

## PATNA HIGH COURT

Biswanath Singh

Vs

District Traffic Supdt. N.E. Rly

Misc. Judicial Case No. 648 of 1954

(Rai and Sinha, JJ.)

21.12.1955

### JUDGMENT

**Rai, J.**

1. The applicant has moved this Court for issue of a writ in the nature of certiorari for quashing the order of the District Traffic Superintendent, North Eastern Railway, Sonapur, by which the services of the petitioner had been terminated and for commanding him to reinstate the petitioner on his substantive post which he had held prior to the termination of his service.

2. The facts leading to the filing of the present application may shortly be stated as follows. The petitioner was appointed in the year 1931 as a signaller by the Bengal North and Western Railway. When the Bengal North and Western Railway Company was taken over by the Government of India, a notice was issued from the office of the General Manager in October 1942 whereby the petitioner was offered employment under the Government of India with effect from 1-1-1943, on terms and conditions specified on the reverse of that notice. According to that notice, the person who was prepared to accept the offer was to execute a form of service agreement, and it was further notified that the Staff Railway Rules as applicable to persons appointed on or after 1-1-1943 would apply to persons who were prepared to accept the offer. It was further stated therein that the persons appointed on or after 1-1-1943, will be governed by the State Railway Rules in all matters. According to the petitioner, he accepted the order and was re-appointed by the General Manager. In July-August, 1952, the petitioner fell ill but after some time he joined his duties at Sahebpur Kamal Junction railway station. After some time he again went on one month's leave. During that period of leave the petitioner again fell ill and was under the treatment of the Civil Surgeon, Muzaffarpur, and other medical practitioners. After being cured, he resumed his duties but was sent up to the District Medical Officer, Gorakhpur, for further medical examination who declared the petitioner medically unfit for service in class A-2 as station-master but fit in class B-2 as booking clerk. On the basis of the medical report of the District Medical Officer, the District Traffic Superintendent, Sonapur, offered the petitioner the post of a booking clerk on his present pay. The petitioner did not accept this offer but wrote back to the District Traffic Superintendent on 29-9-1952 that some mistake had crept in the report of the District Medical Officer as he was under the impression that he had actually been declared fit

for service in class A-2. In that letter the petitioner prayed for being sent up to the Central Hospital, Gorakhpur, for further medical examination and treatment. The petitioner was thereafter examined by the Chief Medical Officer on 6-11-1952. who was of opinion that the petitioner was unfit for service in all classes. The District Traffic Superintendent thereafter sent him a letter dated 13-11-1952, which is annexure-A to his application. This letter was by way of notice of termination of the service of the petitioner from 6-11-1952, until the expiry of the period of the notice.

The petitioner thereafter attempted his re-examination on the ground that in a certificate dated 16-9-1953, granted by Dr. M.P. Sinha which had been counter-signed by Dr. T.N. Banerji of Patna, he was considered to be medically fit for light duty, but his application was ultimately turned down. It became, therefore, necessary for him to move this Court for issue of a writ as indicated above.

3. Learned Counsel for the petitioner contended before us that the order of the District Traffic Superintendent terminating his services is fit to be quashed as the said order has been passed in contravention of the requirements of Article 311 of the Constitution.

4. In support of his contention learned counsel for the petitioner relied on the decisions in - '*Union of India v. Someswar Banerjee*', (AIR V 41) and '*Fakir Chandra v. S. Chakravarti*', (AIR V 41), wherein it was held that the termination of service amounted to dismissal or removal within the meaning of Article 311 of the Constitution. He submitted that in case the termination of the service of the petitioner amounted to his dismissal or removal, the order of the termination of his service could not have been passed by an authority subordinate to that by which he was appointed. He also submitted in the alternative that the requirements of Article 311(2) had not been complied with in the present case.

5. Mr. P.K. Bose, who appeared for the opposite party contended on the other hand, that the termination of the service of the petition was in accordance with the terms of the agreement of his service. He further submitted that in the absence of the actual agreement which had been entered into by the petitioner at the time of his re-employment, the model form of service agreement inserted' at p. 344 of the Ind. Rly. Establishment Code should be considered to be the basis upon which, the present case should be decided as was done in the case of '*Lachhman Prasad*, M.J.C. No. 468 of 1954, D/d. 23-9-1955 (Pat) (C). Mr. Bose relied particularly on the following portion of the judgment given in that case :

"No agreement has been produced in this case on behalf of the petitioner, but the model form of service agreement given at page 344, Appendix XXIV of the Indian Railway Establishment Code states in para 3 that the railway servant shall be subject to the following condition of service, namely, that such service is terminable at any time by either party on one month's notice in writing or by the administration on one month's pay in lieu, of notice. On behalf of the petitioner it was contended that the order of removal was tantamount to an order of punishment within the meaning of rule 1708 at page 181 of the Indian Railway Establishment Code. We do not consider that this argument is correct.

The order of removal, which has been already quoted, shows clearly that the petitioner was

removed not for any misconduct or inefficiency, but the removal was made in accordance with the terms of the service agreement. In a case of this description, the provisions of Article 311 of the Constitution are not applicable. That was the view taken by the Supreme Court in '*Satish Chandra Anand v. Union of India*<sup>3</sup>', (AIR V 40) (D)". In the present case also it is clear from annexure-'A' that the service of the petitioner has been terminated in accordance with Rule 148 sub-rule 3 of the Indian Railway Establishment Code, Volume I. I therefore agree with Mr. Bose that on the authority of the decision in M. J. C. No. 468 of 1954 (Pat) (C) mentioned above with which I respectfully agree, the provisions of Article 311 of the Constitution will not be attracted in this case.

6. With reference to the above-mentioned two decisions reported in 1954 Cal 566 (AIR V 41) (B) and 1954 Cal 399 (AIR V 41), Mr. Bose submitted that in those two cases the attention of their Lordships of the Calcutta High Court was not directed to the terms of the service agreement. Mr. Bose also urged that the view taken in those two decisions is contrary to the view of this Court in the case of '*Ajit Kumar v. Chief Operating Supdt. E. I. Rly. Calcutta*<sup>4</sup>', (AIR V 40) (E). In the above-mentioned Calcutta decisions no distinction was made between termination of service and dismissal or removal from service'. In the Patna case, however, a contrary view was taken. I would better quote in this connection the relevant passage from the judgment in the case of 1953 Pat 92 (AIR V 40) which runs thus :

"It is argued by Mr. B.C. Ghose that 'termination of service' was only another name of 'removal from service'. In support of his argument the learned counsel referred to '*Shambhu Dayal v. Patiala and East Punjab States Union*<sup>5</sup>', (AIR V 39) (F). With great respect, I am unable to accept the argument of Mr. B.C. Ghosh as correct.

In my opinion, the terms 'dismissal', 'removal' and 'reduction in rank' are all technical terms employed in the Article, and it is not permissible to construe these terms in a popular sense. It is important to note that the Indian Railway Establishment Code, which governs the contract of service of these petitioners, makes a clear distinction between a case of termination of service and a case of dismissal or removal or reduction in rank".

7. In my opinion, the contentions raised by Mr. Bose are well founded in law and must prevail. With great respect to tire learned Judges of the Calcutta High Court who decided the cases reported in 1954 Cal 399 (AIR V 41) (A) and 1954 Cal 566 (AIR V 41), I am not in a position to agree with the view taken by them that there is no distinction between 'termination of service' and 'removal from service'. I respectfully agree with the view taken by our own High Court in the case reported in 1953 Pat 92, (AIR V 40), and hold that the provisions of Article 311 of the Constitution are not applicable to the present case. In my view, the petitioner has not made out any case for issue of a writ to quash the order by which his service has been terminated.

8. The result is that the application fails and is dismissed but, in the circumstances of this case, there will be no order for costs.

**Sinha, J.**

9. I agree.

Application dismissed.

Cases Referred.

<sup>1</sup>1954 Cal 399

<sup>2</sup>1954 Cal 566

<sup>3</sup>1953 SC 250

<sup>4</sup>1953 Pat 92

<sup>5</sup>1952 Pepsu 152