

(1964) 01 SC CK 0017
In the Supreme Court Of India
Case No : ?Appeal (civil) 579 of 1963

Union of India (UOI)

APPELLANT

Vs

Indra Deo Kumar and Others

RESPONDENT

Date of Decision : 27-01-1964

Acts Referred:

Evidence Act, 1872 — Section 123

Citation : AIR 1964 SC 1118

Hon'ble Judges : B. P. Sinha, C.J;Raghubar Dayal, J;N. Rajagopala Ayyangar, J;K. Subba Rao, J;J. R. Madholkar, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Raghubar Dayal, J.—Indra Deo Kumar and three others, Travelling Ticket Examiners of the North Eastern Railway, instituted a suit in the Court of the Munsif, 1st Court, Muzaffarpur, for a declaration that they were entitled to promotion in the grade of Travelling Ticket Inspectors of the grade of Rs. 200/- to Rs. 300/- with effect from March 22, 1957 as per the recommendations of the competent authority, the then Regional Superintendent and that the order of the defendants Nos. 2 and 3, viz., the General Manager, N. E. Railway at Gorakhpur and the Chief Personnel Officer, N. E. Railway at Gorakhpur, respectively, rejecting their claim was illegal and without jurisdiction and for the issue of a permanent injunction against the defendants, which included the Union of India, restraining them from filling up the vacancies existing in January, 1951 by taking any other persons than the plaintiffs. The Union of India contested the suit on various, grounds. One of them was that the suit was bad for misjoinder of parties, as defendants Nos. 2 and 3, being servants of the Central Government, were neither necessary nor proper parties under Article 300 of the Constitution and Section 79 of the Code of Civil Procedure.

2. On August 12, 1961, an application was filed on behalf of the plaintiffs for calling upon the defendants to file the four documents mentioned in that

application, as they were essential to prove the allegations of, the plaintiffs in the plaint and as their certified copies could not be issued. The documents were:

1. Recommendation of competent authority (Regional Superintendent, Muzaffarpur) to the General Manager, Gorakhpur, differing from the recommendation of the Selection Board dated 15-1-57.
2. Order of the General Manager by which he rejected the recommendations of the competent authority (i.e., Regional Superintendent).
3. Letter issued by the General Manager to the Competent Authority (i.e., Regional Superintendent) intimating him regarding the order passed on his recommendation.
4. Mark sheets of the candidates interviewed for the post of T.T.I. and conductors by the Selection Board which sat for interview on 1-1-57, 10-1-52 and 14-1-57 at Muzaffarpur.

3. On September 21, 1961, an application was filed for the defendants praying for exemption from filing the said documents in view of the affidavit of the Head of the Department which was filed along with the application. The affidavit was by Shri B. M. Kaul, Chief Personnel Officer, North Eastern Railway, Gorakhpur, and stated:

"I have carefully considered these, references and the mark sheet of the candidates interviewed for the post of T.T.I. and Conductor and have come to the conclusion that they are unpublished official records relating to the affairs of State and their disclosure will be prejudicial to public interest as they are confidential documents.

I do not, therefore, give permission to anyone u/s 123 of the Indian Evidence Act, 1872 to produce the documents or to give any evidence derived therefrom."

4. On December 20, 1961 the learned Munsif rejected this application and ordered the defendants to produce the documents by January 20, 1962 as the affidavit was not by the Head of the Department as required by Section 123 of the Evidence Act. In coming to this conclusion, reliance was placed on the case reported as *The State of Punjab Vs. Sodhi Sukhdev Singh*, in which it was observed that the privilege should be claimed generally by the Minister-in-Charge, who was the political head of the department concerned or by the Secretary of the department, the departmental head, and that the claim should always be made in the form of an affidavit. The affidavit of the Chief Personnel Officer did not even state that he was the Head of the Department.

5. Thereafter, a review petition was filed on January 20, 1962. It was stated therein that Shri B. M. Kaul was the Head of the Department though this fact was wrongly omitted from the earlier affidavit due to clerical error and that a fresh affidavit by him was being filed. Reference was also made to a notification dated April 2, 1959 by the Ministry of Railways and the amendment to Appendix

XXXVIII-RII dated May 18, 1960 to the Indian Railways Establishment Code, VOL. II, in support of the allegation that the Chief Personnel Officer was the head of the department. The affidavit said that the deponent, as the Head of the Personnel Department, was in control of and in charge of its records, that the records were unpublished official records relating to affairs of State and that their disclosure would be prejudicial to public interest. The reasons for this opinion were stated to be:

"(a) The correspondence exchanged between the then Regional Superintendent, Muzaffarpur, Dy. General Manager (P) and Chief Commercial Superintendent (P) was made in official confidence and it is necessary for the proper functioning of the public service not to disclose this correspondence. Its disclosure would materially affect the freedom and candour of expression of opinion and is likely to interfere with the efficient working of the public service and would lead to injury of public interest.

(b) Mark Sheets of candidates as mention-ed in item (iv) is a class of document which it is the practice of the department to keep confidential."

6. The learned Munsif held that a review application was not maintainable as the defendants knew on the earlier occasion also that Shri Kaul was Head of the Department according to notification and rules now relied upon and that even on facts the privilege could not be claimed as the affidavit was not by the Minister-in-Charge of the Department and that it was not a fit case where the privilege could be allowed.

7. The Union of India representing the General Manager and the Chief Personnel Officer of the North Eastern Railway, went to the High Court in revision. The High Court rejected the application agreeing with the learned Munsif that Shri Kaul was not Head of the Department within the meaning of Section 123 of the Evidence Act and that either the Railway Minister or the Secretary to the Ministry of Railways could claim the privilege under that) section. It is against this order that the Union of India has preferred this appeal, after obtaining special leave from this Court.

8. Mr. Bindra, for the appellant, has submitted that the view expressed by this Court in *The State of Punjab Vs. Sodhi Sukhdev Singh*, that the privilege u/s 123 of the Evidence Act should be claimed generally by the Minister-in-Charge who is the political head of the department concerned or by the Secretary of the Department, requires re-consideration. It is urged that the word 'department' in Section 123 of the Evidence Act does not mean, so far as the Railways are concerned only the Ministry of Railways in the Government of India but means any of the Departments of a Railway Administration to which its work has been allotted as each railway administration is a separate, independent entity and each such administration has different departments and that therefore any officer at the head of any such department would come within the expression 'head of department' in Section 123. Shri Kaul is the head of the Personnel Department

of the North Eastern Railway, in view of the notification of the Ministry of Railways and entry in Appendix XXXVIII of Vol. II of the Railway Establishment Code.

9. We consider it unnecessary, for the purposes of this case, to deal with the submission of *The State of Punjab Vs. Sodhi Sukhdev Singh*, requires reconsideration. By this, we do not mean to cast any doubt on the correctness of what has been held in that case. We are of opinion that even if the word 'department' in Section 123 be construed as suggested for the appellant and the Personnel Department be held to be a 'department', Shri Kaul is not the head of that department for the purposes of Section 123.

10. The notification dated April 2, 1959 was issued by the Ministry of Railways (Railway Board) in connection with T. A. rules -- Controlling Officers under Rule 350-RI, and said:

"The President is pleased to decide that the status of the Chief Personnel Officer be that of a Head of the Department and he will therefore be his own Controlling Officer for the purpose of countersigning his T. A. bill under Rule 350-RI. The list of Officers declared to be Heads of Departments, appearing in Appendix 38-RII as last amended vide Board's letter No. F.(E) 54/AL-28 (6) dated 9-5-57 may, therefore, be further amended as in the enclosed correction slip."

11. The Correction slip making the amendment to Appendix 38, R-II, dated May 18, 1960 said:

"Add the following as a new item to this Appendix, as substituted by C.C. No. 97 R-II, and last amended by C. S. No. 125 R-II dated 3-2-58. '18. Chief Personnel Officers'."

12. The terms of the notification make it clear that the Chief Personnel Officer, as such, is not 'head of a department' and that) therefore he is given the status of a Head of a Department.

13. Rule 2202, R-II, gives definitions of certain terms used in Chapter XXII dealing with the Railway Supplementary Rules, when there is nothing repugnant in the subject or context. Its Sub-rule (9) states that head of a department' for the purposes of those rules means an authority specified in Appendix XXXVIII. Appendix XXXVIII gives the list of officers declared to be heads of departments in connection with Rule 2202 (9). The entry at serial number 18 in this Appendix in pursuance of the notification of April 2, 1959 therefore makes a Chief Personnel Officer, head of department for the purpose of the rules in Chapter XXII, R-II, which deals with matters other than matters which come u/s 123 of the Evidence Act. Chapter XXII is divided into seven divisions, A to G, with the headings General Compensatory Allowances, Fees, Leave Procedure, Joining Time, Foreign Service and Delegations. Appendix XXXII mentions the delegations of power by the President under the various rules to different authorities. The entry in Appendix XXXVIII about the Chief Personnel Officer being head of the

department is of no avail in considering him to be head of department for the purpose of Section 123 of the Evidence Act. The notification dated April 2, 1959 further expressly states that the status of the Chief Personnel Officer will be that of a head of department and he will therefore be his own Controlling Officer for the purpose of counter-signing his T. A. Bill under Rule 350, R-I, which corresponds to Rule 344 of the Indian Railway Establishment Code, Volume I, as revised in 1959. Rule 344, under the sub-heading 'Controlling Officers' states, inter alia, that Heads of Departments shall be their own Controlling Officers.

14. It is therefore clear that the status of Shri Kaul, Chief Personnel Officer, as head of department under the notification dated April 2, 1959, and the entry at serial number 18 of Appendix 38-R-II, do not make him head of department for all purposes, but make him head of department for the purpose of the rules in Chapter XXII and in that case also only when there is nothing repugnant in the context or subject of the rule concerned. The Chief Personnel Officer is not given the status of a Head of Department for the purpose of claiming the privilege u/s 123 of the Evidence Act even if it was possible to confer such a status on a person, who is not in fact Head of Department by any notification of the Government or of the Railway Administration.

15. We are of opinion that the Chief Personnel Officer is not head of the department for purposes of Section 123 of the Evidence Act as he has been conferred the status of 'head of department' for particular purposes only and those purposes do not include the purpose of claiming privilege u/s 123 of the Evidence Act. We therefore dismiss this appeal with costs.