

ALLAHABAD HIGH COURT

Raghunath Narain Mathur

Vs.

Union of India

Misc. Writ Appln. No. 672 of 1952

(Sapru and Chaturvedi, JJ.)

28.11.1952

JUDGMENT

Sapra, J

1. This is an application under Article 226 of the Constitution which has been presented to this Court by a Railway clerk who has been given notice by the Railway authorities that he will have to retire on the attainment of 55 years of age.

2. Now, our attention has been drawn to a recent change in the State Railway Establishment Code, vol. II. Sub-rule (2)(a) of R.2046 of that "Code lays down that :

"A ministerial servant who is not governed by sub-clause (b) may be required to retire at the age of 55 years, but should ordinarily be retained in service if he continues efficient, up to the age of 60 years. He must not be retained after that age except in very special circumstances, which must be recorded in writing, and with the sanction of the competent authority."

3. The point which has been urged is that a right has been conferred under this rule on an employee to be retained in service till the age of 60. That right, however, is subject to the reservation that he must be efficient. Dr. Asthana's argument is that the word "ordinarily" restricts discretion of the Railway authorities and that they are, except where the employee is inefficient, expected to retain a Railway employee in service until he reaches the age of 60. He contends, therefore that the applicant is entitled to continue in service until the age of 60 years. It is further urged that his services could be dispensed with only after he had been given an opportunity to show cause why he should not be retired at the age of 55. Dr. Asthana says that he could be retired only if he was found to be inefficient and charges of inefficiency should have been supplied to him for an explanation. We are unable to accept this argument as correct. The

Railway authorities have an unfettered option, in our opinion, to retire a person at the age of 55, though, normally speaking, they are expected to continue persons in employment, unless they are inefficient, until they reach the age of 60. But it is solely for them to decide whether a man shall be retained or not after the age of 55. The word "ordinarily" does not take away their rights to retire him and it cannot be ignored. So in order to arrive at the conclusion whether a person is or is not sufficiently efficient to be allowed to be retained in service till the age of 60, it is not necessary for them to frame regular charges and give the employee an opportunity of explanation. Be that as it may, the important point about this case is that what in the case of the applicant the Railway authorities did was neither to dismiss nor to censure him. They have merely exercised the right which they possess under the terms of his contract of service to indicate to him that his services will not be required after he reaches the age of 55. They were, in any view of the case, under no statutory or legal duty to keep him in employment until the age of 60 and the applicant cannot make a grievance of the fact that the Railway authorities are not prepared to allow him to continue in office.

4. Thus there is no force in this application. It is accordingly dismissed.
Application dismissed.