

(1957) 09 AHC CK 0023
In the Allahabad High Court
Case No : F.A.F.O. No. 4 of 1955

Union of India (UOI)

APPELLANT

Vs

Bhagat Ram

RESPONDENT

Date of Decision : 12-09-1957

Acts Referred:

Railway Establishment Code — Rule 509, 510, 511

Citation : AIR 1958 All 342 : (1957) 27 AWR 831

Hon'ble Judges : B. Mukerji, J

Bench : Single Bench

Advocate : J. Swarup, for the Appellant; R.C. Ghatak, for the Respondent

Final Decision : Dismissed

Judgement

B. Mukerji, J.—This is an appeal against an order of remand made by the 1st Civil Judge of Saharanpur in a suit that was filed by the plaintiff, Bhagat Bam, who is the respondent in the appeal before me, for the recovery of Rs. 1,700/- as arrears of allowances due to him from the Railway Administration. The plaintiff Bhagat Ram was a III Grade Guard in the E, P. Railway at Saharanpur.

He was suspected of having committed an offence punishable u/s 411 of the Indian Penal Code and was, therefore, prosecuted for a charge punishable under that section. On his prosecution he was suspended by the Railway Administration. Bhagat Ram was later acquitted by the court which tried him on the 20th of May, 1949, but he was nevertheless under suspension from the 6th of July, 1948, to the 4th of August, 1949.

The plaintiff was reinstated, apparently, on the 4th of August, 1949, and thereafter the question arose about paying him his salary and allowances to which he would be entitled under the rules framed by the Railway Establishment Code. The plaintiff had been, awarded his full salary by the Railway Administration on reinstatement; further he was awarded 75 per cent, of the salary in lieu of running allowances.

2. As a driver the plaintiff was entitled to claim, what is known as "running allowance". Rule 609 of the Rules makes provision for running allowances. These allowances are granted to railway servants of certain classes who perform duties directly connected with the charge of moving trains. This allowance is calculated at a rate per hundred miles run with a train carrying passenger traffic or on the basis of each trip of 8 hours performed on such a train, and is also payable in lieu of other kinds of detention and travelling allowance.

This allowance is permissible to drivers, shunters, firemen, guards, etc. There was apparently some difficulty felt in regard to the actual calculation of these running allowances in the case of such persons who, though entitled to them, could not earn these allowances because of no fault of theirs. The rules make provision for such a contingency and also for other contingencies.

Rules 510 and 511 are the relevant rules covering the aforementioned cases. Under Rule 510 -- a rule that is headed "Special Running Allowance" -- provision is made as follows :

"(1) When, in the interest of railway service, staff included in any one of the classes enumerated in the preceding rule (I have already indicated that class above) are required to perform duties other than those involving the accompanying of a running train carrying passenger traffic, or when they are required to work on Sundays or certain approved holidays, or when, in circumstances beyond their control, they are not able to earn a full day's running allowance, they are eligible for the grant of a special running allowance, either in addition to or in lieu of the ordinary running allowance."

Sub-rule (2) gives the instances in which the grant of special running allowance is recognised. By Rule 511 the General Manager of a railway is empowered to frame subsidiary rules prescribing the rates of running allowances and the detailed conditions for the grant of special running allowances, having regard to the local conditions of the railway.

These rules, which the General Manager was empowered to frame, were to cover cases of casual leave except special casual leave granted to cover periods of quarantine, etc.; for periods of strikes; or such cases as are not in contravention of any rule relevant to the grant of officiating pay of leave salary, etc. By Sub-rule (4) of that Rule provision is made that the average running allowances could not exceed 75 per cent, of pay.

In this particular case what appears to have happened is that the authority, which was entitled to determine this question, made the following order on the Departmental appeal which had been preferred by Bhagat Ram:--

"With reference to appeal dated 12-10-1949, from Shri Bhagat Ram, son of Thakur Kharak Singh, driver, please note and inform him that his period of suspension has been treated as duty and allowed full pay and allowance during the suspension period."

In the case of Bhagat Ram, therefore, the authority which was competent to order the payment of pay and other emoluments to the plaintiff had made the aforementioned order. Rule 2044 -- the rule that provides for pay etc., after reinstatement -- is in these words:

"When the suspension of a railway servant is held to have been unjustifiable or not wholly justifiable; or when a railway servant who has been dismissed, removed or suspended is reinstated; the revising or appellate authority may grant to him for the period of his absence from duty-

(a) if he is honourably acquitted, the full pay to which he would have been entitled if he had not been dismissed, removed or suspended and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal, removal or suspension; or

(b) if otherwise, such portion of such pay and allowances as the revising or appellate authority may prescribe.

In a case falling under Clause (a), the period of absence from duty will be treated as a period spent on duty. In a case falling under Clause (b). it will not be treated as a period spent on duty unless the revising or appellate authority so directs."

3. One of the questions that was raised was whether the revising or appellate authority had the power to exercise any discretion in the case of payment of salary and allowance of a railway servant who has been found to have been honourably acquitted. It was contended on behalf of the appellant -- the Union of India --that there was a discretion in the revising or appellate authority whether or not to allow the full pay and full allowances even in the case of an honourable acquittal.

Mr. Ghatak, appearing on behalf of the respondent driver, has contended that in regard to the situation contemplated by Clause (a) there was no discretion; the revising or appellate authority had to grant Bhagat Ram the full salary and full allowances and the authority had to determine by a separate order only the nature of the allowances. It was pointed out that this would be clear by bearing in mind the words used in Clause (b).

It was contended that a discretion was only Tested In the authority in regard to those cases Where the acquittal was held not to be "honourable". It was contended that the word "may" in the rule had been used only to indicate "the empowering" of the authority and not to indicate that the authority had vested in him a discretion in the matter.

Reliance was placed by Mr. Ghatak on the case of AIR 1935 12 (Privy Council) where their Lordships of the Privy Council, while interpreting the word "may" in Section 144 of the Code of Civil Procedure, had said that the word "may" there was used In the sense of empowering and not in the sense of conferring a discretion. It is no doubt true that the rules of interpretation permit the interpretation of the word, "may" in certain context as "shall" and vice versa,

namely, permit the Interpretation of "shall" as "may".

The scheme of the rules, in the present case, appears to support the contention put forward by Mr. Ghatak. If the intention of the framers of the rules had been otherwise, then, in my view, this rule would have been worded differently. This question, which was raised, really did not arise on the facts of the case before me, for here, as I have already pointed out, the authority, competent to make the order, had actually made an order on the appeal of Bhagat Ram that he was to get full pay and allowances and that his period of suspension was to be treated as a period spent on duty.

4. The suit had been dismissed by the learned Munsif on the ground that a railway servant could not claim the allowances as of right. In the view of the learned Munsif the payment in respect of allowances was an ex gratia payment and, therefore, such a payment could not be enforced in a civil court by a servant against a master. The lower appellate court has overruled the learned Munsif on this question.

It has held that the allowances that were claimed by the plaintiff in this case were not in the nature of ex gratia payments but were in the nature of monies to which the plaintiff was entitled under the terms and conditions of his service and employment. In my view, the lower appellate court was right on this point. The railway rules make it abundantly clear that allowances, even running allowances, were part of the emoluments payable and claimable by a certain class of railway employees.

I have already indicated above that drivers, to which class the plaintiff belonged, were entitled, to running allowances. I have also indicated above by quoting the relevant rule that in certain cases these running allowances are payable to drivers, even though they are not actually employed in the act of running trains or moving trains, as it has been called in the rules. The question that arises is whether the plaintiff could claim allowances even though he had not actually done anything of the kind. The plaintiff was under suspension. That suspension has been found to be unjustifiable.

Therefore, the plaintiff was prevented from earning the allowances in the same manner as he was prevented from earning his salary. Rule 510 provides that a person entitled to special running allowance, to which apparently the plaintiff was entitled, would be payable in case the person is unable to earn a full day's running allowance in circumstances beyond his control.

It was contended on behalf of the Railway Administration by learned counsel that under Rule 510 the inability to earn because of circumstances beyond the person's control applies only to such cases where a person is unable to earn a full day's running allowance; it does not apply to those cases where a person is unable to earn anything. I am not impressed by this argument, for I consider that this rule has to be liberally interpreted and that the real meaning of the rule is to permit a person to earn the allowance in case he is prevented from earning

It for no fault of his.

This view of mine finds support, I think, from the fact that under Rule 2044 a person has been held to be entitled, on honourable acquittal, not only to full pay but also to full allowances to which he was entitled and would have earned had he not been suspended.

5. In my view, this question as to whether the plaintiff was entitled to the running allowance or not is not open to argument before me, for I find from Ex. 5, to which I have already referred, that the appropriate authority competent to determine this question under Rule 2044 had already decided that the plaintiff was entitled on his reinstatement not only to his full pay but also to full allowances which he would otherwise have earned but for his suspension.

6. The lower appellate court has gone into this question and has expressed the view that the running allowances would be calculated on the basis of an average of the last 12 months preceding the date of suspension. I do not think the lower appellate court was justified in expressing that view, when it found that there was no sufficient material before him on which the actual amount could have been calculated.

I am of the opinion that the proper order that should have been made by the lower appellate court was one holding that the plaintiff was entitled to running allowances which had to be calculated in accordance with the rules framed on the subject.

7. For the reasons given above, I am of the opinion that this appeal must fail and I accordingly dismiss it and uphold the order of remand made by the lower appellate court, but direct the court below, while deciding this question afresh, on evidence which may be led by the parties on the question, not to be guided by the views expressed by the lower appellate court in regard to the basis on which the allowances have to be calculated. Under the circumstances of this case I am of the view that the costs of this appeal should be costs in the cause, and I order accordingly.

8. The stay order is discharged.