

(1956) 11 KL CK 0002
In the High Court Of Kerala
Case No : A.S. No. 508 of 1954

V.N. Rama Iyer

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 06-11-1956

Acts Referred:

Government of India Act, 1935 — Section 240(2)

Citation : AIR 1957 Ker 1

Hon'ble Judges : Varadaraja Iyengar, J;Sankaran, J

Bench : Division Bench

Advocate : T.S. Venkiteswara Iyer and C.S. Ananthakrishna Iyer, for the Appellant; K.P. Pathrose and E.V. Mathew, for the Respondent

Final Decision : Dismissed

Judgement

Varadaraja Iyengar, J.—This appeal is by the plaintiff a discharged Railway servant whose suit for damages for wrongful "removal from the service", has been dismissed by the court below, and the only question is whether the plaintiff was removed from service by an authority subordinate to that by which he was appointed.

2. The plaintiff v. N. Rama Iyer entered service on 28-6-1921 as a temporary relieving clerk in the South Indian Railway Company. After probation for 3 months he was confirmed as a relieving clerk. He got his first appointment as a station Master on 13-3-1934 drawing Rs. 60 and was still in that cadre when the Government of India acquired the Railway as a going concern. That was on 1-4-1944. The plaintiff was subsequently promoted to Rs. 52 in the scale of Rs. 50-60 from 1-6-1946. On 4-6-1946 the plaintiff was transferred temporarily to the Ernakulam South Station, the post of the Station Master of which had been graded as Rs 60-70 and he joined duty there on 18-4-1946.

But soon thereafter he was asked to leave it and go to Lovedale, a hill station. The plaintiff was unwilling to leave Ernakulam and would not obey in spite of the

insistent orders of the District Operating Superintendent (D. O. S.). He refused even to hand over charge to the relieving officer. So charges were framed against the plaintiff accusing him of "grave misconduct" and he was removed from service by Ext. AP order of the District Operating Superintendent dated 30-4-1947 with effect from 10-5-1947. The plaintiff attempted to get the order vacated in appeal before the Chief Operating Superintendent (C. O. P. S.) but failed, vide Ext AJ order dated 7-8-1947, and he filed this suit on 30-5-1948 for declaration that the order of removal was void and ultra vires and for consequential reliefs.

3. Now, at the date of the order removing him from service, plaintiff may be taken to be a Government servant, who by virtue of Section 240(2) of the Government of India Act, 1935, could not be removed by an authority subordinate to that by which he was appointed. This appears also to be the position under Rule 1705 (c) of the Indian Railway Establishment Code, Volume I (1951 edition) which runs as follows:

"No railway servant shall be removed or dismissed by an authority lower than that by which he was appointed to the post held by him substantively".

Based on these provisions the plaintiff's case in the court below was that it was the Chief Operating Superintendent who had appointed him to the Station Master's grade and therefore, the order of removal as passed by the District Operating Superintendent, who was lower in rank was ultra vires and void. The court found however that from the date of his initial appointment as relieving clerk in 1921 till he became the Station Master at Ernakulam South, at no time could it be said that any one higher than the District Operating Superintendent stood in relation to the plaintiff as the authority who appointed or promoted him to the various posts he held, and it followed accordingly that the termination of the plaintiff's service by that officer was unquestionable on the grounds advanced.

Before us the point is raised by learned Counsel that the plaintiff must be deemed to have been appointed to the Station Master's grade by the General Manager, an officer still higher in rank than the Chief Operating Superintendent when, in 1945, the permanent staff of the South Indian Railway was absorbed in the service of the Government of India after their taking over the Railway and the order of removal was in consequence necessarily bad. Alternatively it is contended that the District Operating Superintendent could make substantive appointments only in grades up to a maximum of Rs. 100 and the grade of the post of Station Master which the plaintiff was holding must be taken to be beyond that maximum. For, according to learned Counsel, a Station Master was capable of raising to a maximum of over Rs. 100 and the actual pay level of the plaintiff was for this purpose irrelevant. So the District Operating Superintendent was not competent to pass the impugned order as against the plaintiff.

4. Taking up the main contention as to the General Manager being the appointing

authority, we notice, to begin with, that Ext. AP is the Circular letter dated 1-6-1945 containing the formal offer of re-employment made to the permanent subordinate staff of the South Indian Rail-way Company by the Government of India. It was issued by the General Manager on behalf of and under authority of the Government. It referred in paragraph 1 to a prior Circular dated 26-2-1944 which had notified:

"that the South Indian Railway Company's staff taken over by the State on 1st April, 1944 would, up to 31st December, 1945, be subject to the rules and regulations of the ex-Company. It was also stated that the terms of permanent employment under the Government of India, with effect from 1st January, 1946, would be announced in due course and that the continued employment of permanent employees on these terms would be at their option".

Paragraph 2 then restated the terms of re-employment with effect from 1st January 1948 as already announced. "It then went on to say.

"3. The Government of India have authorised me to offer you service under the Government on the terms set out in para 2 above and you are hereby offered service-on those terms. You are required to communicate to your Departmental officer your written acceptance of this offer within 30 days of the date of issue of this offer."

Paragraph 4 finally referred to the execution of a formal Service Agreement on acceptance of the offer by the employee. Ext. AR is the covering letter sent by the District Traffic Superintendent (D. T. S.) (who was later known as District Operating Superintendent) along with a copy of Ext AP to the plaintiff, then Station Master at Kalipatti Road Station, and Ext AQ dated 28-6-1945 is the acceptance of the plaintiff. Learned Counsel for the plaintiff says that the proper inference to be drawn from these records is that the plaintiff was first entertained as Station Master in the service of Government of India by the General Manager. In our judgment, however, the inference does not follow. For there is no question here, of termination of a prior appointment and the constitution of a fresh appointment, following it. All that Ext AP Circular contemplated was the continued employment by the Government of India of permanent employees of the Company on the terms announced by Government and under option left to the employees concerned.

5. Learned Counsel for the plaintiff relied strongly upon *Mohammad Matteen Qidwai Vs. The Governor-General in Council*, In that case, on the taking over of the Bengal North-western and Rohilkhand and Kumaun Railways, the General Manager of the two combined Railways, acting on behalf of and under the authority of the Government of India issued Circular as here which had led to the plaintiff's appointment. It was held that the appointment of the plaintiff was by the General Manager and the power of dismissal u/s 240(2) of the Government of India Act Could be exercised only by him or by some one superior to him.

But distinguishing feature of the case was that the previous service of the

plaintiff there under the Rohilkhand and Kumaun Railways had been terminated by the management of that Railway with effect from the mid-night of 31-12-1942 by a proper notice and his fresh appointment by the General Manager, took effect from 1-1-1942. There was no continuance of permanent service or at the option of the employee as here and this, in our opinion, makes all the difference. We therefore overrule the main contention.

6. The alternative contention as to plaintiff's substantive appointment being in a grade with a maximum of more than Rs. 100 may now be examined. It is conceded that at the time the plaintiff was removed from service he was a Station Master in the grade of Rs 50-60 and working in a station, the post of the Station Master of which had been graded as Rs. 60-70. But the argument is that there are Station-Masters In higher grades which carry a maximum of more than Rs. 100 and therefore plaintiff as a "Station Master" simpliciter, must be held to hold a substantive appointment in a grade the maximum pay of which is more than Rs. 100. But this is impossible, because Station. Master in one grade cannot be said to be holding the post of a Station Master in another grade. He could do so only if he is promoted to it. There appears to be no substance in this argument as well.

7. No further point was raised. In the result, the appeal fails and it is dismissed with costs.