
(1954) 09 P&H CK 0001
In the Punjab And Haryana At Chandigarh
Case No : First Appeal No. 42 of 1952

Sita Ram Kala Ram

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 09-09-1954

Acts Referred:

Constitution of India, 1950 — Article 311
Government of India Act, 1935 — Section 240, 240(3)
Railway Establishment Code — Rule 143

Citation : AIR 1955 P&H 157

Hon'ble Judges : Kapur, J;Falshaw, J

Bench : Division Bench

Advocate : K.S. Thapar and S.V. Kesar, for the Appellant; K.L. Gosain and K.C. Nayar, for the Respondent

Final Decision : Dismissed

Judgement

Kapur, J.—This is an appeal brought by the plaintiff against a judgment and decree of the Senior Subordinate Judge, Amritsar, dated 28-1-1952 dismissing the plaintiff's suit for declaration with costs.

2. The plaintiff was recruited as a clerk in 19(sic) by the old North-Western Railway. On 29-1-19(sic) he was a Booking Clerk at Amritsar Railway Station. On that day one Ved Prakash made a complaint to the Chief Booking Clerk in regard to an excess payment of Rs. 100/- in the following circumstances. He purchased 5 1/2 inter class tickets to Kanpur and in payment of that he had handed over a hundred-rupee currency note to the Booking Clerk and the latter demanded another Rs. 147-6-0 from him against which the complainant protested, but (sic) the Booking Clerk denied that he had received Rs. 100/- he paid another Rs. 150/-. Later on the plaintiff's cash was checked and an excess of Rs. 100 was found which was returned to the complainant and (sic) acknowledgment received on the back of the complaint. On 29-1-1948 Assistant Transportation Officer S.R. Paul D. W. 1 sent communication Ex. D-1 to the Divisional Commercial Officer,

Ferozepore, mentioning the facts contained in the complaint of Ved Prakash.

As from 6-2-1948 the plaintiff was put under suspension and Ex. D-2 at page 38 of the paper book shows that Sita Ram plaintiff was charge sheeted and he was asked to put in his defence within seven days under the Rules of the Railway Rules. He was also informed that if he wanted to be heard in person, he could apply for it, by the granting of the request was entirely within the discretion of the officer empowered to punish him. His defence is at page 39 and is dated 24-2-1948 He practically admitted the facts but stated that (sic) was a mistake and there was no dishonesty. On 28-2-1948 the Divisional Commercial Officer said that he was not prepared to accept the explanation of the plaintiff and he (plaintiff) was removed from service, and the final order of removal was made on 15-3-1948 in which it is stated-

"You are hereby informed that in accordance with the orders passed by Divisional Commercial Officer, Ferozepore, you are removed from service. Pay in lieu of notice of discharge from service with effect from 15-3-1948."

Exhibit D-8 is a letter of the Station Master, Amritsar, showing that the notice of discharge was delivered to the plaintiff and his acknowledgment was sent to the Divisional Superintendent.

3. The plaintiff then took an appeal to the Divisional Superintendent, Eastern Punjab Railway, but that gentleman dismissed his appeal on 16-4-1948 and this order was conveyed on 19-5-1948 to the plaintiff.

4. On 12-6-1950 the plaintiff brought the suit but of which this appeal has arisen for a declaration that his removal dated 15-3-1948 is illegal, void and "ultra vires" and is not binding on him and he is therefore still a servant of the Railway. He alleged that his appointment was under Rule 143, Indian Railways Administration Code and that in pursuance of that Rule he entered into an agreement with the Railway Administration which was an possession of the agreement, that he had served as a Booking Clerk for about 28 years to the satisfaction of his superior officers and after reciting the facts which I have given above he alleged that no proper enquiry was made or opportunity given to him to defend himself and he was given no notice of the action proposed to be taken against him to show cause why he should not be dismissed from service.

5. For some reason best known to the Railway the allegation in regard to Rule 143 and the entering into the contract was denied by the Railway. They also pleaded that the plaintiff was served with a charge-sheet and he was removed from service on payment of his month wage in lieu of notice of discharge from service and that his appeal had been dismissed. The following three issues were framed by the learned Judge-

1. Was the dismissal of the plaintiff wrongful, improper and "ultra vires"?
2. If so, did not the suit lie in the present form?

3. To what relief was the plaintiff entitled?

The Senior Subordinate Judge has found that the dismissal of the plaintiff was neither unjust nor beyond the powers of the Divisional Commercial Officer, nor was it "iniquitous". The plaintiff has come up in appeal to this Court.

6. As I have said, it was unnecessary on the part of the Railway to deny that the plaintiff had been appointed under a contract entered into under Rule 143 of the Rules, but we have to see what is the nature of the service which a subordinate railway servant enters into. Under the Indian Railway Establishment Code, Volume I, it is provided in Rule 143 as follows-

"143. "Service agreements":--Every non-pensionable railway servant, except one in inferior service, shall be required to execute a service agreement with the President at the time of his substantive appointment or, if he belongs to the category of workshop staff, after the completion of 3 years" continuous service. Railway servants appointed for a limited period may also be required to execute an agreement. All agreements shall be stamped, the cost being borne by the railway servant concerned."

In Form No. 1 in Appendix XXIV is given the standard form of the agreement, para. 3(a) of which contains the condition in regard to the termination of service and it is as follows:

"3. The railway servant shall be subject to the following conditions of service, namely-

(a) that such service is terminable at any time by either party on one month's notice in writing or by the Administration on one month's pay in lieu of notice."

That was the plaintiff's case and although the Railway foolishly denied it, it was not pressed before the Court below, and I must take it that the plaintiff's case continued to be that he was recruited under a contract under Rule 143, Indian Railway Establishment Code, and even if the protection of Section 240(3), Government of India Act, 1935 were available, the nature of the service therefore of the plaintiff was that the service was terminable by one month's notice on each side.

7. It was then submitted that the protection given to civil servants under Article 311, Constitution of India is available to the plaintiff, but as was held in -- " Keshavan Madhava Menon Vs. The State of Bombay, and -- " Lachmandas Kewalram Ahuja and Another Vs. The State of Bombay, the Constitution is not retroactive and therefore it is not applicable to the plaintiff whose cause of action arose before the coming into force of the Constitution.

8. It was then submitted that Section 240(3), Government of India Act would protect the rights of the plaintiff. It is not necessary to decide whether railway servants of the kind that the plaintiff, is, are covered by the protection of Section 240(3), Government of India Act, 1935, but assuming, though not deciding, that

it Is applicable to railway servants, it will not be of any assistance to the plaintiff because of the nature of the contract (see -- " Satish Chandra Anand Vs. The Union of India (UOI),

9. I would therefore dismiss this appeal but in view of the pleadings of the defendant I would leave the parties to bear their own costs throughout.

10. I have had an occasion before to point out to the Railway the careless manner in which some of their cases are conducted and this is one of them. The Railway unnecessarily denied the applicability of Rule 143 or the contract entered into under that Rule although both these points are in their favour. I direct that a copy of this judgment be sent to the Railway Board.

Falshaw, J.

11. I agree.