
(1972) 03 RAJ CK 0010

In the Rajasthan High Court

Case No : Civil First Appeals No's. 24 and 35 of 1968

Union of India (UOI) and Another

APPELLANT

Vs

M.M. Datta and Another

RESPONDENT

Date of Decision : 16-03-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 14, 309
Contract Act, 1872 — Section 213

Citation : (1972) RLW 274 : (1972) WLN 259

Hon'ble Judges : Kan Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kan Singh, J.—I have before me the two appeals arising out of the judgment and decree of the learned Senior Civil Judge, Ajmer, in a suit filed by Shri M.M. Datta against the Union of India for a declaration: (a) that the plaintiff on his absorption on the Western Railway was entitled in a substantive capacity to a basic salary of Rs. 230/- per month in the pre 1931 time scale of Rs. 185 15-350 plus Rs. 4/8/- as interim relief along with other admissible allowances and to fixation of his seniority and benefits of future promotion and calculation of retirement dues and pension accordingly in the old scales on the basis of his NWR selection Board Selection; (b) a consequential relief in the form of a money decree for the amount that may be found due after taking accounts to have been paid short to the plaintiff in salary, pension and other retirement dues with interest at the rate of 6% from the date of the suit; and (c) a decree for Rs. 2592.25 paise said to have been illegally deducted from the plaintiff's pay and retirement dues, with interest at the rate of 6% from the date of the suit. The case set up by the plaintiff was briefly thus.

2. The plaintiff entered into the service of the North Western Railway in Mughalpura Workshop with effect from 12-5-1925 In 1943 he earned his

promotion to the selection post of a Senior Chargeman in the pre 1931 scale of Rs. 185-15 350 after passing the prescribed Selection Board test and continued to work without any break on the said selection post till the partition of India. Regarding the allocation of the civil services of the undivided India on partition between what came to be formed as Pakistan and Dominion of India, there was, according to the plaintiff, a guarantee provided by the Indian Independence Act and the Indian (Provisional Constitution) Order, 1917. According to the aforesaid guarantee the plaintiff was asked to give his option and accordingly he opted for service under the Dominion of India. The plaintiff claimed that according to the aforesaid guarantee he was entitled to be deemed to have been duly appointed in a substantive capacity to the corresponding post in India and to be fixed on the same pay in the said time scale and to be given seniority on the basis of the date of his selection by the North Western Railway Selection Board for the selection post of a Charge-man. In accordance with his option he was ordered to join the Ajmer Railway Workshop and was provisionally allowed to draw a basic monthly pay of Rs. 210/- plus Rs. 4/8/- as interim relief in the pre 1931 scale of Rs. 210 275 prevailing on the ex B.B. & C I Railway which later on came to be constituted along with a few other Railway systems as the Western Railway The plaintiff's grievance was that inspite of the aforesaid guarantee his initial pay, grade, confirmation and seniority after absorption were not fixed by the Western Railway and that question remained pending till 23-12-60 when a final decision was communicated to the plaintiff informing him that during the period 1-1-47 to 21-12-55 the over payment of Rs. 2592.25 paise had been made to him and that the same was proposed to be recovered from him in monthly instalment of Rs. 40/-. This came to the plaintiff as a surprise as instead of fixing him finally in place of his provisional fixation and giving him all the usual benefits flowing from such final fixation the amount of Rs. 2592.25 paise was wrongly recovered from the plaintiff The plaintiff consequently served a notice u/s 80 CPC to the General Manager, Western Railway and instituted the suit on 17-11-62. The reliefs claimed by him have already been set out in the beginning.

3. The Union of India contested the suit. It was denied that the plaintiff was entitled to be fixed up on the footing of the post of a Senior Chargeman held by him under the erstwhile North Western Railway According to the defendant, the plaintiff was only officiating as Senior Chargeman in 1916 and substantively he was only a workman. He was holding the next higher Post of a Journeyman in the grade of Rs. 100-10-170 (Old Scale) in officiating capacity and thereafter held the next higher post of Senior Chargeman in the grade of Rs. 185 15-350 (Old Scale) also in officiating capacity. According to the defendant, the plaintiff was thus not even a confirmed Journeyman at the time of partition. It was also denied by the Union that he had passed the prescribed Selection Board test for the post of a Senior Chargeman. The defendant also denied that the Indian Independence Act, 1947 or the Indian (Provisional Constitution) Order, 1947 afforded any guarantee to the plaintiff. In other words according to the defendant, the petitioner was not entitled to be treated as the holder of the post

of a Senior Chargeman or Chargeman substantively in India Regarding the provisional fixation of the petitioners salary the defendant averred that a salary of Rs. 210/ per month was given to him on the basis of his declaration. Further, according to the defendant, the plaintiff had really opted for the prescribed scales of pay although he had characterised that option as provisional and he had been allowed the benefit of the prescribed scales of pay on the post on which he worked from November, 1959 and later taken to have worked retrospectively with effect from 1-1-1947. In other words, the plaintiff was not entitled to claim the benefit of the pre 1931 scales of pay. Further, according to the defendant, the grade and pay of the plaintiff had been fixed under the prescribed scales of pay, on the basis of his substantive pay under the North Western Railway Administration, on an equivalent post in the Western Railway. As regards the deductions made by the defendant it was averred that the provisional pay was allowed to the plaintiff on the basis of his own declaration which was consequently subject to subsequent abatement on fixation of his pay finally and as it was found that over payments had been made to the plaintiff the amount over-paid was recovered by monthly instalments. The defendant also raised the plea of limitation and further it was pleaded that the court fee paid by the Plaintiff was insufficient. The defendant later on amended the written statement on 27-10-63 and raised one more plea therein that the suit for accounts was not maintainable.

4. The trial court framed the following issues:

1. Whether promotion to selection posts are earned as of right? If so, was the plaintiff substantially promoted in the pre-1931/ scale of Rs. 185-15 350, after passing the prescribed Selection Board test to the selection post of senior chargeman in North Western Railway and continued in North Western Railway as such without break upto the partition of India, as alleged in para 2 of the plaint and was drawing Rs. 230/- as basic pay & Rs. 4/8/- as interim relief?

2. (a) Whether any guarantee was given to the plaintiff at the time of the partition of India and he opted to serve in India in response to that guarantee?

(b) If so, in view of these guarantees, the plaintiff was entitled to be deemed to have been duly appointed substantively to the fixation of his seniority on the basis of the date of his selection as chargeman as alleged in para 6 of the plaint? Is this question justiciable?

3. (a) Whether the plaintiff was entitled after evacuation to India to a basic monthly pay of Rs. 230/- plus Rs. 4/8/-as Interim Relief in the pre 1931 Scale of Rs. 185 15-350 on the Ex B.B. & C.I. Rly? And whether the plaintiff finally opted for old scales of pay?

(b) If issue No. 3(a) is decided in favour of the plaintiff, to what additional amount than already drawn would the plaintiff be entitled to get and whether the plaintiff is entitled to a money decree for the amount that may after taking a counts be found to have been short-paid to the plaintiff in salary-pension and

other retirement dues on this basis with interest at six percent from the date of suit?

4. Was a sum of Rs. 2592.25 p. on account of over payments in salary irregularly and illegally recovered from the plaintiff & he is entitled to get it back?

5. Is the Notice u/s 80 C.P.C. bad as submitted in para 13 of the Written-statement?

6. Is the plaintiff's suit barred by time?

7. Is the suit properly valued, and court-fee paid is sufficient?

8. Is the suit not maintainable for the reasons stated in para 19 of the written-statement?

9. Additional Issue.-Is the suit for accounts not maintainable against the Union of India?

10. Relief.

5. The plaintiff examined himself in his evidence and produced some documents. The defendant produced only one witness, one Deoki Nandan Misra, a Senior Clerk of the Office of the Deputy Chief Mechanical Engineer (Works) Ajmer.

6. Under issue No. 1 the learned Judge considered the allegation of the plaintiff, that in 1943 he had earned his promotion to the selection post of Senior Chargeman in the pre 1931 scale of Rs. 185-15-350 after passing the prescribed Selection Board test. The learned Judge observed in this connection that the only evidence adduced to prove this averment was the oral statement of the plaintiff as also a copy of an extract from North Western Railway Classified list of subordinate Staff corrected upto 30-4-1946, Learned Judge felt that the plaintiff had not brought on record or shown any rules or regulations of the North Western Rly. regarding the plaintiff's right to have earned promotion to selection post and consequently he found it difficult to believe that the North Western Railway employees used to earn promotion to selection post as a matter of right. He also referred to Ex. A/1, a letter dated 28-1-50 from the General Manager (personnel). Lahore addressed to the Deputy Chief Mechanical Engineer (W), B.B. & C.I. Railway, Ajmer regarding the post that the plaintiff was holding as officiating Senior Chargeman. It was mentioned in that letter that the plaintiff had not been confirmed even as Journey-man and that his officiating pay as Chargeman was Rs. 230/- per month as basic pay in the grade of Rs. 185-15-350 on the post of a Senior Chargeman in the officiating capacity and that he had failed to prove that he had passed the prescribed Selection test, for the selection post of Senior Chargeman of the North Western Railway & was substantially promoted to such a post of Senior Chargeman.

7. Regarding issue No. 2(a), about the guarantee on which the plaintiff relied, the learned Judge came to the conclusion that the plaintiff exercised his option for serving under the Dominion of India and in doing so he characterised it as

provisional, nevertheless, according to the learned Judge it was a final option. In the result, the learned Judge held that the guarantee was given to him and that it was in response to such guarantee that he had opted to serve under the Dominion of India. Regarding issue No. 2(b) the learned Judge held that there was no breach of the guarantee given to the plaintiff under the Indian (Provisional Constitution) Order, 1947, For this the learned Judge relied on State of Mysore Vs. M.H. Bellary, .

8. Regarding issue No. 3(a), the learned Judge observed that on his transfer from the North Western Railway to the B B. & C I. Railway the plaintiff was entitled to the substantive pay to which he was entitled on the post of Workman in North Western Railway, but as he was officiating on a higher post of Senior Chargeman, he was entitled to a basic monthly pay of Rs. 230/ in the pre 1931 scale of Rs. 185-15-350 till he was to be considered as continuing to officiate on the c corresponding post of a Senior Chargeman. The learned Judge then proceeded to consider the impact of the Railway Services (Revision of Pay) Rules, 1947 which came into force after the transfer of the plaintiff to the B.B. & C.I. Railway According to Rule 7(4) of the Rules, the option regarding the revised pay scales which were known is the prescribed scales of pay was held by the learned Judge to be final. These Rules were given retrospective effect from 16-8-47 In this behalf the learned Judge took into consideration two documents Ex A/6 and Ex A/8 and held that even though the plaintiff had characterised his option as provisional it could be only a final one and, therefore, the same could not subsequently be allowed to be changed. Regarding this issue the finding of the learned Judge was as follows:

The result of the above discussion is that the plaintiff was entitled after evacuation to India to the basic monthly pay of Rs. 230/- plus Rs. 4/8/- per month as interim relief in the pre- 1931 scale of Rs. 185-15-350 on his posting on the B.B. & C.I. Rly. on the ground that he was getting such pay in such scale while officiating on the post of senior chargeman immediately before 15-8-1947. But as the plaintiff exercised his option under Rule 3(a) to elect the prescribed scales of pay, he became entitled to the pay admissible to him under the prescribed scales of pay & not in the pre-1931 scale of Rs. 185-15-350.

9. Regarding issue No. 3(b) the learned Judge observed that the officiating pay of the plaintiff was actually re-fixed at Rs. 240/- in the prescribed scale of Rs. 200-10-300 in accordance with the formula laid down in Rule 8 of the Railway Services (Revision of Pay) Rules, 1947. For this the learned Judge referred to the relevant entry in Ex. 1, the service sheet of the plaintiff. The learned Judge found that the plaintiff had reported for duty on the B.B. & C.I. Railway on 17-10-47 and had continued on the post of a Chargeman vice one Abdul Hamid till October, 1951 (vide Ex. A/2 and A/7-B). the learned Judge further pointed out that the actual amount drawn by the plaintiff during this period as provisional pay was Rs. 10388/- and according to the officiating pay re-fixed at Rs. 240/- in the scale of Rs. 200-10-300 the plaintiff was entitled to the amount of Rs. 12460/-having

regard to the "annual increments that the plaintiff had earned during this period. Consequently the learned Judge reached the conclusion that an amount of Rs. 2122/- had been paid short to the plaintiff for the period 17-10-1947 to 31-10-1951. The learned Judge also considered a contention advanced by the Union that the claim for this amount would be time barred, but he repelled the contention. Regarding issue No. 4 the learned Judge came to the conclusion that the amount of Rs. 2592.25 paise had been wrongly recovered by the defendant from the plaintiff's pay and gratuity. The learned Judge came to the conclusion that there was no over payment to the plaintiff for the period October, 1947 to October 1951 as alleged. Consequently the learned Judge held that the plaintiff was entitled to get back this amount from the defendant.

10. Under issue No. 5. the learned Judge discussed the validity of the notice u/s 80 CPC and held that the notice cannot be said to be invalid. The other issues were disposed by the learned Judge partly in favour of the plaintiff and partly in favour of the defendant but in as much as nothing (SIC)s on these issues at this stage, I need not refer to them.

11. As regards the additional issue the learned Judge observed that plaintiff was entitled to ask for a money decree for the amount that may after taking the accounts be found to have been short paid to the plaintiff during the relevant period. The suit for accounts, according to the learned Judge was, therefore, maintainable. In view of the conclusions he had reached on the various issues, the learned Judge decreed the plaintiff's claim in respect of two items namely, (1) for an amount of Rs. 2122/- less paid to him during the period from 17-10-1947 to 31-10-1951, and (2) for an amount of Rs. 2592 25 paise recovered from the plaintiff's pay and gratuity. In the result he awarded the plaintiff a decree for a sum of Rs. 4714. 25 paise with proportionate costs and disallowed his remaining reliefs.

12. It is in these circumstances that both the parties have filed appeals to this Court.

13. I may first take up the appeal of the Union. Learned Counsel for the Union raised a two-fold contention: the first one was that the suit being one for arrears of salary was governed by Article 102 of the Limitation Act & consequently, it could have been filed within 3 years of the plaintiff earning the salary. Learned Counsel maintained that the arrears claimed were for a period ending 1951 and as the suit was filed in 1962, it was obviously time barred. Then as regards the item relating to deductions, the learned Counsel submitted that as the challenge was against an order of the officers of the Government the suit should have been filed within one year of the order as required by Article 14 of the Limitation Act. I may read Article 102 of the Limitation Act, 1908:

Article 102 For wages not Three When the wages not otherwise Years accrue due expressly provided for by this Schedule

14. Now the cause of action will arise when the wages of the servant can be said

to have accrued to him A servant of the Railways is the holder of a civil post under the Union. Wages or emoluments of civil servants under the Union may be governed either by an agreement or a rule made by the President. under Article 309 of the Constitution. This is not a case of wages or salary being payable to the civil servant according to any written agreement. The salary or wages could, therefore, necessarily be such as would be payable under the relevant rules and under orders of a competent authority who is entitled to determine the salary or wages of the civil servant concerned. I may to start with, refer to the order that was passed regarding the salary of the plaintiff on his transfer to the B. B, & C I. Railway. It is Ex. A/2 which I may read:

Loco & Carr. Supdt's Office, Ajmer, dated 15-10 1947 No. E/TR/IND/6-83

To The Turner Foreman C.S. Ajmer

Transfer of staff from Pakistan

On transfer from Pakistan the bearer Mr. Madan Mohan S/o Sardar Bhag Singh is posted in your Deptt as a Chargeman vide Abdul Hamid T No. 961 being transferred to Pakistan.

The date he starts work should be advised to this office and the H T K. as usual.

He will be paid Rs 210/- p.m. provisionally till further orders

This order unmistakably shows that Rs 210/- per month was fixed provisionally till further orders, as the salary payable to the plaintiff The order shows that the fixation of salary was provisional till further order and could be revised later on in accordance with the rules that may be in force for the time being. The plaintiff came to be fixed at a salary of Rs. 240/- per month effective from 16-8-1947 by an order that was issued by the competent authority on 2-11-65. This position is admitted on behalf of the Union. That being so, the right to claim wages at the enhanced rate or scale could accrue to the plaintiff only when his salary or wages were finally determined by the competent authority. Shri Gupta invited my attention to a case reported as The State of Punjab Vs. S. Bhagwan Singh Grewal, where in Article 102 of the Limitation Act in a case about recovery of arrears of pay was considered. The learned Judges held:

Article 102 will apply, if the Government servant had to file a suit for the recovery of arrears of his pay. Such a suit has to be brought within three years from the date when the wages accrued due.

Where the pay-grade of the plaintiff was revised in 1960 but the Government finally decided the matter of fixing the plaintiff's pay in new time-scale on 13-2-1961. The wages at the enhanced rate tell due on 13-2-1961 and not earlier.

15. I am in respectful agreement with the above observations. The plaintiff's claim was, therefore, cannot be said to be time barred in respect of the difference in salary for the period 16-10-1947 to 16-11-1951. There is, therefore, no force in the contention that the suit regarding these arrears was

barred by time.

16. Regarding the deductions also the suit cannot be said to be time barred. Article 14 of the Limitation Act provides for suits to set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for. Limitation it is one year from the date of the act or order. The alleged wrong or injury inflicted on the plaintiff consisted in deducting his salary and, therefore if the plaintiff were to sue for the recovery of the amount wrongly deducted then, to my mind, the suit is not such as would be governed by this Article. It is true, in claiming the relief the plaintiff would have necessarily to challenge the order under which the deductions were made, but that challenge is only collateral. The real injury is on account of the deductions of the wages and the cause of action would be based on. such a deduction Even on the defendant's own showing the salary that was finally fixed for the plaintiff effective from 16-8-1947 was Rs. 240/- per month in place of the provisional salary of Rs. 210/- per month that was fixed under order Ex. A/2. In as much as the deductions were made in 1962, the suit for the recovery of amount cannot be barred by the time.

17. The appeal of the Union has thus no force

18. I may now turn to the appeal of the plaintiff Learned Counsel for the plaintiff contended that the Court was in error in allowing the arrears of his salary on the basis of prescribed scales and not on the basis of the pre 1931 scales for which the plaintiff had opted in accordance with the Railway Services (Revision of Pay) Rules, 1947. Learned Counsel pointed out that the option initially given by the plaintiff was only a provisional one and in accordance with the President's order dated 28-3-51 as published in the B. B & C. 1 Railway Gazette of 13 4-51. The plaintiff had given his fresh option vide Ex. A/5 within the time allowed. The learned Counsel maintains that though the learned trial Judge has referred to Ex. A/6 and Ex A/8 subsequent orders of the President which were inapplicable to the case of the plaintiff, he had completely overlooked the option already exercised by the plaintiff and which is contained in Ex A/5 Learned Counsel further submitted that one Harbanslal who was similarly circumstanced having come from the North Western Railway and working in the same B. B & C.I. Railway was allowed to change his option. In the circumstances, learned Counsel maintains, that pinning down the plaintiff to his first provisional offer was discriminatory & hit by Article 14 of the Constitution Learned Counsel then submitted that the defendants were to blame, for not fixing the salary of the plaintiff as also his seniority for a considerable time and the plaintiff was entitled to have his seniority fixed as also to get the due promotions in accordance with his seniority Here learned Counsel pointed out that one Darbara Singh who was junior to the plaintiff both on account of his length of service as well as pay and grade pay had been allowed to earn his promotions from 1951 onwards and, therefore, taking Darbara Singh's case as a base for his contention, he argued, that whatever emoluments on promotion had been paid to Darbara Singh should

also have been paid to the plaintiff, if not more.

19. Learned Counsel for the Union raised a preliminary objection regarding the defendant's appeal. It was submitted that the plaintiff has claimed arrears amounting to Rs. 36,000-in his memo of appeal, but he has paid a court fee of Rs. 25/- only. Thus, according to hatred counsel, the appeal is not maintainable. Learned Counsel for the appellant has tried to meet this objection on the ground that this was a suit for accounts and even the court below has found that the plaintiff was entitled to ask for accounts regarding his claims for arrears of salary or salary that he would get on fixation of seniority and on his being given his rightful promotions.

20. I propose to consider the preliminary objection first, because if that prevails then I am relieved from going to the merits of the plaintiff's appeals. A perusal of the memo of appeal show. that the plaintiff-appellant" is in fact asking for a decree for an amount of Rs. 36,347/- instead of one for Rs. 2122 regarding his claim for arrears of salary or salary that would result for his due promotions. I may read para-10 of the memo of appeal:

Para-10 That the finding of the trial Judge on issue No. 3-(b) is wrong The trial Judge should have held that a sum of Rs. 36347/-was less paid to the plaintiff in salary and not a sum of Rs. 2122/- only as wrongly held by the trial Judge According to the plaintiff it was a case of wrong fixation of pay and seniority in violation of the guarantee given at the time of the partition and the learned trial Court has made out from its imagination a case of reduction which does not find mention anywhere in the pleading, nor any such argument about reduction was ever pressed at the Bar, nor was Crown Aluminium Works Vs. Their Workmen, as cited and the plaintiff should have been awarded a decree for Rs. 36,347/- on the basis of his unrebutted evidence in respect of arrears of pay and a decree for Rs. 1151/- less paid in gratuity and he should have been declared entitled to a monthly pension of Rs. 243 75 p

21. Now Section 15 of the Rajasthan Court Fees and Suits Valuation Act, 1951 provides that the provisions of Sections 10 to 13 relating to the determination and levy of fee on plaints in suits shall apply mutatis mutandis to the determination and levy of fee in respect of a memorandum of appeal, cross-objection or other proceeding in second appeal or in an appeal from the judgment of a Single Judge of the High Court of Rajasthan under any law for the time bring in force Section 10 is about statement of particulars of subject matter of the suit and plaintiff's valuation thereof. It provides that in every suit in which the fee payable under this Act on the plaint depends on the market value of the subject matter of the suit, the plaintiff shall file with the plaint, a statement in the prescribed form, of particulars of the subject matter of the suit and his valuation thereof unless such particulars and the valuation are contained in the plaint. Section 11 lays down that in every suit instituted in any Court, the Court shall before ordering the plaint to be registered decide on the materials and allegations contained in the plaint and on the materials contained in the

statement, if any, filed u/s 10, the proper fee payable thereon, the decision being however subject to review, further review and correction in the manner specified in the succeeding sub-sections Section 33 is about suits for accounts. It lays down that in a suit for accounts fee shall be computed on the amount sued as estimated in the plaint. Then the scale of fee is laid down in the Schedule. Article 1 lays down the ad valorem fees payable on a plaint or written statement, pleading a set off or counter claim or memorandum of appeal presented to any court. Now, I find two difficulties in the path of the plaintiff in this connection. Assuming that this is a suit for accounts then too, according to the plain language of Section 33, fee has to be computed on the amount sued for as estimated in the plaint. Here, we have to read the words "memo of appeal" in place of the word "plaint", as the question of court fee arises in connection with the memo of appeal. Now, the short question is what is the amount payable to him that the plaintiff-appellant has himself estimated or put. Para-10 of the memo of appeal is crystal clear for showing that the amount that was being claimed here was Rs. 36,347/- minus the amount of Rs. 2122/- for which a decree has already been granted to the plaintiff. Then the prayer at the end of the memo of appeal is that the plaintiff's suit be decreed in full. This again shows that the relief claimed in appeal is Rs. 36,347/- minus Rs. 2122/- already allowed. I have no manner of doubt, therefore, that even assuming that it were a suit for accounts, the plaintiff appellant was bound to pay Court fee on this much amount. Apart from this I find it difficult to accept the contention that this was really a suit for accounts. This was a suit by a servant against his master in respect of the salary or the salary he would have got, if he were promoted to higher posts. Now, the salary that the servant would be getting in accordance with the rule or rules on which he would be relying would be an ascertained sum. Likewise, the period for which the servant would be claiming the arrears of salary would be a definite period. In such a case I am far from satisfied that the suit could properly be characterised as one for rendition of accounts. A servant whose salary is not governed by any agreement, but by statutory rules cannot, in my view, justly ask for rendition of accounts for arrears of his salary. Accounts are generally rendered in such cases as on account of the jural relationship between the parties, one party does something on behalf of the other or spends money on behalf of the other. Such relationship may be as between a principal or an agent, or between partners or between trustees and beneficiaries, but I have not come across a case where a master who has undertaken to pay a salary in accordance with the statutory rules is required to render accounts to his servant regarding the salary. Learned Counsel invited my attention to *Narandas Morardas Gaziwala and Others Vs. S.P. Am. Papammal and Another*, In that case their Lordships were concerned with a case where an agent was asking for rendition of accounts from his principal. Their Lordships referred to the provisions of the Contract Act and observed that the Act recognises only the principal's right to sue for rendition of accounts. Nevertheless according to the principles of equity as recognised by the Queen's Bench Division in England their Lordships held that even an agent could in exceptional circumstances where his remuneration

depends on the extent of dealings which are not known to him, would be entitled to ask for rendition of accounts. This is what their Lordships observed:

The Principal's right to sue an agent for rendition of accounts is recognised by the Contract Act, in as much as Section 213 there to specifically provides that an agent is bound to render proper accounts to his principal on demand. There is no such provision in the Act which enables an agent to sue his principal for accounts. The statute is not exhaustive and the right of the agent to sue the principal for accounts is an equitable right arising under special circumstances and is not a statutory right. In English law an agent has a right to have an account taken and where the accounts are of a simple nature they can be taken in an ordinary action in a Queen's Bench Division. The legal position in India is not different. Though an agent has no statutory right for an account from his principal, nevertheless there may be special circumstances rendering it equitable that the principal should account to the agent. Such a case may arise where all the accounts are in the possession of the principal and the agent does not possess accounts to enable him to determine his claims for commission against his principal. The right of the agent may also arise in an exceptional circumstance where his remuneration depends on the extent of dealings which are not known to him or where he cannot be aware of the extent of the amount due to him unless the accounts of his principal are gone into.

22. Learned Counsel for the plaintiff-appellant was strongly leaning on these observations and he impressed on me to extend the principles laid down therein even to a case of a servant regarding his claim for arrears of salary or such salary as he would have got on due promotions being given to him. Learned Counsel submitted that it was the fault of the master that he did not fix the salary of the servant as also did not give him the due seniority or promotions and the entire record was within the master and. therefore, those were exceptional circumstances as would warrant the extension of this equitable doctrine even in a case like the present on I have devoted anxious consideration to the argument. Though I pay full tribute to learned Counsel for putting forth this facet, I am afraid this doctrine cannot justly be extended to a case like the present one. As I have already observed, the salary or emoluments payable to a civil servant under the Union are governed by statutory rules. Now what is the salary payable to a civil servant or what would be payable had he been promoted to a higher post would be definitely known with reference to the statutory rules. Likewise, the period for which the salary is claimed would be definitely known. What appears to me is that the plaintiff, if he were aggrieved on account of the non-fixation of his salary on final basis or his notification of seniority in the cadre, or on account of his non promotion when he should have been promoted should have knocked at the right door in time. This handicap that he has suffered on account of his own laches or on account of the master's snuff or hard attitude cannot be made good by trying to convert a simple money suit into one for rendition of accounts. I, therefore, repel the contention. This is, however, not to say that the plaintiff's was not a hard case. There is no manner of doubt that a person who came from

the territories which subsequently formed part of Pakistan did not have his fate determined by the concerning authorities for as long a period as almost 18 years and his salary too was finally determined only after his retirement. One is sorry for such a state of affairs. Be that as it may, the law does not help the plaintiff regarding his other claims.

23. The result is that I dismiss the appeal of the Union with costs. The appeal of the plaintiff is also dismissed, but the parties are left to bear their own costs.