

(2011) 11 AHC CK 0094
In the Allahabad High Court
Case No : Second Appeal No. 1846 of 1982

Ram Ji Lal Agarwal

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 03-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100(5)
Railway Servants (Discipline and Appeal) Rules, 1968 — Rule 6, 8(2), 9(2)

Citation : (2012) 1 ADJ 99 : (2012) 3 AWC 2345 : (2012) 132 FLR 797

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble S.U. Khan, J.—List revised. No one appears for the respondent. Heard learned counsel for the appellant.

2. This second appeal was admitted on 19.7.1982 on the following substantial questions of law:

1. Whether, the order of dismissal founded open an enquiry initiated by an authority not competent to do so is sustainable in law?
2. Whether, in the circumstances of the case the plaintiff respondent could be said to have been afforded a reasonable opportunity of defence?

During arguments learned counsel for the appellant raised one more point hence appeal is proposed to be heard on the following third substantial question of law also (in accordance with the proviso to Section 100(5) C.P.C.).

3. Whether the punishment of dismissal from service on the mis-conduct found proved is so dis-proportion-ate that it shocks the conscious of the Court and is liable to be set aside on the said ground?

3. In the opinion of the Court the above substantial question of law is essential for complete adjudication of the dispute between the parties.

4. Appellant was confirmed fitter in the Central Railways. His services were terminated on 24.9.1976. He sought a declaration in the suit giving rise to the instant appeal to the effect that termination order was illegal and beyond jurisdiction.

5. The case of the plaintiff-appellant was that he was appointed as fitter in the year 1958 and was confirmed on the said post by the respondent on 17.12.1960 and posted at Jhansi.

6. The only charge against the plaintiff-appellant was that he had not filled the diary of three days, 1st, 2nd, and 3rd March, 1976. Before termination Inquiry was held and charge-sheet was given to the plaintiff. Trial Court/ Munsif, Court No. 9, Jhansi decreed the suit through judgment and decree dated 4.9.1980. Trial Court held that in accordance with the Railway Servants (Discipline and Appeal) Rules, 1968, Inquiry Officer was to be appointed by the appointing authority/disciplinary authority of the plaintiff-appellant. Shri Ved Prakash Katiyar had been appointed as Inquiry Officer by Shri D.G.Gokhale who was at that time Assistant Electrical Engineer. However, the appointing authority of the plaintiff-appellant was Divisional Engineer (Electrical) hence it was held that appointment of Inquiry Officer was wrong and the appointment was bad according to Rule 1702 of Railway Employees Manual.

7. Trial Court also found that charge-sheet signed by Shri Gokhale was defective as it ought to have been signed by appointing authority/disciplinary authority. The trial Court further held that plaintiff was not provided opportunity to examine TXR and list of electrical fitter duties for which he had requested.

8. Against the judgment and decree dated 4.9.1980 defendant-respondent filed civil appeal No. 247 of 1980. The District Judge, Jhansi through judgment and decree dated 1.2.1982 allowed the appeal, set aside the judgment and decree passed by the trial Court and dismissed the suit of the plaintiff-appellant hence this Second appeal.

9. Termination order was passed by Divisional Electrical Engineer Shri A.K.Jain.

10. The Lower appellate Court held the appointment of Inquiry Officer to be valid and in accordance with Rule 8(2) of the Railway Servants (Discipline and Appeal) Rules, 1968 according to which "the disciplinary authority who is competent to impose minor penalties under Rule-6 may subject to the provisions of Clause (c) of Sub Rule (1) of Sub Rule (2) institute disciplinary proceedings against any railway servant for the imposition of any of the major penalties notwithstanding that such disciplinary authority is not competent under the rules to impose any of the said major penalties."

11. Lower appellate Court has held that during argument learned counsel for both the parties admitted that Shri Gokhale was Assistant Engineer. Accordingly, Lower appellate Court held that the Inquiry Officer had rightly been appointed.

12. The Supreme Court in Union of India (UOI) and Others Vs. Alok Kumar, , has

held that under Rule 9(2) of aforesaid Rules of 1968 even former employees of Railway Department can be appointed as Inquiry Officers.

13. In respect of denial of opportunity of hearing Lower appellate Court in para-7 of its judgment held that it was not necessary to provide copies of all the documents asked for. It has also held that plaintiff-appellant could not show that how he was prejudiced by non supply of the copies of those documents. It has further been held that plaintiff could very well inspect documents instead of insisting upon copies.

14. Prima facie I do not find any error in the finding recorded by the Lower appellate Court. However, I do not propose to decide these points covered by the first two substantial questions of law finally as in my opinion the appeal may very well be decided on the third substantial question of law.

15. Even though no issue was framed regarding quantum of punishment however, this stares the Court in its face and it may be covered by miscellaneous issue i.e. issue No. 8 to the effect that to what relief plaintiff is entitled. Absolutely no evidence is required on this point. It being a pure question of law can even for the first time be considered by the second appellate Court vide Kaveripatnam Subbaraya Setty Annaiah Setty Charities Trust Vs. S.K. Viswanatha Setty, .

16. In the following authorities the Supreme Court has held that if termination order is passed for few days absence or on other trivial grounds, it is liable to be set aside :

1. Pepso Road Transport Corporation v. Rawel Singh, AIR 2008 (Supp.) SC 1591
2. Mavgi C. Lakum v. Central Bank of India, AIR 2008 (Supp.) SC 1817
3. Depot Manager, APSRTC v. V. Surender, AIR 2009 (Supp.) SC 622
4. Jagdish Singh Vs. Punjab Engineering College and Others, and
5. Chairman cum Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others,

17. Punishment of dismissal/removal from service on the ground that diary was not filled for three days is shocking to the conscious of the Court. Accordingly, third substantial question of law is decided in favour of the plaintiff-appellant.

18. However, the relief as asked for in the plaint cannot be granted as appellant has crossed the age of superannuation more than 15 years before. Now the appellant can only be compensated in terms of money. On the suggestion of the Court learned counsel for the appellant after consulting his client on telephone has agreed for acceptance of Rs. 1,25,000.00 in full and final satisfaction of his claim.

19. Accordingly, second appeal is allowed. Judgment and decree passed by the Lower appellate Court is set aside. Judgment and decree passed by the trial

Court is affirmed with the modification/variation that the plaintiff-appellant is held entitled to Rs. 1,25,000.00 as damages/ compensation for illegal termination of his services.

20. The said amount shall be paid to the plaintiff-appellant by the respondent within two months from the date of receipt of certified copy of this judgment failing which 2% per month interest shall be payable since after two months till actual payment.