
(1970) 08 GAU CK 0002
In the Gauhati High Court

Sudhir Ranjan Guha

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-08-1970

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Citation : AIR 1971 Guw 67 : (1971) 2 LLJ 101

Hon'ble Judges : P.K. Goswami, C.J.;D.M. Sen, J

Bench : Division Bench

Judgement

P.K. Goswami, C.J.—The petitioner in this Civil Rule was initially an employee under the Assam Bengal Railway Company, appointed prior to 31st March, 1938. That company was taken over by the Government of India with effect from 1st January, 1942. The company underwent several changes of name and at present the petitioner is serving as sub-Head in the Accounts Department under the North-East Frontier Railway at Pandu. He is a confirmed ministerial servant under the Railway. The petitioner's date of birth being 30-6-1910, he claims to retire when he attains the age of sixty years on 30-6-1970 in accordance with Rule 2046 (F.R. 56) of the Railway Establishment Code. That Rule, as it stands after the last amendment in 1967, may be quoted:

(a) Except as otherwise provided in this Rule, every railway servant shall retire on the date he attains the age of fifty-eight years.

(b) A ministerial railway servant who entered Government service on or before the 31st March, 1938 and held on that 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 Rule 2008 and continues 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 sixty years.

Note:--For the purpose of this Clause the expression "Government Service" includes service rendered in a former Provincial Government and in Ex-Company and Ex-State Railways, the Rule of which had a provision similar to Clause (b) above."

Prior to the above amendment, the Note stood as follows:--

Note:--For the purpose of this Clause, the expression "Government Service" includes service rendered in ex-Company and ex-State Railway, and in a former Provincial Government,

2. The petitioner submits that the second amendment in December, 1967, substituting the Note for the earlier Note is violative of Articles 14 and 16(1) of the Constitution of India. He contends that the clause "the Rule of which had a provision similar to Clause (b) above" in defining "Government Service" in Rule 2046 discriminates the petitioner, who, although an ex-Railway Company employee, is a Government servant for all purposes, from other Government employees under the Railway and similarly placed. We have, therefore, to examine whether this Note appended to the Rule is violative of Articles 14 and 16(1) of the Constitution on the ground urged by the petitioner.

3. It appears that there were three sources from which the railway employees came: one source was from government railways, the second source was from company-owned railways and the third source was from the Indian State-owned railways. After the ex-company and Indian State-owned railways were taken over by the Government, they all came to be included in one-service under the Government. A certain distinction however appears to have been maintained with regard to their conditions of service. It is averred in paragraph 8 of the counter-affidavit on behalf of the respondents and 2 thus--

That with regard to the statements made in paragraph 6 of the petition, the deponent begs to state that on taking over Ex-Assam Bengal Railway Company Limited by the Government with effect from 1-1-1942; the petitioner elected to retain the Assam Bengal Railway scale of pay in respect of his substantive post, until his substantive pay was increased to Rs. 80/- a stage in the Ex. A. B. Rly. time scale. On the introduction of the Central Pay Commission's scale of pay with effect from 1-1-1947, known as prescribed scale of pay, the petitioner elected the prescribed scale of pay with effect from 1-1-1947 finally, but he did not elect the Central Pay Commission Leave Rules. A decision was given by the President of India that persons in ex-Company gazetted and non-gazetted posts who have elected both the prescribed scale of pay/and the Central Pay Commission leave rules shall be governed by the State Railway Rules in respect of other conditions of service also.

The petitioner has not denied the averments made in paragraph 8 above. It is, therefore, clear that the petitioner selected different conditions of service in several respects and was treated differently from other employees who traced their service to other sources. This is perhaps the reason why the Note was

amended in the way done on the 23rd December, 1967. By the provision which has been introduced by this Note while all ministerial railway servants who entered Government service on or before 31st March 1938 shall retire at the age of 60, the petitioner who was an ex-company servant in the Railway being unable to produce a rule of the company providing for retirement at 60 years would not be entitled to the benefit of this extension of age. This is a rule with regard to the conditions of service of railway employees in general and the retirement age now being fixed at 60 years under a statutory rule, To deprive the benefit of the same to the petitioner on the sole ground of his inability to produce a rule while in company service to the same effect is indeed a very hard case. Whether however such a differentiation on the sole ground mentioned above is discriminatory under Article 14 of the Constitution will require separate consideration. It is not stated that the railway servants of the Government-owned railways who are also equally government servants now placed in the same circumstances along with the petitioner had an earlier condition of service under the Government providing for their retirement at the age of 60. While, therefore, the authorities have not insisted on the requirement of such a condition of service about superannuation at the age of 60 in their case, the amended Note requires the petitioner to produce such a condition. The matter would have been different if there had been already the age of retirement at 60 years in the case of Government employees. We, therefore, find that it is a clear case of discrimination introduced under the amended Note to deny the benefit of the superannuation age of 60 years to the petitioner, unless his previous service condition under the company had such a rule in force.

With regard to the condition of the age of superannuation the petitioner, an ex-Assam Bengal Railway Company employee and other Government railway employees are in equal and identical position. The amended Note under the President's Order under Article 309 of the Constitution works unequally amongst ministerial employees placed under similar circumstances. Conditions of service cannot be put in a stagnant billabong in a progressive society and, an employee, because he had been initially employed under a private Railway Company prior to taking over of the concern by Government in 1942 cannot, for the reason of there not having then a particular condition of service be perpetuated forever to whatever meagre and inadequate conditions that had obtained more than a quarter of a century ago. In the timely advancement of the community there is general improvement in health and growing consciousness of the various needs in respect of other matters perhaps warranting, where the authorities so decide, a revision of the condition of service. While the new condition was not there in that way for any ministerial railway employee prior to the amendment of the Rule, it cannot under the law be introduced for the first time making it only available for a class of employees excluding another class similarly situated. There is no reasonable basis whatsoever of such a classification and the same is not founded on any intelligible differentia, which may distinguish one class to which the petitioner belongs, from the other class of ministerial railway employees similarly

placed. The differentia, if any, has no relation to the object of the provision, which is introduced perhaps in pursuance of the growing demand of all employees for their welfare, contentment and pressing necessity in the reality of circumstances of life, consistent always with public interest. It is not a case of an option to continue under certain favourable conditions of service obtaining from before, but the impugned part of the rule imposes an obligation to continue under an unwanted condition of retirement at a lower age while similar other employees, by virtue of the new condition of service so far unknown to all railway employees alike, shall get the benefit of retirement at a higher age. The amended Note, therefore, discriminates between the employees placed under similar circumstances of being Government employees under the Railway.

4. Mr. A.R. Barooah, the learned Counsel for the respondents strenuously relied on a decision of the Supreme Court in *The State of Punjab Vs. Joginder Singh*, and drew our attention to the observations at para 23, which we may quote:

If the government order of September 27, 1957 did not integrate them into a single service, it would follow that the two remained as they started as two distinct services. If they were distinct services, there was no question of inter se seniority between members of the two services, nor of any comparison between the two in the matter of promotion for founding an argument based upon Article 14 or Article 16(1). They started dissimilarly and they continued dissimilarly and any dissimilarity in their treatment would not be a denial of equal opportunity, for "it is common ground that within each group there is no denial of that freedom guaranteed by the two Articles.

We, however, find that the present case is clearly distinguishable from the facts on which the above observations have been made by the Supreme Court. That was a case of two distinct services which remained separate all through. Here, the petitioner and other employees all belong to one service under the Railway. We are therefore clearly of opinion that the clause in the amended Note, namely "the Rule of which had a provision similar to Clause (b) above" is violative of Article 14 and necessarily under Article 16(I) of the Constitution of India and the same is struck down accordingly. The other portion of the Note is severable from this clause and is not affected.

5. In the result, the petition is allowed The Rule is made absolute. The respondents are hereby directed to retain the petitioner in service till he attains the age of 60 years. There will however be no order as to costs in the entire circumstances.

D.M. Sen, J.

6. I agree.