

Mohammad Sagiruddin

Vs

The Distt. Mechanical Engineer, North East Frontier Railways and Others

Civil Appeal No. 1699(N) of 1967

(A.N. Ray, D.G. Palekar, M.H. Beg JJ)

27.03.1973

JUDGMENT

PALEKAR, J. -

1. This is an appeal by special leave from a judgment and order of the Patna High Court in Miscellaneous Judicial Case No. 944 of 1962 dismissing the petition.

2. The appellant had joined service in the old Bengal Assam Railway, now known as North East Frontier Railway as a substitute cleaner some time in 1940. In due course, in 1956 he was promoted to officiate as an Engine Driver 'C' and worked in that capacity till December, 1961. He was then in the scale of Rs. 150/- to Rs. 240/- and was actually drawing the pay of Rs. 160/- per month. Engine Drivers have to undergo periodical tests for their vision. On December 25, 1961 the appellant was examined by the District Medical Officer, Katihar who reported that the appellant was medically unfit for service in class A-1, i.e. for driving Railway Engines though he was fit for service in class B-2. The appellant appealed to the Chief Medical Officer who, however, confirmed the report of the District Medical Officer. The Railway Authorities thereupon in accordance with Rule 152 of the Indian Railway Establishment Code, Volume 1, 1959 granted the appellant leave that was due to him and, in the meantime, offered to absorb him in a post for which he was fit namely as Pump Engine Driver. The scale of this post was Rs. 75/- to Rs. 110/- and the appellant was given the maximum of the scale namely Rs. 110/- per month. The appellant accepted the post but without prejudice, and thereafter filed the petition on December 12, 1962, complaining that he had been reduced in rank by way of punishment without complying with the mandatory provisions of Article 311 of the Constitution. The petition was dismissed on October 12, 1965, and it is from this order that the present appeal is filed.

3. There is no substance in this appeal. It is not disputed that in the Medical Examination it was certified that he was unfit for service in class A-1 though he was fit for service in class B-2. Being unfit for service in class A-1 as an Engine Driver 'C' he could not be continued in that post. An Engine Driver of a passenger train must have a good vision and if the Driver does not have a good vision he could not possibly be continued as an Engine Driver. He must, therefore, be accommodated in some other post in accordance with the certificate. The certificate had stated that he was fit for service in class B-2. A Pump Engine Driver comes under class B-2 and, therefore, he was offered that post which he accepted and he was given the maximum of that scale. All this was done in accordance with Rule 152 of the Code which is as follows :

"A Railway servant who fails in vision test or otherwise becomes physically incapable of performing the duties of the post which he occupies but not incapable of

performing other duties, should not be discharged forthwith but should be granted leave in accordance with Rule 2237-A-R. During the period of leave so granted, such a railway servant must be offered some alternative employment on reasonable emoluments having regard to his former emoluments. Further, the extraordinary leave portion of leave granted in accordance with Rule 2237-A-R should not be cut short purely on account of his refusing the first offer which is made to him, but he must be discharged if he does not accept one or more offers during the period of his leave."

4. This rule is an extremely reasonable rule. Normally an employee who is medically unfit for service would be invalidated or discharged. But the above rule provides that if an employee fails only in the vision test but otherwise is not incapable of performing other duties he should not be discharged but absorbed in a post where his services could be utilized. Having regard to the duties that he was performing so far in which some amount of skill had been acquired he was offered the post of the Pump Engine Driver for which he was declared medically fit. It is true that the scale of pay for this post is lower than the scale to which he had been entitled as an Engine Driver 'C'. But if he had not accepted the post the Railway authorities would have had no option but to discharge him. In these circumstances, it can be hardly contended that he was either punished or went with a stigma on his character. This was not a disciplinary measure. The appellant being found unfit for the job was given some other job for which he was fit. We do not see how Article 311 of the Constitution comes in there.

5. The appeal has therefore to be dismissed. No order as to costs.

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