

(1986) 07 RAJ CK 0024
In the Rajasthan High Court
Case No : Civil First Appeal No. 117 of 1980

Ved Prakash Chaturvedi

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 23-07-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 14, 141
Penal Code, 1860 (IPC) — Section 420, 465, 471

Citation : (1987) 1 WLN 358

Hon'ble Judges : Surendra Nath Bhargava, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Surendra Nath Bhargava, J.—This is plaintiff's first appeal against the judgment and decree passed by the Additional District Judge, Dausa, dated 15-12-1979, dismissing the suit for declaration and arrears of salary.

2. The plaintiff-appellant was appointed initially as literate Cleaner in Loco Shed, M how under the BB & CI Railway, on 11-10-1950. The BB & CI Railway was converted into the Western Railway in the year 1952 and all the employees of BB & CI. Railway became the employees of the Western Railway. Thereafter, the plaintiff-appellant was posted as Ticket Collector on 27-4-1956 on his selection by the Railway Service Commission. His posting orders were passed by the DTS, Bandikui. Lateron, the plaintiff was further promoted to the post of Travelling Ticket Examiner (TTE) on 30th June, 1965, and further promoted as Guard on 23-12-1966. The plaintiff-appellant was convicted for the offence u/s 420/471 IPC on 7-2-1967 by the Additional Munsif and Judicial Magistrate, Jaipur West. His services were terminated. He preferred an appeal, and therefore, his termination was put in abeyance. His appeal was dismissed and conviction was maintained vide order dated 29-4-1968. Thereupon, he was again dismissed from service vide order dated 3-5-1968 with effect from 29-4-1968 by the

Divisional Commercial Superintendent, Western Railway, Jaipur. The plaintiff-appellant preferred an appeal against this order and according to the plaintiff, he was never intimated about the decision of his appeal, so he made several representations and ultimately, the Divisional Superintendent (E), Jaipur vide letter dated 18-9-1974 informed the plaintiff that his appeal has been rejected by the Divisional Superintendent, Jaipur and he was informed about the same vide office letter dated 8-11-1968. The plaintiff then filed a mercy appeal against the said order to the CCS and General Manager, Western Railway, Bombay. He was informed by the Divisional Superintendent, Jaipur that the General Manager had considered the appeal and the same was rejected vide letter dated 20th August, 1974. Therefore, the plaintiff filed the present suit praying that the order of the DCS dated 3-5-1968 be declared to be illegal, inoperative and ineffective against the plaintiff and the said order be set aside. The plaintiff further claimed arrears of salary against the Union of India through General Manager, Western Railway.

3. The present suit was filed in the court of Addl. District Judge, Dausa on 5-1-1976.

4. The defendant contested the suit and filed a detailed written statement. One of the objections taken by the defendant was that the suit is barred by time.

5. The plaintiff-appellant filed an application under Order 6, Rule 17 CPC for amendment of the plaint and wanted to add prayer in the relief clause that the order of the Divisional Superintendent, Jaipur, dt. 8-11-1968 as communicated to him vide letter dated 18-9-1974 is illegal and inoperative against the plaintiff, and further that the order of the General Manager, Bombay communicated by the Divisional Superintendent, Jaipur vide letter dated August 20, 1974 is also illegal and inoperative against the plaintiff.

6. The amendment was opposed by the defendant but the amendment was ultimately allowed by the trial court by its order dated 11-5-1977.

7. The plaintiff filed amended plaint on 25-5-1977 and the defendant also filed amended written statement.

8. On the pleadings of the parties, the trial court framed the following issues:

?1? vk;k oknh dk fu;qfDr vf/kdkjh tuvj eSustj if"Peh jsyos gS \\\

?2? vk;k oknh dh Isok fuo`fRr dk vkns"k okn Ik= ds in ua- 11 yk 15 es of.kZr vfHkdFkuks ds dkj.k voS/k ,oa fu"izHkkoh gS \\\

?3? vk;k U;k;ky; gktk es oknh ds Isok fuo`fRr ds vkns"k dks pqukSrh ugh nh tk ldrh \\\

?4? vk;k oknh dk nkok E;kn ds ckgj \\\

?5? vk;k uksfVI nQk 80 tk-nh- fof/kIEer ugh gS \\\

?6? vk;k U;k;ky; "kqYd ukdkQh gS \\\

?? vuqrks"k

2v vk;k Mh- ,l- t;ij dk vkns"k dzeak bZ@lh@161@252 fnukad 8&11&1968 voS/
k fu"izHkkoh gS \\

2c vk;k th- ,e- cEcbZ dk vkns"k dks dzeak bZ@lh@161@252 fnukad
20&8&1974 voS/k o fu"izHkkoh gS \\

9. The plaintiff examined himself as PW 1 and the defendant examined Achal Singh as DW 1. A number of documents have been produced by the parties. The learned trial court after hearing the arguments of the learned Counsel for the parties, decided issues Nos. 1, 2, 2-A and 2-B against the plaintiff. Issue No. 4 regarding limitation was also decided against the plaintiff, where as Issues Nos. 3, 5 and 6 were not pressed by the defendant. Hence, they were decided against the defendant.

10. In the result, the suit was dismissed by the trial court by its order dated 15-12-1979. It is against this judgment that the present appeal has been filed by the plaintiff.

11. At the close of the arguments on 13-5-1986, an additional affidavit has been filed on behalf of the appellant along with certain documents. An additional affidavit was also filed on 17th May, 1986 along with certain documents, copies where of were given to the learned Counsel for the respondents.

12. Learned Counsel for the appellant has very vehemently argued that the finding on Issue No. 1 is erroneous & the impugned order terminating his services was illegal as it was not passed by the General Manager, Western Railway who had appointed the appellant. He has placed reliance on letter dated 6-6-1955 which has been reproduced in para 2 of the plaint which was issued on behalf of the CCS (Estt.) COPS. He has further submitted that after the formation of the Western Railway, all the employees including the appellant working with the BB & CI Railway should be deemed to have been appointed by the General Manager, Western Railway.

13. My attention has been drawn to his application dated 24th July, 1976 before the Trial Court where in the plaintiff appellant had prayed that certain documents including the letter dated 6-6-1965 should be summoned from the Divisional Superintendent, Western Railway, Jaipur as they had failed to supply to the plaintiff copy of the same though he had made a request vide his letter dated 2-7-1976. My attention has further been drawn to another application dated 27-8-1976 filed in the trial court for summoning the original letter No. F. 1136/4/74 Vol. 3 dated 16-4-1956 addressed to the DTS Bandikui, a copy where of was demanded by the plaintiff-appellant vide his letter dated 15-8-1977 but the same was not supplied to him, and also to the proceedings of the trial court, dt. 16-8-1976. Thereafter, the defendant sought time to produce the document but it was never produced. As such in the absence of original appointment letter, General Manager should be treated as the Appointing Authority in view of the

Railway Board's letter No. D & A/63-RG-5/23 dated 21-2-1964. He has further submitted that as per Rule 134 of the Indian Railway Establishment Code published in 1959, the authorities competent to make first appointment to non gazetted posts in the Indian Railways, are the General Manager, the Chief Administrative Officer or lower authority to whom he may delegate power and since, there is no evidence to show that this power has been delegated to the Heads of the Department; the appellant should be denied to have been appointed by the General Manager. In this connection, He has placed reliance on *Sailendra Nath v. State of Bihar* AIR 1968 SC 1292 and *Mysore State Board Transport Corporation v. Meerza Kasim Ali* Beg 1977 (1) SLR 237.

14. He has further submitted that since the order of termination has not been passed by the Appointing Authority, the impugned order is illegal and void. He has placed reliance on *Om Prakash v. Union of India* 1975 (2) SLR 226, *Hari Shanker Sharma v. Union of India* 1976 (1) SLR 317, *Girwar v. Union of India* 1982 (2) SLJ 56 *State of Maharashtra Vs. G.A. Pitre and Others*,

15. Learned Counsel for the appellant has further challenged the impugned order on the ground that the impugned order was passed without application of mind as the appellant was working as the TTE at the time of his dismissal and not as Ticket Collector. Moreover, the order of dismissal could not be retrospective in nature. The order was passed on May 3, 1968, where as his dismissal order was to take effect from 29th April, 1968. It has further been submitted that the Authority which passed the order did not have a copy of the judgment convicting the appellant & the dismissal is not automatic but each case should be examined on merits, and since the case of the petitioner was not examined independently, the impugned order based merely on the ground that he was convicted by the criminal court, was liable to be quashed.

16. Learned Counsel for the appellant has also submitted that even the appellate order is liable to be quashed, as the appellate authority has also not applied its mind and has not considered the points and submissions made in the memo of appeal, though it was preferred from jail and was more or less, like a mercy petition. The order of the appellate authority is not a speaking order, as is expected by it vide Para 1731 (2) as Rule 1719 of the Railway Establishment Code. In this connection, he has placed reliance on *Girwar's* case (supra), *Heerlal Shah v. State of Assam* 1985 (2) SLR 370, *Somaru Dass v. State of M.P.* 1985 (2) SLR 520 , *State of Punjab v. Bakhtawar Singh* 1972 SLR 85, *Kuldeep Singh v. Union of India* 1974 WLN 176; *Union of India v. Tara Chand* 1975 Lab. & IC 992 and also the latest decisions of the Supreme Court in *Union of India v. Tulsiram Patel* 1985 (2) SLR 576 and *M.S. Chouhan v. State Bank of India* 1985 (1) SLR 684.

17. Learned Counsel for the appellant has also submitted that the impugned order is violative of Article 14 of the Constitution of India in as much, as persons similarly placed were not dismissed but lesser punishment was given to them and therefore, also the impugned order is vitiated.

18. It has further been submitted on behalf of the appellant that the learned trial court has seriously erred in deciding Issue No. 4 regarding limitation against the appellant. He has submitted that the impugned order dated 3-5-68 passed by the DCS. Jaipur merged into the appellate order dated 8-11-1968 passed by the Divisional Superintendent, Jaipur & hence, limitation should be reckoned from 8-11-1968 and the cause of action came into existence only when the appellate order was served upon the plaintiff and since the appellate order was communicated to the plaintiff only on 20th August, 1974, hence, the cause of action accrued to the plaintiff only on 20th August, 1974 and on 18-9-74 when the order of the appellate authority dated 8-11-1968 was communicated to him. Hence, the limitation starts only on 20th August, 1974. Therefore the suit was within time. In this connection, he has placed reliance on State of M.P. v. Syed Qumarali 1967 S.L.R. 228 and S.C. Rai v. State of M.P. and Anr. 1978 (2) SLR 297. Lastly, learned Counsel for the appellant has submitted that the appellant was the son of a railway employee and therefore, it was not necessary for him to be a matriculate before getting appointment therefore, it was not necessary to file false and fabricated High School Certificate before getting the appointment. He has further submitted that the order dated 27-4-56 passed by the DTS was only a posting order and he has produced a copy of the same along with his affidavit filed on 17-5-86. He has further submitted that he has passed High School Examination in 1963 and has made a mercy petition to this court as well vide his additional affidavit filed on 13-5-86.

19. On the other hand, learned Counsel for the respondents has supported the judgment of the trial court and has submitted that the first appellate court should not interfere ordinarily with the findings of the trial court and in this connection, has placed reliance on Sarju Pershad Vs. Raja Jwaleshwari Pratap Narain Singh and Others, , Mst. Rukhmabai Vs. Lala Laxminarayan and Others, , C. Mohammed Yunus Vs. Syed Unissa and Others, ; R.C. Jall Vs. Union of India (UOI), , State of UP v. Ram Murat 1973(2) SLR 707, The State of Madhya Pradesh Vs. The State of Maharashtra and Others, and Menuna Phatun v. State of UP and Anr. 1983 (3) SCC 571.

20. The appellate was guilty of serious offence as he secured appointment as the Ticket Collector in the Railway by applying to the Railway Service Commission mentioning that he was Matriculate and enclosed a copy of forged Metric pass certificate of the Punjab University, where as in fact he had not passed matriculation examination from the Punjab University in the year 1945. Since the appellant was convicted for offence u/s 420, 465 and 471 I.P.C. which are very serious offences, the impugned order is fully justified as his retention in service would have been against public interest and no lenient view could be taken. Since Ex. A-3A reproduced the charge for which the appellant was convicted, the Disciplinary Authority as well as the Appellate Authority was fully aware of the charges levelled against the appellant and it cannot be said that it was the case of non-application of mind. The punishment was proper and no lenient view could have been taken and should be taken. He has also submitted that the principles

of natural justice were observed and full opportunity was afforded to the appellant and the appellant had no defence, and that this court should not interfere in such matters.

21. In this connection, he has placed reliance on Sarin H.C. v. Union of India 1976 (2) SLR 248 and The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee,

22. The very fact that the earlier order passed against the appellant was changed since he filed an appeal and his sentence was suspended, shows that the disciplinary authority had applied its mind. He has further submitted that since the appellate authority had agreed with the view of the disciplinary authority, it was not necessary for the appellate authority to give detailed reasons and in fact, no reasons were necessary as the main basis for passing the impugned order was conviction of the plaintiff appellant by a competent judicial court. No prejudice has been caused to the appellant, and even in his memo of appeal (Ex. 2), no objection was taken that he was prejudiced because reasons were not given in the impugned order. In this connection, he has placed reliance on Jankinath Sarangi Vs. State of Orissa, ; The Keshav Mills Co. Ltd. and Another Vs. Union of India (UOI) and Others, ; R.C. Sharma Vs. Union of India (UOI) and Others, and Tara Chand Khatri Vs. Municipal Corporation of Delhi and Others,

23. Learned Counsel for the respondent has further submitted that the appellant had not taken any plea before the appellate authority that the impugned order was not passed by the competent authority. Letter dated 6-6-1965, cannot be termed as an appointment letter. It is only an intimation to the appellant that he has been selected for appointment as Ticket Collector and that he shall be appointed as a Ticket Collector when a vacancy occurred, subject to the conditions given in the letter. Even the memo of appeal preferred by the appellant against the impugned order shows that the plaintiff was appointed by the DTS which is apparent vide para 15 of Ex. 2, his statement in court as PW 1 and statement of defendant witness (DWI) also confirms and proves that the appellant was not appointed by the General Manager but by the DTS. The plaintiff appellant had challenged the impugned order and it was for him to produce his appointment letter which must be in original with him only. He has not produced any evidence that the original appointment letter has been lost or was not available and he did not apply to the court for producing secondary evidence. Nor he has asked the defendant to produce the same in the court. Under the Evidence Act, no secondary evidence could have been produced in such circumstances. The burden was on the appellant and it cannot be shifted to the Railway so as to prove that the impugned order was passed by the competent authority. Since the plaintiff appellant has miserably failed in discharging his initial burden, the official act should be deemed to have been done in accordance with law unless otherwise is shown. Whether powers of the General Manager were delegated or not under Rule 134, is a pure question of fact. This point was never agitated before the trial court. There was no issue and

no evidence was led to that effect. Therefore, the appellant cannot be allowed to raise that question before the appellate court. At present, we are governed by adversary system of jurisprudence and unless a party raises some point and other side gets an opportunity to meet that point, the appellant cannot be allowed to raise a new point of fact at the appellate stage. Reliance in this connection has been placed on Union of India v. Ram Gopal Tanwar 1972 RLW 32.

24. Learned Counsel for the respondent has further submitted that the suit is time barred and the learned trial court has rightly held it to be so. In this connection, he has placed reliance on Sita Ram Goel Vs. The Municipal Board, Kanpur and Others, which he submits is the direct authority on the point.

25. I have given my thoughtful consideration to the whole matter and have also gone through the record of the case as well as various authorities cited at the bar.

26. The appellant was initially appointed as literate Cleaner on 11-10-1950 under the BB & CI Railway. There after, he was selected by the Railway Service Commission, Bombay for the post of Ticket Collector and by letter dated 6-6-1955, he was informed that he had been selected for appointment as Ticket Collector in the Western Railway & that he will be appointed as Ticket Collector when the vacancy occurred, subject to certain conditions, like passing the medical examination, character verification, training etc. Thereafter he was appointed as Ticket Collector by order dated 27-4-1956, The appellant was further promoted to the post of Travelling Ticket Examiner in 1965 and again as Guard on 23-12-1966. The appellant while in service was convicted for offences u/s 420 and 471 I.P.C., by an order dated 7-2-1967, passed by the Additional Munsif Magistrate, Jaipur West and his services were terminated but since the appellant preferred an appeal against the said judgment, he was granted bail and his sentence was suspended, therefore, the appellant was reinstated in service and when his appeal against conviction was dismissed on 29-4-1968, and his conviction was maintained, he was again dismissed from service vide order dated 3-5-1968 with effect from 29-4-1968 by the Divisional Commercial Superintendent, Western Railway, Jaipur. Contention of the learned Counsel for the appellant that letter dated 6-6-1955 should be taken as an appointment letter is not maintainable because the letter when read as a whole makes it abundantly clear that this was with reference to his application and subsequent examination and interview by the Railway Service Commission that he was advised that he had been selected for appointment as Ticket Collector. It was further mentioned in that letter that "You will be appointed" as Ticket Collector when vacancy occurred, subject to certain conditions mentioned in that letter. It is clear that a separate appointment letter was to be issued later on as and when the vacancy occurred and letter dated 6-6-55 was only an intimation about his selection and that letter of appointment was issued on 27-4-1956. The petitioner did not produce this letter in the trial court. The original letter dated 27-4-56 must be in possession of the plaintiff appellant and if he wanted to rely on that document, it was for the plaintiff to have produced the same. No evidence was

led by the plaintiff that the said letter had been lost or was not available with him and no permission was sought to produce secondary evidence in that behalf nor the trial court ever directed the defendants to produce the office copy of that letter. It was only on 17-5-86 after the arguments had been concluded and judgment was reserved that the appellant has filed a copy of that letter along with his additional affidavit which cannot be taken on record at this stage because the point which the learned Counsel for the appellant wants to argue that his order of dismissal is void because it was not passed by the Appointing Authority, was not agitated before the appellate authority before whom the appellant had filed an appeal against his order of dismissal dated 3-5-1968. In para No. 15 of the appeal (Ex. 2) preferred by the appellant, it has been stated as under:

that the applicant in terms of above orders joined the Training School, Udaipur on 6-6-1955 and on completion of training creditably was appointed Ticket Collector under the DTS BKI's letter No. EG 34/56 dated 27-4-1956.

The aforesaid statement made by the appellant in the appeal (Ex. 2) amounts to an admission by him that he was appointed vide letter dated 27-4-1956 issued by the D.T.S. Learned Counsel for the appellant never asked the defendants to produce this letter in the trial court. Original of this letter also must be with the appellant, and the appellant having failed to produce the same cannot be allowed to argue that adverse inference must be drawn against the defendants for not producing this letter in the trial court. Moreover, if the plaintiff had been appointed by the General Manager, as he claims, he would not have filed appeal either to the Divisional Superintendent or to the General Manager against his order of dismissal dated 3-5-1968 nor he agitated this point in his appeal. Learned Counsel for the Union of India has placed reliance on Union of India (UOI) Vs. Onkar Singh Johari, Burden of Issue No. 1 was also on the plaintiff, therefore, I think the trial court was right in deciding Issue No. 1 against the appellant.

27. The other ground urged by the learned Counsel for the appellant that no powers under Rule 134 had been delegated by the General Manager, also does not hold any water and the appellant cannot be allowed to press this point as this was never taken in his appeal nor was agitated before the trial court. Moreover, this is a question of fact which cannot be permitted to be argued at the appellate stage. Learned Counsel for the Union of India has of course submitted that under the Schedule of powers, power of removal of Class III employees has been delegated to the Senior Scale Officers and Divisional Commercial Superintendent is the Senior Scale Officer who is equal to rank of District Traffic Superintendent. The authority relied on by learned Counsel for the appellant, i.e., Sailendera Nath Bose v. The State of Bihar AIR 1968 SC 1292 is not applicable to the facts of the present case. This case was a criminal case and the question before the court was whether the sanction had been obtained from the Appointing Authority or not and since in that case, the prosecution had failed to produce any material to

prove that the sanction had been obtained from the Appointing Authority, the court had acquitted the accused person in that case.

28. The next contention of the learned Counsel for the appellant is that the order dated 3-5-1968 was passed without application of mind, is also without any force. The authority which passed the order dated 3-5-1968, was fully aware about the charge against the appellant because in Ex. A. 3A which is conviction report, a brief summary of the case has been mentioned, stating there in "Shri Ved Prakash Chaturvedi in the year 1955-56 secured appointment as Ticket Collector in the Railways by applying to the Railway Service Commission, Bombay, for the post of Ticket Collector, mentioning therein that he was matriculate and enclosing a copy of the matriculation certificate of the Punjab University when he had never passed the aforesaid examination from Punjab University in the year 1945". He was convicted u/s 420, I.P.C. for 2 years rigorous imprisonment and a fine of Rs. 200/-, in default of payment of fine, further rigorous imprisonment for two months and also under Sections 465/471, I.P.C. to one year rigorous imprisonment and a fine of Rs. 100/- in default of payment of fine, one month's rigorous imprisonment which clearly gives the nature of the charges for which the appellant was convicted. It was only after going through this conviction report that the Authority while passing the order dated 3-5-1968 had expressed that the conduct of the said Shri Ved Prakash Chaturvedi which led to his conviction is such as to render his further retention in public service undesirable. Merely because the full text of the judgment convicting the appellant was not before the Authority, it cannot be said that the Authority did not apply its mind before passing the impugned order.

29. The other contentions of the learned Counsel for the appellant that the appellate order dated 8-11-1968 is also void and illegal and inoperative because it is not a speaking order or did not contain any reason, has also to be rejected because the Appellate Authority had agreed with the view and opinion expressed by the Disciplinary Authority while passing the impugned order, dated May 3, 1968. More over, there was nothing to be considered in the present case. It was not a case where in an enquiry was being held by the Disciplinary Authority or some evidence had been led by the parties and that evidence had to be appreciated before passing the impugned order. In the present case, the only basis for passing the impugned order was the order of conviction by the court and since the appeal filed by the appellant against his order of conviction had also been dismissed and had become final, nothing remained to be considered or reasoned out by the Appellate Authority. More over, the appeal (Ex. 2) filed by the appellant was also by way of mercy and there was nothing very material which had to be discussed and met by the Appellate Authority, except the quantum of punishment to be awarded by the disciplinary authority.

30. Now coming to the next contention of the learned Counsel for the appellant regarding Article 14 of the Constitution of India. Suffice is to say that Article 14 of the Constitution cannot apply to such type of cases. Unless the full facts of the

cases were available to the court and the judgments of those cases were placed before the trial court, it cannot be said that the facts of the cases were identical and similar and no comparison can be made unless the judgments were placed before the court so as to show that the gravity of the misconduct was identical in both the cases. Since the appellant has not placed the material, he cannot be allowed to agitate this ground.

31. As regards Issue No. 4 about limitation, it is not disputed that the appellant was removed from service by the impugned order dated 3-5-68 passed by the Divisional Commercial Superintendent. It is also not disputed that the appellant had preferred an appeal & his appeal was dismissed by the Divisional Superintendent Jaipur by his order dated 8-11-1976. It is also not disputed that the suit was filed on 5-1-1976. According to the plaintiff himself, the cause of action arose to him on 3-5-1968 and on 20-8-1974 by refusal to set aside the order of dismissal and on 18-9-1974 by order of rejection of his appeal, Notice u/s 80 CPC was given on 16-10-1975, which was received by the defendants on 20-10-1975. According to the appellant the order dated 3-5-1968 merged in the appellate order dated 8-11-1968 but the order dated 8-11-1968 was not communicated to the appellant and it was for the first time that a copy of the letter dated 8-11-1968 was sent to him vide letter dated 18-9-1974 which was received by him on 20-9-1974 and therefore, according to him, the limitation starts only from 20-9-1974.

32. Learned Counsel for the respondents has placed reliance on Sitaram Goyal v. Municipal Board AIR 1958 SC 1036 which is fully applicable to the facts of the present case. The authorities relied upon by the learned Counsel for the appellant i.e. 1967 SLR 228 and Sita Ram Goel Vs. The Municipal Board, Kanpur and Others, are distinguishable on facts. I am bound by the decision of the Hon"ble Supreme Court of India, under Article 141 of the Constitution of India.

33. Thus, I do not find any force in this appeal. The appeal is therefore, dismissed and the judgment and decree dated 15-12-1979 passed Additional District and Sessions Judge, Dausa are confirmed but looking to the facts and circumstances of the case, I leave the parties to bear their own costs.