of the Railway Administration to terminate the service of a railway servant by paying him the pay for the period of notice."

12. The argument of the learned counsel for the Union of India was that the termination of the plaintiff's service was in accordance with Sub-para (3) of Para 148 of the State Establishment Code and that the plaintiff had been given one month's pay in lieu of notice in accordance with Sub-para (4). From this it was sought to be contended that the plaintiff's services had been terminated in accordance with the terms of the agreement and the conditions of his service, and that his removal from service was not by way of punishment.

13. The contention of the learned counsel for the respondent is clearly untenable. The order Ex. D whereby the services of the plaintiff were terminated, does not specify any reason for the termination of the plaintiff's service. On the contrary, the said order makes it abundantly clear that the plaintiff's services were not being terminated in accordance with the terms of the agreement and the

conditions of service. The words "in terms of your agreement and conditions of service" in the order Ex. D were scored out, thus indicating that the plaintiff's removal was not based on the terms of the agreement and conditions of his service.

14. In this connection it is pertinent to observe that the defendant did not file the agreement or the contract entered into by the plaintiff with the defendant. It is, therefore, not possible to ascertain as to what were the terms of the agreement and the conditions governing the plaintiff's service. At any rate, it is manifest that the termination of the plaintiff's service had not been brought about in accordance with the terms of the agreement and the conditions of his service, as is clear from the order EX. D.

15. It would appear from Para 1708 of the State Railway Establishment Code (Volume I) that a railway servant is liable to be removed from the service on account of his absentsing himself from duty without sufficient cause. The procedure laid down in Para 1707 has to be followed before a railway servant can be removed from service on grounds mentioned in Para 1708. The procedure prescribed in Para 1707 is in accordance with the provisions of Section 240(3) of the Government of India Act. It would thus appear, that before a railway servant can be removed from service on grounds mentioned in Para 1708, the railway authority has got to comply with the procedure prescribed by the aforesaid rules. In the present case no such procedure was fallowed and no opportunity whatsoever was afforded to the plaintiff to show cause against his removal. I have, therefore, no hesitation in holding that the removal of the plaintiff from the defendant's service was against the mandatory provisions of the Government of India Act and the Rules framed under the State Railway Establishment Code.

16. The next question that arises for consideration is whether the order of removal passed in the present case against the plaintiff amounted to punishment. I have already held that the railway department had not been able to prove that it had a right to terminate the employment of the plaintiff by giving him one month's salary in lieu of notice without complying with the mandatory provisions of Section 240(3) of the Government of India Act and the procedure prescribed by the State Railway Establishment Code. There is no evidence on the record to show that the termination of the plaintiff's service was founded on the right flowing from the contract or the service rules. The order Ex. D completely belied the defendant's assertion that the removal of the plaintiff from service was made on the basis of the terms of the agreement and the conditions of service.

17. The test for determining whether the termination of the plaintiff's service was by way of punishment is to ascertain whether he, but for such termination, had a right to hold the post. It is not disputed that he was a permanent employee holding a non-pensionable post and but for the termination of his service would have continued to remain in service and hold the post of fitter in the railway department. It is also clear that the plaintiff was removed from

service on account of his being absent from duty without leave a ground which could form the subject matter of a charge-sheet under para 1708 of the State Railway Establishment Code. Thus the plaintiff's dismissal from service was clearly by way of punishment

18. In *Parshotam Lal Dhingra Vs. Union of India (UOI)*, the Supreme Court observed:

"Shortly put, the principle is that when a servant has a right to a post or a rank either in the terms of the contract of employment, express or implied, or under the rules governing the conditions of his service, the termination of the service of such a servant, or his reduction to a lower post, is by itself, *prima facie*, a punishment, for it operates as a forfeiture of his right to hold that post or that rank and to get the emoluments and other benefits attached thereto."

19. It was not disputed that the plaintiff had a right to hold the post of a fitter and that his removal from service had the effect of depriving him of that post and the consequent loss of the emoluments and other benefits attached thereto. It must follow, therefore, that the termination of the plaintiff's service was by way of punishment."

20. In view of the findings recorded by me above, the conclusion is irresistible that the plaintiff was removed from service without affording him reasonable opportunity of showing cause against the punishment proposed to be inflicted on him.

21. The evidence in the case also goes to show that the plaintiff was not paid any salary for the period of his absence from duty between 14-10-47 and 3-11-47. The order intimating that he was being paid one month's pay in lieu of notice was an eye-wash. The plaintiff had already been punished for unauthorised absence from duty by withholding his salary for that period. Over and above that he was punished again by ordering his removal from service with effect from 21-12-47. His removal from service on payment of one month's pay in lieu of notice was thus clearly illegal and unwarranted by law.

22. I am, therefore, of the opinion that the decree passed by the learned Civil Judge must be set aside and that of the Munsif restored.

23. I accordingly allow this appeal, set aside the decree of the Civil Judge dated 14-8-52 and decree the plaintiff's suit with costs.