

(1966) 03 CAL CK 0025
In the Calcutta High Court
Case No : A.F.O.O. No. 187 of 1965

Union of India (UOI) and Others

APPELLANT

Vs

Satya Bhusan Banerjee

RESPONDENT

Date of Decision : 22-03-1966

Acts Referred:

Constitution of India, 1950 — Article 309, 311
Railway Establishment Code — Rule 149, 149(1)

Citation : AIR 1966 Cal 545 : (1969) 1 LLJ 27

Hon'ble Judges : G.K. Mitter, J;A.N. Sen, J

Bench : Division Bench

Advocate : Bhabesh Narayan Bose, for the Appellant; Nani Coomer Chakravarti and Anil Kumar Sen, for the Respondent

Final Decision : Allowed

Judgement

Mitter, J.—This is an appeal by the Union of India and others against the order of a learned single Judge of this Court making absolute a rule obtained by the respondent directing the issue of a writ in the nature of mandamus commanding the appellants to rescind and to recall the notice of termination of service dated August 23, 1961 under Rule 149 of the Railway Establishment Code by the General Manager, Eastern Railway and other reliefs.

2. The facts about which there can be no dispute are as follows: The respondent Satya Bhusan Banerjee was appointed as a ticket collector after selection by the Railway Service Commission, on a temporary basis. On March 10, 1961 while he was on duty at gate No. 6 at the Howrah Railway Station he was charged verbally by B.M. Khanna, Additional Commercial Superintendent, Howrah with having allowed a passenger to pass in with unbooked luggage in excess of the exempted weight by taking illegal gratification of one rupee from him. The respondent denied the allegation but Mr. Khanna got one Abdul Sakhar a passenger carrying a bedding and a small tin box to subscribe to a statement written out by the said B.M. Khanna. On May 11, 1961 the respondent was p

placed under an order of suspension by which he was allowed half pay and other allowances during the period of suspension. This communication which is annexure "A" to the affidavit-in-opposition is addressed to the Station Superintendent Howrah and is headed "Sub: Corruption". No charge sheet was ever submitted to him on July 26, 1961 the respondent made a representation to the Divisional Superintendent Howrah complaining about the protracted period of suspension without framing of any charges against him. On August 22, 1961 he received a communication from the Divisional Superintendent Howrah to the effect that he was taken off suspension immediately and he was directed to resume his duties forthwith. He was also informed that it had been decided to drop disciplinary proceedings initiated against him. On the very next day the General Manager passed an order terminating his service in accordance with Rule 149 of the Indian Railway Establishment Code to take effect from the forenoon of August 23, 1961, By this order the respondent was allowed one month's pay in lieu of notice of termination of service. He was served with an order dated August 28, 1961 to the effect that consequent on the termination of service by the order of General Manager the respondent had ceased to be in service from the forenoon of August 23, 1961 and that he should receive one month's pay in lieu of notice. The respondent thereafter made representations against the said order to the General Manager, but to no effect.

3. The case made in the petition is that the Divisional Commercial Superintendent Mr. B.M. Khanna was inimically disposed towards me respondent as the latter had refused to comply with certain irregular orders made by Khanna and that the alleged Incident of May 10, 1961 was concocted by Mr. Khanna to wreak vengeance on the respondent. Realising that it would be impossible to substantiate the charge of corruption against the respondent and that the enquiry might have repercussions against himself, Mr. Khanna purposely avoided the disciplinary proceedings and maliciously took recourse to the provision of Rule 149 of the Railway Establishment Code with a view to impose a penalty without giving him an opportunity to vindicate his innocence. The respondent further charged that the order of August 23, 1961 was not really made by the General Manager, but procured by the said Mr. Khanna in exercise of his influence over the General Manager. The respondent charged in his petition that the purported termination of service was an act of personal revenge on the part of Mr. Khanna and was a colourable exercise of the powers of the General Manager. A further contention was put forward that the respondent was a "workman within the meaning of Section 3(s) of the Industrial Disputes Act and the railway administration was an industry" as defined in Section 3(1) of the said Act. The termination of the respondent's service was retrenchment within the meaning of Section 25-F and invalid because of non-compliance with the provisions of Section 25-G of the said Act, inasmuch as the respondent's position as ticket collector of the Howrah Division was 634 out of the total strength of 800. The validity of Rule 149 itself was challenged in the petition on various grounds, but as the same was not persisted in, it is not necessary to go into the same. The

grounds which were put forward at the hearing before the learned trial Judge and before us were:

1. Disciplinary proceedings having been initiated against the respondent and purported to be dropped the termination of service under Rule 149 was really by way of punishment and as such invalid because no hearing was given to the respondent.

2. In exercising powers under Rule 149 of the Railway Establishment Code the General Manager had taken recourse to an indirect method to achieve that which he could not have done directly by drawing up proceedings and submitting charge-sheet to the respondent and following normal disciplinary procedure.

3. The exercise of powers under Rule 149 was mala fide on the facts of this case.

4. The termination of service was bad and in contravention of the provisions of the Industrial Disputes Act.

4. The only affidavit-in-opposition in this case was affirmed by the Divisional Commercial Superintendent Mr. Khanna The points made in this affidavit are:

(a) The deponent had no reason to be inimically disposed towards the respondent and there was no question of taking revenge on him.

(b) The incident of the respondent's taking Re. 1 illegally from a third class passenger to pass out some unbooked luggage was true as the said luggage was weighed and found to be 25 Kg in excess over the exemption limit and a statement had been taken from the passenger concerned to that effect.

(c) The respondent was placed under suspension as an investigation into his conduct was contemplated by the railway authorities at the time. No charge sheet could be submitted before the completion of the contemplated investigation and in fact no charge sheet, was ever issued to the respondent.

(d) The order of August 22, 1961 was inaccurately worded and should have stated that "the intention of taking disciplinary proceeding against him was being dropped" in place of the words "it had been decided to drop the disciplinary proceeding initiated against him."

(e) It was the General Manager who directed the termination of the service of the respondent under Rule 149 and it was not by way of penalty. The respondent never exerted any influence over the General Manager in the matter.

5. An affidavit-in-reply was affirmed by the respondent but nothing turns on that.

6. The learned trial Judge found that the order of suspension of the respondent on the allegation of misconduct had not been followed up by disciplinary action but according to him this by itself would not show that there was no reason to suspend him. In the absence of materials he was not inclined to believe that the whole story was one prepared by Khanna. The learned trial Judge was further not prepared to hold that the General Manager had succumbed to inducement by

Khanna while passing the order of termination of service. He took the view that in *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, the Supreme Court had merely struck down Clause (3) of Rule 149 and not Clause (1) of the same rule. Referring to certain observations of the Supreme Court in *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, and *Parshotam Lal Dhingra Vs. Union of India (UOI)*, the learned trial Judge said that he had to see why the service of the petitioner was terminated and whether the termination really amounted to his removal. Sifting the facts of the case in the light of Clause (1) of Rule 149 of the Railway Establishment Code the learned Judge observed:

"it is not the case of the respondents that the service of the petitioner was terminated either due to the expiry of the sanction to the post he was holding or expiry of the officiating vacancy or due to his physical or mental incapacity. There was also no disciplinary measure taken against the petitioner. The termination of the petitioner's service must therefore, fall, if at all, under "some other cause" mentioned in the Rule. No such case was pleaded in the affidavit-in-opposition. Mr. Bose learned advocate for respondents could not also indicate any cause of termination of the petitioner's service, although specifically asked to do so by this Court. Why then was the service of the petitioner at all terminated? Here the history of the treatment meted out to the petitioner becomes relevant. If there was no disciplinary proceedings even initiated against the petitioner it is not understandable why he was kept under suspension for such a long period. Be that as it may, as soon as the petitioner resumed his duties after receipt of the letter of August 22, 1961, he was presented with an order of termination of service, bearing date August 23, 1961. In the background of circumstances that the order of termination of the petitioner's service was made, one may reasonably infer that the order was not unconnected with what was at one time being sought to be done against the petitioner. Otherwise there is no ground why the order was at all made against the petitioner. I have already expressed the view that the respondent General Manager was not induced by anybody in making the order. Nevertheless, it is reasonable to infer, in the circumstances stated above, that the respondent General Manager could not get over the shock of the suspicion against the petitioner and intended to get rid of him. He took resort to his power under Clause (1) of Rule 149 as a short cut to the removal of the petitioner otherwise than by way of disciplinary action. Since termination of service of the petitioner, in such circumstances, would amount to his removal from service and since this virtual removal order was passed without conforming to the prescribed procedure in the Railway Establishment Code and in Clause (2) of Article 311 of the Constitution, the order cannot be sustained."

7. With great respect it appears to me that the learned Judge's approach to the question was not correct. No doubt the Court must not come to any conclusion on the wording of the text of the document terminating the service of the petitioner but must take into consideration all the facts and circumstances in connection there with and see whether the termination was by way of

punishment. No inference can be drawn that termination of service was a penal step merely because the Government contemplated taking punitive action against the employee. The protection given by Article 311 of the Constitution to civil servants and railway servants of the Government of India was considered at length by the Supreme Court in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, . Das C. J. examined in detail the rights of Government servants whether permanent, temporary or officiating under the Government of India Acts of 1915, 1919 and 1935 and the Constitution of India. With regard to the position of servants holding temporary posts he said (at page 42).

"likewise an appointment to a temporary post in a Government service may be substantive or on probation or on an officiating basis. Here also, in the absence of any special stipulation or any specific service rule, the servant so appointed acquires no right to the post and his service can be terminated at any time except in one case, namely, when the appointment to a temporary post is for a definite period. In such a case the servant so appointed acquires a right to his tenure for that period which cannot be put an end to unless there is a special contract entitling the employer to do so on giving the requisite notice or the person so appointed is, on enquiry held on due notice to the servant and after giving him a reasonable opportunity to defend himself, found guilty of misconduct, negligence, inefficiency or any other disqualification tod is by way of punishment dismissed or removed from service or reduced in rank. The substantive appointment to a temporary post, under the rules, used to give the servant so appointed certain benefits regarding pay and leave, but was otherwise on me same footing as appointment to a temporary post on probation or on an officiating basis, that is to say, terminable by notice except where under the rules promulgated n 1949 to which reference will hereafter be made his service had ripened into what is called a quasi permanent service."

Examining the different Service Rules as also the Rules under the Indian Railway Establishment Code and measuring the same against Articles 310 and 311 of the Constitution the learned Chief Justice said (page 47).

"The principle embodied in Article 310(1) that the Government servants hold office during the pleasure of the President or the Governor, as the case may be, is qualified by the provisions of Article 311 which give protection to the Government servants. The net result is that it is only in those cases where the Government intends to inflict those three forms of punishments that the Government servant must be given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. It follows, therefore, that if the termination of service is sought to be brought about otherwise than by way of punishment, men the Government servant whose service is so terminated cannot claim the protection of Article 311(2)."

The learned Chief Justice then went on to examine the case in which the termination of service of a Government servant can be said to amount to a dismissal or removal by way of punishment. According to him where a person

was appointed substantively to a permanent post in Government service, he normally acquired a right to hold the post until under the rules, he attained the age of superannuation or was compulsorily retired and in the absence of a contract, express or implied, or a service rule, he could not be turned out of his post unless the post itself was abolished or unless he was guilty of misconduct negligence, inefficiency or other disqualifications and appropriate proceedings were taken under the service rules read with Article 311(2). The second case considered by the learned Chief Justice was that of a person appointed to a temporary post for a fixed term. According to the learned Judge the service of such a person could not, in the absence of a contract or a service rule permitting its premature termination be terminated before the expiry of that period. The third case considered by him was that of a person who having been appointed temporarily to a post had been in continuous service for more than three years or had been certified by the appointing authority as fit for employment in a quasi-permanent capacity. The learned Chief Justice concluded.

"except in the three cases just mentioned a Government servant has no right to his post and the termination of service of a Government servant does not, except in those cases, amount to a dismissal or removal by way of punishment. But if the servant has no right to the post, as where he is appointed to a post, permanent or temporary either on probation or on an officiating basis and whose temporary service has not ripened into a quasi-permanent service as defined in the Temporary Service Rules, the termination of his employment does not deprive him of any right and cannot, therefore, by itself be a punishment. One test for determining whether the termination of the service of a government servant is by way of punishment is to ascertain whether the servant, but for such termination, had the right to hold the post. If he had a right to the post as in the three cases hereinbefore mentioned the termination of his service will by itself be a punishment and he will be entitled to the protection of Article 311."

8. The learned Judge was careful to add that it did not, however, follow that, except in the three cases mentioned above, in all other cases, termination of service of a Government servant who had no right to his post, e.g., where he was appointed to a post temporary or permanent, either on probation, or on an officiating basis and had not acquired a quasi permanent status, could not in any circumstance be a dismissal or removal from service by way of punishment. He added (p. 65).

"Cases may arise where the Government may find a servant unsuitable for the post on account of misconduct, negligence, inefficiency or other disqualification. If such a servant was appointed to a post, permanent or temporary, either on probation or on officiating basis, then the very transitory character of the employment implies that the employment was terminable at any time on reasonable notice given by the Government. Again if the servant was appointed to a post, permanent or temporary on the express condition or term that the employment would be terminated on say a month's notice as in a case of Satish

Chandra Anand Vs. The Union of India (UOI), , then the Government might at any time serve the requisite notice. In both cases the Government may proceed to take action against the servant in exercise of its power under the terms of the contract of employment, express or implied, or under the rules regulating the conditions of service, if any be applicable, and ordinarily in such a situation the Government will take this course. But the Government may take the view that a simple termination of service is not enough and that the conduct of the servant had been such that he deserves a punishment entailing penal consequences. In such a case the Government may choose to proceed against the servant on the basis of his misconduct, negligence, inefficiency or the like and inflict on him the punishment of dismissal, removal or reduction carrying with it the penal consequences. In such a case the servant will be entitled to the protection of Article 311(2)."

9. Parshotam Lal Dhingra Vs. Union of India (UOI), was one where it was claimed that there had been reduction in rank without an opportunity of showing cause given to the servant. According to the learned Judge,

"the real test for determining whether the reduction in such cases is or is not by way of punishment, is to find out if the order for the reduction also visits the servant with any penal consequences. Thus, if the order entails or provides for the forfeiture of his pay or allowance or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstance may indicate that although in form the Government had purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of employment or under the rules in truth or reality the Government has terminated the employment as and by way of penalty. The use of the expressions "terminate" or "discharges is not conclusive. In spite of the use of such innocuous expressions, the Court has to apply the two tests mentioned above, namely, (1) whether the servant had a right to the post or the rank or (2) whether he had been visited with evil consequence of the kind hereinbefore referred to? If the case satisfies either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service.

10. The question came up for consideration again by the Supreme Court in the case of Jagdish Mitter Vs. The Union of India (UOI), . There the facts were as follows: The appellant was appointed as a temporary second division clerk in the general post office, Lahore for a period of six months on October 9, 1946. Thereafter, his appointment was continued from time to time until he was posted in the office of the Post Master General at Ambala in 1947. In July 1949 a complaint was made against his conduct by one Shyamlal which led to an enquiry. Shyamlal had alleged that he had posted four reply-paid post cards to the Post Master General, Ambala in connection with a claim application for National Defence Certificates originally registered in Pakistan and received no reply to the said letters except a bare acknowledgment. In July 1949 Shyamlal

received a reply written on a portion of one of his reply post cards: the contents showed that the said card was written by Viswa Mitter, the brother of the appellant, to his mother. Viswa Mitter had failed to score off the address of the original sender written on the post card and so it was delivered to Shyamalal instead of to the mother of Viswa Mitter. In the course of investigation that followed, Viswa Mitter admitted that he had written the said post card to his mother using for that purpose the reply post card sent by Shyamlal. Thereafter, an order was passed on the appellant terminating his service. He filed a suit complaining that an enquiry had been held against him without furnishing a charge sheet. The appellant lost his suit before the Sub-Judge and went in appeal before the District Judge. The High Court of Punjab ultimately dismissed the appeal. Examining the facts of the case it was observed by the Supreme Court that Viswa Mitter admitted that he had illegally used the card although it was not known when the enquiry was held, how it commenced and what was the final order passed as a result of it. The learned Chief Justice observed:

"It is quite possible that even if the respondent intended to hold a formal enquiry with a view to take disciplinary action against the appellant, it may have thought that a preliminary investigation in that behalf may first be conducted and then a decision may be taken as to whether a formal enquiry should be held or not. If that was the scope of the enquiry which was apparently held in this case, the appellant cannot rely upon the said enquiry in support of his plea that his discharge amounts to dismissal."

According to the Supreme Court however the order passed on the appellant itself showed that it was not a discharge but a dismissal. The wording of the order was as follows:

"Shri Jagdish Mitter, a temporary 2nd Division Clerk of this office having been found undesirable to be retained in Government service is hereby served with a month's notice of discharge with effect from November 1, 1949."

The Court came to the conclusion that

"when the order itself referred to the fact that the appellant was found undesirable to be retained in government service, it expressly cast a stigma on the appellant and in that sense, must be held to be an order of dismissal and not a mere order of discharge. When an authority wants to terminate the services of a temporary servant, it can pass a simple order of discharge without casting any aspersion against the temporary servant or attaching any stigma to his character. As soon as it is shown that the order purports to cast an aspersion on the temporary servant, it would be idle to suggest that the order is a simple order of discharge. The test in such cases must be: does the order cast aspersion or attach stigma to the officer when it purports to discharge him? If the answer to this question is in the affirmative, then notwithstanding the form of the order, the termination of service must be held, in substance, to amount to dismissal."

11. The Court examined the earlier decisions on this point and said that

"It is obvious that temporary servants or probationers are generally discharged, because they are not found to be competent or suitable for the post they hold. In other words, if a temporary servant or a probationer is found to be satisfactory in his work, efficient and otherwise eligible, it is unlikely that his services would be terminated, and so, before discharging a temporary servant, the authority may have to examine the question about the suitability of the said servant to be continued and acting bona fide in that behalf, the authority may also give a chance to the servant to explain, if any complaints are made against him, or his competence or suitability is disputed on some grounds arising from the discharge of his work; but such an enquiry would be held only for the purpose of deciding whether the temporary servant should be continued or not. There is no element of punitive proceedings in such an enquiry, the idea in holding such an enquiry is not to punish the temporary servant but just to decide whether he deserves to be continued in service or not. If as a result of such an enquiry the authority comes to the conclusion that the temporary servant is not suitable to be continued it may pass a simple order of discharge by virtue of the powers conferred on it by the contract or the relevant rule; in such a case, it would not be open to the temporary servant to invoke the protection of Article 311 for the simple reason that the enquiry which ultimately led to his discharge was held only for the purpose of deciding whether the power under the contract or the relevant rule should be exercised and the temporary servant discharged. On the other hand, in some cases, the authority may choose to exercise its power to dismiss a temporary servant and that would necessitate a formal departmental enquiry in that behalf. If such a formal enquiry is held, and an order terminating the services of a temporary servant is passed as a result of the finding recorded in the said enquiry, prima facie the termination would amount to the dismissal of the temporary servant. It is in this connection that it is necessary to remember cases in which the services of a temporary servant have been terminated directly as a result of the formal departmental enquiry, and cases in which such termination may not be the direct result of the enquiry; and this complication arises because it is now settled by decisions of this Court that the motive operating in the mind of the authority in terminating the services of a temporary servant does not alter the character of the termination and is not material in determining the said character. Take a case where the authority initiates a formal departmental enquiry against a temporary servant, but whilst the enquiry is pending, it takes the view that it may not be necessary or expedient to terminate the services of the temporary servant by issuing an order of dismissal against him. In order to avoid imposing any stigma which an order of dismissal necessarily implies, the enquiry is stopped and an order of discharge simpliciter is served on the servant. On the authority of the decision of this Court in the case of Parshotam Lal Dhingra Vs. Union of India (UOI), it must be held that the termination of services of the temporary servant which in form and in substance is no more than his discharge effected under the terms of contract or the relevant rule, cannot, in law, be regarded as his dismissal, because the appointing authority was actuated by the motive that the said servant did not

deserve to be continued for some alleged misconduct. That is why in dealing with temporary servants against whom formal departmental enquiries may have been commenced but were not pursued to the end, the principle that the motive operating in the mind of the authority is immaterial, has to be borne in mind."

12. In *Champaklal Chimanlal Shah Vs. The Union of India (UOI)*, referred to by both sides at the bar the facts were as follows: Champaklal was in the service of the Union of India for many years. In 1949 he was appointed as an officiating assistant director grade II in the office of the Textile Commissioner Bombay and was working as such till 1954. The appointment was temporary and his services were liable to be terminated on one month's notice on either side. In February 1954 he was transferred to Bombay and was informed in August 1954 that his services would be terminated from September 1954. No cause was assigned for the termination of his service and no opportunity was given to him of showing cause against the action taken against him. The appellant filed a suit in the City Civil Court at Bombay contending that his service had been terminated unjustifiably and maliciously as the Regional Director of Production in the Textiles Commissioner's Office at Ahmedabad was against him. He was called upon to explain certain irregularities in December 1953 and to state why disciplinary action should not be taken against him. The appellant's case was that certain enquiries were held behind his back but the matter was not pursued and he was transferred to Bombay where he was served with a notice terminating his service. The Government's case was that although some departmental enquiry was conducted against the appellant but the said enquiry was not pursued as the evidence against him was not considered to be conclusive. But as the appellant's work was not found satisfactory he was transferred to Bombay and as his work and conduct were ultimately found to be unsatisfactory his employment was terminated under Rule 5 of the Rules. Dismissing the appeal the Supreme Court observed that

"the way in which the memorandum was drafted and the fact that in the last sentence he was asked to state why disciplinary action should not be taken against him might give an impression that the intention was to hold a formal departmental enquiry against him with a view to punishing him. But though this may appear to be so what is important to see is what actually happened after this memorandum for the Courts are not to go by the particular name given by a party to a certain proceeding but are concerned with the spirit and substance of it in the light of what preceded and succeeded it..... In actual fact however it is not even the case of the appellant that any enquiry officer was appointed to hold what we have called a formal departmental enquiry in which evidence was tendered from both sides in the presence of the appellant. The appellant worked in Bombay for over six months and thereafter the Government finally decided to terminate his services under Rule 5 as his work and conduct were found unsatisfactory even after his transfer to Bombay. On these facts, there can, in our opinion, be no doubt that even if a departmental enquiry was contemplated in December 1953 it was not pursued and no positive action was taken against

him on the basis of the memorandum issued to him on December 29, 1953. We cannot accept the proposition that once Government issues a memorandum like that issued in this case on December 29, 1953 but later decides not to hold a departmental enquiry for taking punitive action, it can never thereafter proceed to take action against a temporary government servant in the terms of Rule 5, even though it is satisfied otherwise that his conduct and work are unsatisfactory"

13. We have therefore, to take into consideration not only the wording of the letter of termination of service but the events preceding it. It is unfortunate that the order of suspension of May 11, 1961 was headed "subject: corruption," and that in the order of August 22, 1961 withdrawing the suspension it was stated that "it has been decided to drop the disciplinary proceedings initiated against him." The order of termination of service cast no aspersion or stigma on the respondent. The termination of service must, of course, have some evil consequences on the public servant or the government servant in that he loses his pay and his job but that by itself does not infringe Article 311 of the Constitution. The authorities noted above show that only when the order of termination of service is by way of punitive action that the servant has a right to complain. As has been noted in the cases the motive operating in the mind of the authority issuing the order of termination of service is not to be considered. In this case the learned Judge discountenanced the suggestion that the Divisional Commercial Superintendent was inimically disposed towards the respondent and was seeking to wreak vengeance on him. He further negatived the plea that the order of termination of service by the General Manager was a colourable exercise of his power or that he had succumbed to inducements in that behalf by the Divisional Commercial Superintendent. In my opinion, he fell into an error in speculating as to the cause which led to the making of the order. Obviously the Divisional Commercial Superintendent had been of the view that there was a case of corruption which was followed up by placing the respondent under suspension but nothing by way of disciplinary action appears to have been taken against the respondent. No charge sheet was submitted to him, no formal enquiry was held and the order of termination of service does not even suggest that the respondent was found to be inefficient or corrupt or that his conduct was undesirable. Rule 149 (1) of the Railway Establishment Code prescribes for the period of notice which must be given to a temporary railway servant. It provides that no notice of termination of service is necessary when a person concerned has no lien on a permanent post but is appointed to hold a temporary post or to officiate in a permanent post if his termination is due to the expiry of the sanction to the post or the expiry of the officiating vacancy or is due to mental or physical incapacity or to his removal or dismissal from service as a disciplinary measure. In all other cases whatever be the cause he is entitled to one month's notice provided he was not engaged on a contract for a definite period and the contract did not lay down any other period of notice. The result is that a person holding a temporary post like the appellant before us is at the most entitled to one month's notice of termination of service if he is not engaged for a fixed

period and Government is under no obligation to assign any reason for such termination.

14. Before parting with this case I would like to remark that this is a case where the General Manager should have affirmed an affidavit in view of the fact that the respondent was complaining about his attitude and had even suggested that he was a tool in the hands of the Divisional Commercial Superintendent. No doubt there is no material to support that charge but in a case like this where good faith of a person in high office is questioned he should repudiate the charge himself and not leave to someone else to do so.

15. In the result holding that no disciplinary action was taken against the respondent although there might have been a cause for investigation we cannot come to the conclusion that the termination of service of the respondent was by way of punishment merely because of the heading of the order of suspension and the wording of the text of the withdrawal of suspension and the duration of the period of suspension.

16. As the case is not one of retrenchment the Industrial Disputes Act does not come up for consideration.

17. In the result, the appeal must be allowed and the Rule discharged. The parties will pay and bear their own costs throughout.

A.N. Sen, J.

18. I agree.

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