
(1959) 03 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : Second appeal No. 38-D of 1955

Wallu Ram

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 20-03-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 80
Constitution of India, 1950 — Article 300, 310(1)

Citation : AIR 1961 P&H 329

Hon'ble Judges : S.B. Capoor, J

Bench : Single Bench

Advocate : B.D. Behl, for the Appellant; R.S. Narula, for the Respondent

Final Decision : Allowed

Judgement

1. This is a second appeal against the judgment and decree of Shri Y. L. Taneja, Additional District Judge, Delhi, whereby he maintained the order of the trial Court dismissing the plaintiff's suit with costs.

2. The plaintiff is a Railway employee having entered service as far back as the year 1915 and he held substantively the post of the Station Master Grade II even before the partition of the country. It is not now disputed that in September, 1948, he passed the P. III course which entitled him to promotion. After the partition of the country he was selected as a Station Master Grade IV on the 27th of January, 1948, the scale of pay applicable to which post was 200-10-250.

This selection was approved by the Headquarters Office on the 6th of July, 1948. Though several vacancies occurred in that grade, officials junior to the plaintiff were promoted to it and to higher Grades V and VI to which the scales of pay applicable were 260-10-300 and 320-15-350 respectively. The plaintiff made representations to the higher authorities. In the meanwhile, the scales of pay of the various Grades of the Station Masters were revised and the old Railway employees were required by the circular (Ex. p. 65) to exercise their option

before the 30th of April, 1948, either to retain the existing scales both on their present posts as well as on promotion to the higher posts or to come on the new scales of pay which were known as the prescribed scales.

So far as the Station Masters of Grades II and III were concerned, the new scales were more favourable than the old ones as the former went up to a higher maximum. As regards the Station Masters in Grades V and VI, the new scales, being 200-10-300, were less favourable. The plaintiff's case was that since his representations against his supersession were already pending, he could not make any final choice between the old scales and the prescribed scales.

If his representations failed and he had continued in Grades II and III the new scales were more favourable to him while if they succeeded the old scales would be more advantageous. Accordingly, the plaintiff while exercising his option sent with it a covering letter, copy Ex. P. 4, in which he said that he was opting for the prescribed scales provisionally pending the decision of his representations. The option itself is Ex. D. I, dated the 12th of April, 1948.

3. Subsequently in August, 1948, the plaintiff was sent to Jind as Station Master Grade V and in December, 1948, to Pathankot in the same Grade and in February, 1949, to Jullundur again in Grade V. The Copy Ex. P. 49, dated the 27th of December, 1950, shows that the plaintiff's name was by virtue of the selection made by the Railway Board put on the approved list for Station Masters Grades V and VI, and he was officiating in Grade V when a few days later he was transferred to the Delhi Division. Right up to the 3rd of July, 1951, the petitioner continued to be paid Rs. 270/- P. M. i. e., in the Grade 200-10-300. Then the Government appears to have discovered that he was not entitled to this grade and from the 3rd of July, 1951, his pay was reduced to Rs. 200/- P. M. i. e. the minimum pay of a Station Master Grade V under the prescribed scales.

4. The crucial question in this appeal is whether the plaintiff is entitled to receive pay in Grade V under the old scale or under the prescribed scale. In the suit he had made other claims, but in this appeal he seeks relief only on account of the difference in the two scales, and there is no dispute that as a matter of calculation if the point is determined in his favour he would be entitled to a sum of Rs. 1080/- (One thousand eighty).

5. The suit was contested by the Union of India not only on the merits, but on other grounds that the notice served on the defendant was invalid and that the Civil Court had no jurisdiction to grant any relief to the effect that the plaintiff was entitled to be paid under the old scales and not under the prescribed scales. The trial Court held that the plaintiff could not be allowed to say that his option for the prescribed scales was merely a provisional one and further that the Civil Court had no jurisdiction to grant the relief in this respect.

It further held that the notice served upon the defendant u/s 80 of the CPC was defective and invalid. The learned Additional District Judge in appeal found that the option exercised by the plaintiff was a provisions one, but that the Civil Court

had no jurisdiction to grant him the relief sought for. Then the Appellate Court reversed the finding of the trial Court as regards the invalidity of the notice so far as the relief of payment in the old scales was concerned. As a result, it dismissed the appeal with costs.

6. The finding of the Lower Appellate Court to the effect that the exercise of option by the plaintiff on the 12th of April, 1948, was a provisional one is one of fact which should not ordinarily be disturbed in second appeal. Mr. R. S. Narula on behalf of the Union of India pointed out that Ex. D.1 was unqualified and in paragraph 3 thereof it was stated that the plaintiff clearly understood that the option exercised by him was final.

Mr. Narula maintained that the covering letter copy of which is Ex. P.4, was never sent and is an after-thought. In view of the fact that the plaintiffs' representations were pending, any prudent man would not exercise a final option unless those representations were decided, as if the representations succeeded, the old scales would be more beneficial while if they were turned down, the prescribed scales would be more advantageous.

The plaintiff has been by letters (copies Ex. P.1 to Ex. P.3) dated 15-1-1948, 6-2-1948 and 12-2-1948 pressing for a decision on his representations and in Ex. P-4 he mentioned these 3 earlier letters. He had summoned his personal record from the office of the Divisional Superintendent in order to prove the originals of those letters, but the officials who were summoned with the record produced only a part of it and did not give any satisfactory reply as to why the entire record could not have been produced.

In these circumstances, the learned Additional District Judge quite rightly drew the adverse inference against the defendant to the effect that if the proper records had been produced the originals of Ex. P-1 to Ex. P-4 would have been found on them. The principal reason why the trial Court did not accept Ex. P-4 as genuine was that in a letter written on the 12th of June 1951, (Ex. P-12), the plaintiff did not say that his exercise of option on the 12th of April, 1948, was provisional one.

There was, however, no occasion to do so. Previous to that the Railway Board had issued a circular, (Ex. P-63) dated the 29th of March, 1951, allowing the employees concerned to exercise under certain circumstances a revised option, and the plaintiff had sent his revised option dated the 17th of April, 1951, marked Ex. P-64, saying that he opted back to the old scales of pay. This request was, however, turned down.

7. I would, therefore, uphold the finding of the learned Lower Appellate Court to the effect that in point of fact the plaintiffs' option on the 12th of April, 1948, was only a provisional one. The admitted fact that upto the 3rd of July, 1951, he was continued to be paid according to the old scales would indicate that the defendant was treating the plaintiff as not having opted for the prescribed scales.

According to paragraph 2(e) of the circular, (Ex. P-65), the pre-1931 entrants as do not exercise their option within six months from 1-11-1947 would be assumed to have retained their existing scales of pay. In paragraph 7 of the same circular, it was recognised that the option could be exercised by the staff only after they were placed in possession of the necessary data.

If the necessary data was not furnished to any particular official by the 30th of April, 1948, which was the last date by which the option was to be exercised, it is obvious that that official could only exercise his option provisionally. The position, therefore, is that either the option exercised by the plaintiff on the 12th of April, 1948, is to be treated as provisional or in view of paragraph 2(e) of the circular (Ex. P-65) he should be deemed to have retained the existing scales of pay.

8. The form of service agreement for subordinate staff is given as Form No. 1 in Appendix XXIV to Volume 1 of the Indian Railway Establishment Code (Second Reprint). The Clause 8 of this form lays down that so long as the railway servant remains in service he shall be paid such pay as may be prescribed from time to time by the rules of the service applicable to his position and appointment. The appendix to Form No. 1 makes a reference to the Indian Railway Establishment Code as also the Rules Books governing the privileges and conditions of service of the permanent staff of the Railways.

"The presumptive pay of a post as defined in Item (24) of paragraph 2003 (Volume II of the Indian Railway Establishment Code, (Second Reprint) means the pay to which a particular railway servant would be entitled if he held the post substantively and was performing its duties. The combined effect of these provisions when applied to the case of the plaintiff would be that he was entitled during the relevant period to the old scale of pay of the Station Master of the Fifth Grade.

9. The lower appellate Court as well as the trial Court were not prepared to entertain this part of his claim on the ground that the Civil Court had no jurisdiction to grant him the relief sought for. Mr. Bahl on behalf of the plaintiff relied on *The State of Bihar Vs. Abdul Majid*, for the proposition that in India the State could be sued for the arrears of salary directly by the civil servants.

His Lordships of the Supreme Court, while interpreting the expression "holds office during His Majesty's pleasure" in Section 240 of the Government of India Act, 1935, (now corresponding to the expression "holds office during the pleasure of the President" in Clause (1) of Article 310 of the Constitution of India) observed that this expression concerned itself with the tenure of office of the civil servant and it was not implicit in it that a civil servant served the Crown "ex gratia" or that his salary is in the nature of a bounty, and further that it had no relation or connection with the question whether an action could be filed to recover arrears of salary against the Crown.

Mr. R. S. Narula on behalf of the defendant sought to distinguish this case on the ground that the present case is not one in which arrears of salary are being

claimed on the ground of wrongful dismissal or removal from service or reduction in rank. According to him, the present case was merely one in which the Government had chosen to place the plaintiff in one grade rather than another and relying on Union of India (UOI) Vs. D.S. Bajaj, maintained that if a decree was granted in this case, it would amount to the Court's taking upon itself the "control over Government in most detailed work of managing its services".

On the facts of the present case, however, I am unable to accept Union of India (UOI) Vs. D.S. Bajaj, the plaintiff wanted a mandatory injunction against the Union of India for entering his name in the list of the temporary qualified subordinate Engineers, and it was held that the Courts could not grant any such injunction as that would amount to interference in the Government's work of administration. In the present case, when it has been held that the plaintiff must be deemed to have been placed in the old scales, it follows that he is entitled to draw pay in that scale, and on the authority of, The State of Bihar Vs. Abdul Majid, it must be held that the suit so far as this relief was concerned was maintainable.

10. The only remaining question is that of the validity or otherwise of the notice u/s 80 of the CPC served by the plaintiff on the defendant. Mr. Narula seeks to challenge the finding of the appellate Court to the effect that this was a valid notice, and all that he could point out was that this notice did not give any details of the claim. It is dated the 16th of August, 1951, and obviously could not include the claim for the subsequent period.

It has been held by a Division Bench of this Court in Braham Dutt Vs. East Punjab Province and Others, that the object of the requirement of a notice u/s 80 of the CPC is to afford the defendant an opportunity to consider his position with regard to the claim, and this object is sufficiently satisfied if the notice informs the defendant generally of the nature of the suit intended to be filed and the relief sought to be claimed. I agree with the learned lower appellate Court that the notice in this case sufficiently complied with this requirement.

11. In the result, accepting this appeal, decree the plaintiff's suit to the extent of granting him a decree for Rs. 1080/- with proportionate costs throughout against the defendant.