

(1963) 11 PAT CK 0005
In the Patna High Court
Case No : A.F.A.D. No. 738 of 1962

Union of India (UOI)

APPELLANT

Vs

Mallick Mohammad Illyas

RESPONDENT

Date of Decision : 26-11-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 310, 311

Citation : AIR 1964 Patna 168

Hon'ble Judges : K. Ahmad, J

Bench : Single Bench

Advocate : P.K. Bose, for the Appellant; Syed Akbar Hussain, for the Respondent

Final Decision : Dismissed

Judgement

K. Ahmad, J.—This appeal is by the defendant Union of India the owner of North Eastern Railway Administration and is directed against the judgment dated the 10th May, 1962, of Mr. Krishna Devi Prasad, Additional Subordinate Judge, Patna, affirming those dated the 29th April, 1961, passed by Mr. R. J. Pandey, Munsif 1st Court, Patna, who thereby decreed the suit in full.

2. The plaintiff, who is the respondent here, is a confirmed railway employee of the North Eastern Railway Administration. He was appointed on 11-6-1948 as a Ticket Collector and in the year 1956 he was as such posted at Digha Ghat Station. His case is that on 14-11-56 he fell ill and reported sick and gave a memo, of sickness to the Station Master, Digha Ghat. Thereafter on recovery he rejoined the post at that very Station and continued to work as usual up to 17th April, 1957.

In the meantime it appears that on 17th November 1956, one Md. Qayum was detected travelling on his return Journey from Bombay at Bhusawal, a place at a distance of about 900 miles from Digha and Patna, under a forged military railway warrant. When interrogated that man first gave himself out as a havildar

clerk and thereafter a businessman and lastly a Ticket Collector at Digha Ghat. This ultimately led to his prosecution and conviction. Thereafter on the report received from there, the North Eastern Railway Administration came to the conclusion that it was the plaintiff of this case who was arrested at Bhusawal and then convicted in the course of the aforesaid incident. Accordingly the plaintiff on 18-4-1957" while working at Digha was all of a sudden put under suspension as per order dated 15-4-57 passed by the District Traffic Superintendent. The plaintiff thereupon on 22-4-1957 in order to acquaint himself with the reasons for his suspension went to Gorakhpur. His case is that there he met various authorities including one Mr. A. Roza, the then Vigilance Officer, Gorakhpur. There, it is said, he was put to various kinds of humiliation and was further forced to affix his finger print on a paper and thereafter to make a statement in writing on behalf of one Qayum. Further while there, it is claimed, his photograph was also taken.

Thereafter, it appears, he again went to the office of the Vigilance Officer at Gorakhpur on 3-5-1957, though this time, according to him, at the instance of the Station Master, Digha Ghat. On this occasion, it is said, while he was there, he was literally confined in his office and again his forced handwriting on two other sheets of paper was taken. Subsequently on 11-7-57 a copy of the charge-sheet dated 26-6-57, which is exhibit 5 on the record, was served on him. He was thereunder charged for serious misconduct under Rule 1702 R. I. of the Establishment Code, Volume I. The specific allegations that are stated in its Annexure "A" are as follows:

"1. You were on unauthorised absence from your headquarters viz., Dighaghat, with effect from 14-11-56 the date on which you reported sick, since you were detected travelling on 17-11-56 in a Second Class compartment of 5 Dn. at Bhusawal.

2. On 17-11-56 at Bhusawal you had in your possession a forged EFT No. 4659 of 12-11-56 in favour of two military persons issued in exchange of a forged warrant No. R. B. 79922 on form No. IAFT 1752A ex Muzaffarpur to Bombay and back, and on the above mentioned E. F. T. you were found travelling on your return journey from Bombay.

3. On being interrogated before the Railway Magistrate at Bhusawal you at first personified yourself as a Havildar Clerk No. Sr. 178165 No. 1. A. S. C. MFP working under Commanding Officer Capt. Izaharul Haque and thereafter as a businessman, and in the last you personified yourself as a Ticket Collector posted at Dighaghat.

4. On 20-3-57 you gave a statement before the Vigilance Inspector that you had no brother whereas on 1-11-56 you had requisitioned to DTS/ Sonapore for a Pass for one dependent brother aged 17 1/2 ex Sonapore to Howrah and back. If you had no brother, how did you apply for a pass for a dependent brother?"

At this the plaintiff made demand of the relevant documents which were relied

upon by the authorities in support of the charge-sheet in order to enable him to file his show cause. In answer thereto the department is said to have intimated to him by the letter dated 26-5-57, which is exhibit 1(a), that

"you are directed hereby to submit your defence "first without any further delay. After receipt of your defence, facilities whatever required and found as per rules will be afforded."

Accordingly thereafter without getting any document as asked for by him, the plaintiff submitted his show cause (exhibit 7) on 5-8-57. Therein he denied all the allegations made against him in the charge-sheet and asserted that during the time, referred to therein, he was all along present at Digha and Patna and never went beyond these places and much less to Bombay or Bhusawal, and, therefore, there could be no question in that connection either of his arrest or conviction. Further, therein he also asserted that his statement about his brother was substantially correct. His complaint, however, is that in spite of this show cause, the Department proceeded on with the enquiry.

Subsequently it transpires that the plaintiff on 6-1-58 in the course of the enquiry wrote a letter (exhibit 1(c)) dated 6-1-58 to the Department praying therein for the production of certain documents in the custody of the Department and also of the witnesses examined on their behalf for cross-examination. The Department in answer thereto on 30-1-58 communicated to him under the letter which is exhibit i(b) on the record, that

"it will not be possible for the administration to arrange attendance of items 1(i), (ii), (iii) and (iv), 3, 4, 5, 6, 11, 12 and 15 of your above quoted letter. You may, however, make your own arrangements to ensure their attendance."

The plaintiff, therefore, on 10-11-57 is said to have filed an application before the Chief Commercial Superintendent, Gorakhpur, praying therein for the withdrawal of the suspension order passed against him on 18-4-57 and also for the leave to resume his duties but that too, it is said, was turned down.

His further case is that in the meantime he was neither given any reasonable opportunity to defend himself nor the case was taken up for final decision, on the contrary, it was kept pending indefinitely. Therefore, on 23-7-58 by which time the plaintiff had already been under suspension for more than 15 months, he instituted the present suit for the declaration that the charge-sheet framed against him was baseless, illegal and mala fide and for setting aside the aforesaid order of suspension. There was also a prayer made in the plaint for an order of permanent injunction restraining the Department from proceeding against the plaintiff on the basis of the said charge-sheet.

3. The Railway Administration in their written statement have controverted all, the clarifications and allegations made in the show cause of the plaintiff and have stuck to what is stated in the charge-sheet. Further they have also pleaded that the delay in the disposal of the enquiry was due to the non-co-operative tactics

of the plaintiff in the course of that enquiry.

4. On these pleadings, the following issues were framed at the trial.

"1. Is the suit as framed maintainable,?

2. Has the plaintiff got any valid cause of action for the suit?

3. Have the notices u/s 80 C. P. C. been properly served upon the Railway Authorities concerned?

4. Has the court got jurisdiction to try this suit?

5. Is the charge-sheet dated 8-7-57 illegal as alleged?

6. Is the plaintiff's story of his presence at Patna on 17-11-1956 as alleged true?

7. To what relief or reliefs, if any, is the plaintiff entitled to?"

4a. The trial court on hearing the parties found all these issues in favour of the plaintiff. In regard to issues Nos. 5 and 6, the specific conclusion come to by it was as follows:

"Having considered the evidence of the parties, entire materials on record and the circumstances of the case, I find that the plaintiff has proved his case as alleged and his version of the case as alleged is true. I find that the plaintiff's case of alibi as alleged that he was at Patna on 17-11-56 is true. I further find that he was not travelling without a, ticket or any forged Military Railway warrant in Bhusawal Section on 17-11-56 and that he was (not) detected, tried and convicted by any Magistrate at Bhusawal which is about 900 miles away from Patna."

Further, in continuation therewith, in answer to issue No. 4, it also held that-

"I find that this court has got jurisdiction to try this suit and also find that the allegations in the charge-sheets against the plaintiff are incorrect."

As to issue No. 1, which related to the maintainability of the suit, the trial court in its judgment observed that-

"This issue was not pressed before me at the time of hearing."

Further, as to issue No. 3, it held that-

"Notice u/s 80 C. P. C. has been properly served upon the General Manager, N. E. Railway, Gorakhpur."

Thereafter the remaining issues 2 and 7 were answered by it in these terms:

"As discussed and found under above issues, I find that the plaintiff has got a valid cause of action for the suit and that he is entitled to get reliefs as sought for."

Accordingly the suit as framed was at the trial decreed in full.

4b. In appeal, none of the findings of fact or those relating to issue Nos. 5 and 6, as given by the trial court, was challenged as is evident from paragraph 6 of the judgment under appeal which reads:

"The learned lawyer appearing on behalf of the appellant conceded that he had not much to say regarding the findings of the learned Munsif on the question of fact, that is, these questions which relate to the charges against the respondent. He admitted that the evidence on the record was not sufficient to establish the charges against the respondent and argued only on the question of law regarding the maintainability of the suit and the jurisdiction of the Court to try it."

Accordingly all the findings of facts as arrived at by the trial court have been in appeal affirmed and disposed of on a brief discussion of the materials which have been brought on the record in support thereof. Then the two main points canvassed before it were taken up by the court below for discussion, namely, those relating to (1) the maintainability of the suit and (2) the jurisdiction of the court. Even in regard to those two points, the discussion made in the judgment under appeal is elaborate and full. But finally they too have been negated as was done by the trial court with the result that in appeal also the Railway Administration lost the case. Hence now they have come in second appeal to this Court. It was filed on 10-9-62.

4c. Thereafter on 3-5-63 during the pendency of this appeal a petition u/s 151 of the CPC was filed on behalf of the plaintiff respondent. It prayed that-

"Your Lordships may be pleased to dismiss S. A. No. 738 of 1962 with costs to this respondent, or pass such other order or orders as to your Lordships may appear fit and proper".

And in support of this prayer the grounds given therein are to be found in its paragraphs 3, 4 and 5. They read as follows:

"3. That the appellant after the confirmation of the first appellate Court accepted the decree and withdrew the suspension order vide letter No. DCS/ SS/TC/DDGT/57 dated 12-11-62 and Letter No. E/Tc/62 of 13-12-62.

4. That your petitioner after the receipt of the said letter resumed his duty in the said N. E. Railways on 21-11-62 and got his due promotion under C. C. S. letter No. E. 255/20/2 (T) T. C. MEP dated 29-7-61.

5. That in these circumstances the appellant may not continue the above mentioned second appeal before the Hon'ble High Court and the same has in fact become infructuous."

This application came up for consideration before another Bench on 11-7-63 and the order that it passed as to that petition is as follows:

"This application u/s 151 of the CPC filed on behalf of the plaintiff-respondent is opposed by Shri P. K. Bose, appearing for the appellant. No relief, therefore, can be granted to the respondent in terms of the prayer made. No further order is,

therefore, necessary on this petition."

4d. Thus, now the main appeal has come up for final disposal. In this Court also, in support of this appeal Mr. Bose appearing for the Railway Administration has raised only the same two points which were mainly agitated in the court below, namely, those relating to the maintainability of the suit and the jurisdiction of the Court, besides of course one more small point which I shall take up at the end.

4e. In law, the term "jurisdiction" means an authority or power to act in a matter, or an authority or power which a man hath to do justice in causes of complaint brought before him. In other words, as applied to a particular claim or controversy, jurisdiction is the power to hear and determine that controversy. It may be local, pecuniary, personal or with reference to the subject-matter of the suit *Shew Prosad Bungshidhur v. Rarn Chunder Haribux* 23 Ind Cas 977: AIR 1914 Cal 338 .

5. In the present case what is, I think, meant by the plea of lack of jurisdiction is that there is lack of jurisdiction of the cause. Jurisdiction of a cause is the power over the subject-matter conferred by law which means the power to hear and determine cases of the general class to which the proceeding in question belongs. If a court has jurisdiction of the persons to the action and the cause is the kind of a cause triable in such court, it has jurisdiction of the subject of the action and has the power to render any rightful judgment therein. In the present case it is not denied that the court has the jurisdiction of the persons to the action, namely, the Union of India and others who have been impleaded in the suit as defendants. Therefore, the plea as to want of jurisdiction is rested here solely on the claim that the cause as made out in the plaint is one which is not triable in Civil Court.

6. But as jurisdiction of the subject-matter always comes from the law, this controversy ultimately reduces itself to the consideration whether under law the Civil Court has on the facts of this case any jurisdiction of the subject-matter or not.

7. In law, however, it is well-established that where there is a statute or statutory rules prescribing the terms of service and the mode of dismissal as also the mode of imposing any other punishment, laid down therein, the statute and the rules control the common law doctrine of the pleasure of the Crown and govern the right of Civil servants *N. Baksi Vs. Accountant General and Another*, . Under the Constitution of India also though there is a recognition given to the common law doctrine of the pleasure of the Crown in Article 310 mat provision too has been made subject to the limitations as given in the next Article, namely, Article 311. This Article 311 reproduces sub-sections (2) and (3) of Section 240 of the Government of India Act of 1935 with the additional proviso (c) to Clause (2) which is new. While dealing with this provision of law in regard to the reasonableness of opportunity, as referred to in the aforesaid Section 240, their Lordships of the Privy Council in the case of AIR 1948 121 (Privy Council) has

observed that thereunder the person charged has the right to reasonable opportunity of showing cause twice before the order of dismissal etc. is passed. Therefore, under Article 311 also, which is in this respect all similar to that, there are two stages in the proceedings, the first being when the charges are enquired into and at this stage the person required to meet the charges should be given a reasonable opportunity to enter into his defence; and the second stage is when after the enquiring authority has come to the conclusion on the charges and there arises the question of the proper punishment to be awarded. A notice has then again to be given to show cause against the punishment proposed. Therefore, it is only when both these conditions, amongst others, are complied with that a proceeding taken under Article 311 against a Civil servant can be sustained as valid and legal.

Accordingly the Indian Railway Establishment Code, which deals with railway servants, has on the same lines made a detailed procedure governing the conduct and discipline of railway servants. That is to be found in its Chapter XVII which commences from Rule 1701. Rule 1702 provides that the penalties, as enumerated therein, may, for good and sufficient reasons and as provided thereafter, be imposed upon railway servants. That, amongst others, includes suspension as item No. 7 and dismissal as item No. 9 the two punishments which in the present case are said to have constituted the basis of the disciplinary action against the plaintiff. It is followed by Rule 1704 which mentions the authorities competent to impose the penalties as specified in Rule 1702. Thereafter Rule 1706 deals with the circumstances justifying dismissal and Rule 1707 lays down the procedure for holding enquiries in relation thereto.

Then comes Rule 1711 which deals with suspension. This rule is said to have been recently amended and thereunder suspension is no longer a penalty. This amendment, however, as admitted even by Mr. Bose, was made after the suspension of the plaintiff on 18-4-57 though before the institution of the present suit on 25-7-58. That being so, the punishment of suspension in the case of the plaintiff is to be governed by the rule as it stood on 18-4-57 and not by the one as it stood after amendment on 23-7-58. But in any case, the punishment or dismissal or of suspension as also that of others as specified in Rule 1702 has to be imposed in the case of railway servant in the manner as provided in the Indian Railway Establishment Code and Article 311 of the Constitution of India. And if there is any substantial contravention made in respect thereof in the course of any proceeding taken against a railway servant for punishment, that is always likely to result in a denial of right to him as contemplated thereunder, and to get that grievance redressed it will always be open to him to come to Civil Court otherwise the entire scheme of protection as envisaged in the Indian Railway Establishment Code and Article 311 of the Constitution of India will stand nullified. It is true that in the present case the second stage as contemplated by Article 311 of the Constitution of India has not yet reached but that fact alone cannot oust the jurisdiction of the Civil Court in taking cognizance of any illegality or irregularity that may have already been committed in the course of such a

proceeding as a, result of arty contravention of those provisions of law Vide the cases of Ananthanarayanan v. Southern Rly. AIR 1956 Mad 220 and Himmatlal Harilal Mehta Vs. The State of Madhya Pradesh and Others, .

8. Now the court below in dealing with the question of jurisdiction for the reason of contravention of the Rules has held as follows:

(1) That the plaintiff having been suspended on 18-4-57 long before the proceeding under the charge-sheet dated 26th June 1957, was taken up against him, the order of suspension is void in law.

(2) That there is no material on the record to show that any order approving the order of suspension on the expiry of its period of four months has been obtained from higher authorities as provided in the Rules.

(3) That the plaintiff being an employee under the Commercial section (vide App. III pages 196 and 200 of the Establishment Code. Vol. II) could not be suspended under any order passed by the District Traffic Superintendent. As such the order of suspension was without any authority in law.

(4) That the plaintiff was not afforded reasonable opportunity either to show cause against the charges or to defend himself during the enquiry.

(5) That the proceeding and the order of suspension have been unnecessarily kept pending for long without any justification on the part of the Railway Establishment.

(6) That there is no material on the record in proof of any of the allegations made in the charge-sheet.

9. If these findings given by the court below are correct, then I think in the light of the law stated above, there is little scope for any plea that there is no jurisdiction in the Civil Court to try the present case. Mr. Bose, however, has strongly challenged the findings of the court below in regard to the invalidity of the order of suspension.

10. Now the rule as to suspension, namely, Rule 1711, as it stood on the date of the order of suspension in the present case, read as follows:

"(a) A railway servant shall be placed under suspension when he is arrested or committed to prison pending trial by a court of law, and he shall remain under suspension until judgment is delivered, by the court, unless in the event of his release on bail, the authority competent to suspend him decides to allow him to resume duty pending decision of the Court.

(b) A railway servant whose conduct is undergoing investigation on a charge, the maximum penalty for which is dismissal or removal from service may at the discretion of the competent authority, be kept under suspension until his case has been finally decided. The period of suspension under this sub-rule should not normally exceed 4 months except with the approval of the authority next above

that imposing the penalty."

Under this Rule, the order of suspension in the present case can be supported if at all under its Clause (b). But under this clause the condition precedent for an order of suspension against a railway servant is that his conduct must already be undergoing investigation of a charge, the maximum penalty for which is dismissal or removal from service. In the present case, however, the charge as against the plaintiff was framed on 26-6-1957 as is evident from the charge-sheet. Therefore this charge-sheet cannot support the validity of the order of suspension in the case of the plaintiff which on 18-4-57 was passed, long before the date of the charge-sheet. Further, it is not denied that by the time the present suit was instituted the period of suspension had already exceeded much beyond four months. But there is no evidence on the record that there was any approval taken of the authority next above the one imposing the penalty at any time after the original order of suspension. For both these reasons, therefore, the order of suspension as passed in the present case is not sustainable at least under the terms of the aforesaid Clause (b) of Rule 1711. Judged, therefore, from that point of view, the order of suspension as passed in the present case is void.

11. The submission made, however, by Mr. Bose is that the suspension as ordered in the present case was not a punitive suspension as contemplated by the aforesaid Rule 1711 but suspension pending an enquiry. That being so, the validity of the order of suspension in the present case, it has been submitted, should not be judged on the basis of the terms of Rule 1711 but on the general principles of law applying to a suspension pending an enquiry. In support of this contention reliance has been placed by learned counsel on the decision in *Bhawani Kudal Co-operative Urban Bank Ltd. v. Venkatapathi Naidu* (1955) Mad LJ 293: AIR 1956 Mad 150. Therein it is pointed out that-

"Suspension as is well known is of two kinds, punitive suspension pending an enquiry into the charges against an employee. If the suspension is punitive and amounts to a punishment, the same consideration, which apply to a dismissal would apply to it and unless the employer is able to make out misconduct, reasonable notice of the temporary termination of the service would have to be given. For it cannot be that the employer who cannot put an end to the contract of service, except on reasonable notice, can temporarily terminate the employment by unilateral action and withhold salary at his pleasure. In my opinion, where there is a power of punitive suspension, unless the master is able to justify it on the ground of proved misconduct, he has no right to suspend or to withhold salary for the period of suspension. In the absence of proved misconduct it would be a case where for no reason the master is preventing and hindering the servant from doing his work, the latter being able and willing to perform his part of the contract, and consequently the wages or salary due to the workman cannot be withheld during the period of suspension. In regard to suspension pending enquiry, the decisions have differed on the question whether

this power is a necessary incident of the power of dismissal or has to be specifically conferred by Statute or contract. In the decision of this Court in *Seshadri Aiyangar v. Ranga Bhattar* ILR 35 Mad 631 it was held that this was an incident of the power of dismissal though the learned Judges took care to lay down that this was not to be taken as of universal application, and, might not exist where it depends on the rules of a Corporation or of a quasi-corporation like a club,"

On principle, therefore I think, there can be no two opinions that suspension of an employee is of two kinds, punitive suspension and suspension pending an enquiry. It has, however, to be remembered that under the general law of master and servant there is no implied power in the employer to punish a servant by suspension (*Vide Hanley v. Pease and Partners Ltd.* (1915) 1 KB 698 and (1955) 1 Mad LJ 293: (AIR 1956 Mad 150) and the servant in such cases can sue for damages for not being allowed to work, if he was ready to work. If, however, there be a power to suspend, the effect of the suspension is to suspend the contract of service as a whole, with the result that the servant cannot insist on working or claim his pay for the period of suspension (*vide Wallwork v. Fielding* (1922) 2 KB 66 , *Secretary of State Vs. Surendra Nath Goswami* , *Padmakant Motilal Vora Vs. The Ahmedabad Municipal Borough* , , AIR 1945 183 (Nagpur); AIR 1945 244 (Nagpur) , *Rupa Ram v. Divisional Supdt. N. W. Rly.* AIR 1954 Pun 298, *Municipal Committee, Buldana v. D. S. Karve* AIR 1946 Nag 347, AIR 1941 125 (Nagpur) and *Nrishingha Murari Chakravarty Vs. District Magistrate and Collector, Hooghly* ,). And there is little scope for any controversy that these principles apply as well to the case of punitive suspension as to the case of suspension pending an enquiry. Rather, it is well established that they apply to the case of suspension as a whole. In *The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers' Union* , , their Lordships of the Supreme Court while dealing with suspension have observed:

"It is now well settled that the power to suspend, in the sense of a right to forbid a servant to work, is not an implied term in an ordinary contract between master and servant, and that such a power can only be the creature either of a statute governing the contract or of an express term in the contract itself. Ordinarily, therefore, the absence of such power either as an express term in the contract or in the rules framed under some statute would mean that a master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work, he will have to pay wages during the so-called period of suspension. Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the suspension has the effect of temporarily suspending the relation of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay. These principles of ordinary law of master and servant are well settled."

Therefore, may it be a punitive suspension or suspension pending an enquiry,

neither of them can be valid unless it is found to have been provided in the statute governing the contract of service or as an express term in the contract itself. Under the Indian Railway Establishment Code, which governs the contract of service in the present case the only provision made for suspension, is to be found in Rule 1702 (7) and Rule 1711 which deals with the procedure for imposing that suspension. Then a bare reading of the Code as a whole also suggests that what is provided in the aforesaid Rules 1702(7) and 1711 is the suspension pending an enquiry and not the punitive suspension for under Clause (a) of Rule 1711 it can be ordered only when the employee is arrested or committed to prison pending trial by a court of law and under Clause (b) only when his conduct is undergoing investigation on a charge the maximum punishment for which is dismissal or removal from service and then under both, the order of suspension is to operate only so long as the case has not been decided. Therefore suspension as provided therein is but a step in aid of the Criminal trial or disciplinary proceeding taken against an employee.

It is, however, true that in Rule 1702 the suspension has been mentioned as one of the penalties to be imposed upon railway employees. That, however, does not necessarily mean that suspension as contemplated thereunder is but a punitive suspension and not a suspension pending an enquiry. Then, apart from it, a suspension pending an enquiry is after all nothing but an incident of the power of dismissal and as the power of dismissal is by itself a penalty, its incident also is a part of that penalty. Looked at from that point of view also, therefore, the compliance of the procedure as laid down in the aforesaid Rule 1711 is essential for the validity of any order passed for suspension under the Indian Railway Establishment Code, may it be a punitive suspension or a suspension pending an enquiry. And as in the present case the order of suspension passed against the plaintiff is not in conformity with the terms of this Rule 1711, as already discussed above, it is but a void order and as such not binding on the plaintiff nor sustainable in law. That being so there is a clear case of illegality of procedure made out in the present case and, therefore, the plea raised in defence to the effect that there was no jurisdiction in the Court to go into the matter has to be rejected.

12. The other point raised by Mr. Bose in support of the appeal, as already stated, relates to the maintainability of the suit. But in support of that contention nothing specific has been pointed out to me apart from what has already been discussed above. Perhaps the plea of non-maintainability meant to convey the idea that at least in respect of the declaration sought in the plaint that the charge sheet dated 26-6-1957 was illegal and based on mala fide, there was no cause of action available to the plaintiff; and in that sense the submission made by Mr. Bose is that the Civil Court being not a court of appeal against the order passed by the Department for an enquiry against the plaintiff on the basis of the aforesaid charge-sheet, it was premature for the Civil Court to hold unless investigation had been completed as to whether the charge-sheet as made out in the present case was illegal and based on mala fide.

In my opinion, the ground on which the charge-sheet framed by the Railway Department has been attacked in the present case by the plaintiff is not that on merits the evidence given in support thereof is unworthy of reliance but on the ground that there is no evidence in support of it and what has been stated therein is based on conjecture. In other words, the attack against the charge-sheet is founded on the ground that all the allegations made therein are unreal and, therefore, they cannot be the basis of any legal proceeding against him. The Court below has gone into this aspect of the case and has finally found in favour of the plaintiff and that not only on the basis of the material brought on the record by the plaintiff but also on the admissions made on that behalf by the Railway Establishment itself. That being so, the suit for declaration that such a charge-sheet cannot be the basis of any legal proceeding against the employee is in law maintainable.

13. Lastly, there is one more small point which has been canvassed before me in support of the appeal and that is about the second charge-sheet. The second charge-sheet, it appears, was submitted against the plaintiff on 7-8-1958 while the suit giving rise to the appeal was already pending in court. The lower appellate court while dealing with this charge-sheet has observed that

"the charges mentioned therein are substantially the same and they also cannot stand".

It is true that the suit as framed was based on a cause of action which had already accrued and not on facts which were to happen thereafter. As such, the second charge-sheet could not have normally fallen within the scope of the present suit but in view of the fact, as found by the court below, that the second charge-sheet is substantially speaking nothing but a duplication of the former, there is no force left in the contention that the declaration made in regard to that charge-sheet is based either on any new cause of action or on any new fact. Therefore this part of the submission also made by Mr. Bose fails.

14. In the result, therefore, I hold that there is no substance in this appeal. Accordingly it is dismissed with costs.

15. Before, however, I close this judgment, I must express that what has surprised me most in this connection is the inconsistent and contradictory attitude of the Railway Department in the matter of dealing with the service of the plaintiff. It appears, which has not been denied before me, that soon after the judgment of the lower appellate court, the Railway Department withdrew the suspension order (vide letter No. DCS/SS/TC/DDGT/57 dated 12-11-62 and letter No. F/Tc/62 of 13-12-62); further they also seem to have given promotion to him under C. C. S. letter No. E255/20/2/(T) T. C. MFP dated 29-7-61. No doubt as to the promotion there is an explanation given by the Railway Department in Paragraph 6 of their counter-affidavit, which reads that-

".....The said letter was nothing but a mere provisional list of seniority which is being published by the Railway from time to time in the usual course. The

annexure attached to the said letter shows that the plaintiff's position was 57th in the list and the statement in the said annexure that he was promoted after 1-4-60 was a wrong entry and was made under a misapprehension. The date 1-4-60 shown in the said annexure of the aforesaid letter is the date of Upgrading and the promotion after this date can only relate to the office order of the Chief Commercial Supdt. (P) N. E. Railway, Gorakhpur dated 17-12-1960 and to no other order or letter."

But I am yet unconvinced that a responsible body like the Railway Department with all the resources at their command could have passed the order of promotion so lightly. Any way the hard fact is that the plaintiff is now working and also enjoying the promotion as claimed by him in his affidavit. In those circumstances, the normal course of conduct on the part of the employer, namely, the Railway Department, would have been not to pursue the matter any further thereafter. But here in spite of the prayer made in the affidavit filed by the plaintiff to that effect, it has not only been pursued but pursued with all vigour and even to the length of explaining that the order of promotion was based on misapprehension. May that story of misapprehension be true or wrong, but the way in which it is now tried to be justified against an employee is neither consistent with the dignity of the Railway Department nor with the responsibility which the Department owe to their employees. It may be susceptible to the impression that perhaps the authorities at the top are in this matter of one view and those interested below have not yet reconciled themselves to that view. This after all is not a very desirable state of affairs and the earlier it is remedied the better.