
(1974) 01 RAJ CK 0042
In the Rajasthan High Court

Victor David

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 17-01-1974

Acts Referred:

Manual of Railway Pension Rules, 1950 — Rule 305

Citation : (1975) 1 LLJ 334 : (1974) RLW 69 : (1974) 7 WLN 6

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Judgement

G.M. Lodha, J.—This is an appeal by the plaintiff from the appellate judgment and decree by the District Judge, Ajmer dated 29-10-1966, whereby the learned Judge upheld the decree of dismissal of the plaintiff's suit for recovery of Rs. 2,100 on account of alleged wrongful reduction of 50 per cent of his death-cum-retirement gratuity.

2. The plaintiff, after completing 30 years of service with the Western Railway retired on 12-7-1960 on attaining superannuation. His case is that he was entitled to full death-cum-retirement gratuity equal to 15 months' pay, he was last drawing, i.e., Rs. 280 per month. Thus according to the plaintiff he was entitled to get Rs. 4,200 as death-cum-retirement gratuity but the Divisional Personnel Officer by his letter dated 24-3-1962 marked Ex. A4 informed him that only 50 per cent of death-cum-retirement gratuity had been sanctioned for him. Admittedly the plaintiff has been paid Rs. 2,100 being 50 per cent of the death-cum-retirement gratuity and since 50 per cent, i.e., Rs. 2,100 was withheld he filed the present suit after serving the statutory notice.

3. The Union of India resisted the plaintiff's claim and pleaded inter alia that the death-cum-retirement gratuity was in the nature of a gift and that in any case 50 per cent of the same had been rightly withheld

4. The learned Civil Judge, Ajmer held that withholding of 50 per cent of the gratuity was neither wrong nor illegal. He further held that the death-cum-

retirement gratuity is in the nature of a gift and no suit can lie for recovery of the same. In the result, the suit was dismissed.

5. On appeal by the plaintiff, the learned District Judge held that the plaintiff's service was not found to be thoroughly satisfactory, he had been censured twice, and had prepared wrong rosters, as a result of which the railway had been put to a heavy loss. He also found that the plaintiff had been given full opportunity to explain the lapses on his part in preparing wrong rosters. In this view of the matter the learned District Judge concurred with the view taken by the trial Court and dismissed the plaintiff's appeal. Hence this second appeal by him.

6. Learned counsel for the appellant has argued the following points before me:

(1) That the Divisional Personnel Officer was not competent to withhold the plaintiff's death-cum-retirement gratuity.

(2) That the subsequent approval of the General Manager did not validate the impugned order by the Divisional Personnel Officer.

(3) That the gratuity in question was not in the nature of a bounty or a gift, but the plaintiff was entitled to whole of it unless it was found that his service had not been thoroughly satisfactory.

(4) That the principles of natural justice had not been followed in the enquiry made into the plaintiff's conduct regarding preparation of wrong rosters and, therefore, the impugned order is liable to be struck down,

7. I would first take up the question whether the plaintiff is entitled to death-cum-retirement gratuity as a matter of right? In support of his contention that the gratuity in question is not in the nature of a gift, learned Counsel relied upon: *The Garment Cleaning Works Vs. Its Workmen*, ; *The Hindustan Times Ltd., New Delhi Vs. Their Workmen*, ; *Deokinandan Prasad Vs. The State of Bihar and Others*, , *Jogesh Chandra v. Union of India* AIR 1955 Assam 17 ; *Rajasekhariah v. The State of Mysore* (1968) 2 Serv L.R. 269 : (1968) Lab. I C. 956: A I.R. 1968 Mys. 206; *H. Bommaiah Assistant Commissioner v. State of Mysore* (1969) Serv. L.R. 881 : (1969) Lab. I.C. 895 (Mys); *Amar Nath v. N.F. Railway* AIR 1969 Assam 112 : (1969) Lab. I. C 1192 and *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, . He has further drawn my attention to Rule 103 of Manual of Railway Pension Rules, 1950. Rule 1.03 reads as under:

103. A permanent Railway servant on quitting service or his family/nominee in the event of his death while in service is entitled to death-cum-retirement gratuity in addition to ordinary gratuity/pension or family pension, as the case may be, under Chapter VI or Chap. VIII.

In this connection reference may be made to paras 313 and 314 of the Rules which have also a direct bearing on the point at issue. They may be reproduced hereunder for ready reference:

313. When service is not thoroughly satisfactory. (1) The full pensionary benefits

admissible under these rules are not to be given as a matter of course or unless the service rendered has been thoroughly satisfactory.

(ii) If the service has not been thoroughly satisfactory, the authority sanctioning the pensionary benefits should make such reduction in the amount of the pensionary benefits as it thinks proper:

Provided that if the authority sanctioning the pensionary benefits is lower than the authority competent to remove the Railway servant from service, no order regarding reduction in the amount of pensionary benefits shall be made without the approval of the authority competent to remove the Railway servant from service.

(iii) The reduction may be made either in ordinary gratuity/pension or in death-cum-retirement gratuity or both ; it is, however, necessary that the competent authority should express its intention in clear and unequivocal language.

Note: Where pension has been reduced under para. 312 further reduction under this para shall not be made".

314 (1) (i) the reduction of pensionary benefits under para. 313 is to be related solely to the quality of service.

(ii) The competent authority would be justified in making proof of a specific instance of fraud or negligence by a Railway servant the ground for a finding that his service has not been thoroughly satisfactory. The measure of reduction in the amount of pensionary benefits shall, however, be the extent by which the Railway servant's service as a whole has failed to reach a thoroughly satisfactory standard, and any attempt to equate the amount of reduction with the amount of loss caused to the Government is incorrect. Para. 313 does not operate to authorize reduction of pensionary benefits either to nothing or to a nominal amount. It, however, contemplates permanent reduction in the amount of pensionary benefits and does not admit of the reduction of ordinary/family pension payable in respect of any one particular year only.

Note : The service of a Railway servant against whom a charge of corruption has been proved by his failure to explain satisfactorily the acquisition by himself or by any other person on his behalf, of wealth disproportionate to his known sources of income cannot be considered to be thoroughly satisfactory and is sufficient to warrant a reduction being made in the amount of his pension.

8. On the other hand, learned Counsel for the Railway has laid great stress on R. 335 (1958 Edition) which reads as under ;

305 Ordinary pension and family pension as also the commuted value of (ordinary) pension are governed by the Pension Act, 1871. Death-cum-retirement gratuity is, however, a gift and does not fall within the ambit of that Act.

Note : The underlining is mine.

9. Thus it is clear that the death-cum-retirement gratuity is not governed by the Pension Act, 1871. Rule 103 no doubt provides that a permanent railway servant on quitting service is entitled to death-cum-retirement-gratuity in addition to ordinary gratuity and other things. But this rule has to be read subject to Rules 305, 313 and 314. Rule 305 clearly lays down that death-cum-retirement-gratuity is a gift. Para 1 of Rule 313 further provides that the full pensionary benefits admissible under these rules are not to be given as a matter of course or unless the service rendered has been thoroughly satisfactory. This rule deals with pensionary benefits in general and not with death-cum-retirement gratuity in particular. So also Rule 314 deals generally with pensionary benefits. But so far as death-cum-retirement gratuity is concerned, it has been specifically provided in Rule 305(1958 Edition) that it is a gift and the conferment of the same depends solely upon the quality of service rendered by the incumbent. It is further a matter of subjective satisfaction of the competent authority whether the service of a particular railway employee has come upto a particular mark so as to entitle him to get the full death-cum-retirement gratuity. The cumulative effect of the various provisions in the Rules referred to above leaves no doubt that a railway employee cannot claim death-cum-retirement gratuity as a matter of right. In other words it is in the nature of a reward for good service. It is settled law that nobody can make a claim for a gift or a reward.

10. In Secy. of State Vs. Bhola Nath Mitra, it was held that "Gratuity is something of the nature of a gift and, therefore, Rule 8 of the Gratuity Rules does not impose any legal liability on the Railway Administration to pay any gratuity to the employee nor does it confer on him any right which he can lawfully demand." It was further held that "the Court is not entitled to interfere and compel payment even if it is found that the discretion vested in the Railway Administration was not exercised bona fide but arbitrarily or has been influenced by extraneous and irrelevant consideration." It is not necessary for me to express my opinion on the latter point, namely, whether the Court can interfere even if it is found that the discretion was not exercised bona fide or was influenced by extraneous or irrelevant consideration as in the present case, no such eventuality has arisen. It has not even been suggested before me that the impugned order withholding 50 per cent of the death-cum-retirement gratuity was made for extraneous or irrelevant consideration or that the power was exercised mala fide. There is no denying the fact that the plaintiff was censured twice. Similarly it is not denied that the explanation was called from the plaintiff for having prepared wrong rosters but the same was not accepted by the Railway Authorities. If, in these circumstances, the Railway did not think it fit to allow full death-cum-retirement gratuity to the plaintiff it cannot be said that the Railway Administration in any way misused its powers. Consequently, the plaintiff's claim for recovery of 50 per cent, death-cum-retirement gratuity cannot be sustained. The authorities relied upon by the learned Counsel for the appellant are distinguishable and the principles laid down therein are not applicable to the facts and circumstances of the case on hand. This concludes the matter.

11. However, I may say a word about the competence of the authority which passed the impugned order. It is true that the impugned order was passed by the Divisional Personnel Officer before obtaining the approval of the authority competent to remove the plaintiff, but it appears that the papers were submitted for approval of the General Manager, who accorded the same as is apparent from the letter Ex. A3, dated 22-6-1963. The sanction was no doubt given after the institution of the suit which was filed on 19-3-1963 but in the facts and circumstances of the case, the approval of the General Manager even though accorded subsequent to the suit can be taken notice of and the impugned order cannot be held to be invalid on that ground.

12. I might also state that even as regards the charge of preparing wrong rosters the plaintiff was given full opportunity to explain his conduct in that connection. It is quite another thing that the explanation submitted by him did not find favour with the authorities. But in any view of the matter the order cannot be called arbitrary or mala fide.

13. The result of the foregoing discussion is that the appeal merits dismissal. The appeal is, therefore, dismissed, but in the circumstances of the case I make no order regarding costs.

14. Learned counsel for the appellant prays for grant of leave to appeal u/s 18 of the Rajasthan High Court Ordinance. Leave is declined.