

Ram Chand Vs. Union of India (Uoi) Through the General Manager

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Court : Rajasthan

Decided On : Aug-08-1975

Reported in : 1975WLN(UC)340

Judge : S.N. Modi, J.

Appeal No. : S.B. Civil 2nd Appeal No. 270 of 1967

Appellant : Ram Chand

Respondent : Union of India (Uoi) Through the General Manager

Disposition : Appeal dismissed

Judgement :

S.N. Modi, J.

1. This is a second appeal by the plaintiff Ramchand against the judgment and decree of the District Judge, Bikaner, dated 31-3-67 where-by he reversed the decree passed by she Munsif, Bikaner, in civil original suit No. 309 of 1963.

2. The plaintiff appellant is an employee of the Northen Railway & was posted as Senior Trains Clerk at Lalgarh Railway Station in the year 1960. The Divisional Commercial Superintendent, Bikaner, hereinafter to be referred to as the DCS, charge sheeetd the plaintiff on 3-10-60 for deliberately detaining a goods wagon at the Churu Railway Station on 3-7-69. The DCS by his order dated 14-7-61

imposed penalty on the plaintiff by withholding one increment in the pay of the plaintiff.

3. The plaintiff instituted the present suit on 19-9-63 for declaration that order of the DCS dated 14-7-61 is illegal and he may be allowed Rs. 5/- per month as annual increment. He sought these reliefs mainly on two grounds. First, at he was not given any opportunity to inspect the record inspite of his written request dated 7-10-60 Second, the DCS was not competent to punish him. The suit was resisted by the defendant Union of India. It was plead d that the plaintiff was permitted to inspect the record on 3-2-61 but on one pretext or the other he did not avail himself of the opportunity. The defendant further pleaded that the plaintiff inspected the record after the imposition of the penalty and the matter was reconsidered on filing his reply and be penalty was reaffirmed on 12-10-61 vide Ex. A/1. The defendant denied that the DCS was not the competent authority to punish the plaintiff. Some mere pleas were raised by the defendant, but in this appeal we are not concerned with them. The trial court after evidence recorded the finding that no opportunity was afforded to the plaintiff to inspect the record before the penalty was imposed. The trial court further held that the competent authority to punish he plaintiff was the Divisional Operating Superintendent and not the DCS. The suit was accordingly decreed. On appeal by the Union of India, the learned District Judge reversed both these findings of the trial court and dismissed the suit Hence this second appeal by the plaintiff.

4. I have heard learned Counsel for the parties and gone through the record of the case. It is contended on behalf of the plaintiff-appellant that since no opportunity was given to the plaintiff to inspect the record of the Railway Station, Churu before he was awarded penalty, the order dated 14-7-61 is liable to be quashed. It is further contended that the learned District Judge wrongly relied on Ex. A/4 and Ex. A/5 as they were neither sent to the plaintiff nor there is evidence to show that in pursuance of these letters the plaintiff was given any opportunity to inspect the record. In my opinion, there is no substance in the above contention. It is true that Ex. A/4 is a letter by the DCS addressed to the Station Master, Lalgarh This letter shows that the plaintiff Ramchand was permitted to see the records as requested by him. There is, however, no evidence to show that the permission accorded by

the DCS to inspect the record was communicated to the plaintiff by the Station Master, Lalgarrh. From this record it cannot be inferred that an opportunity was afforded to the plaintiff to inspect the record vide letter dated 3-2-61 (Ex A/4) Ex. A/5 is again a letter written by the DCS to the Station Master, Lalgarrh in which the Station Master has been directed to arrange to forward the plaintiff's defense within a week. The defendant can not seek any assistance from this letter as there is no proof that the contents of this letter were communicated to the plaintiff by the Station Master, Lalgarrh. It, however, appears that in pursuance of the letter EX. A/6 dated 19-8-61, the plaintiff inspected the relevant record and submitted his reply on 28-8-61. See para 8 of the notice Ex. 5 given by the plaintiff It further appears from Ex. A/1 dated 12-10-61 that his defence dated 28-8-61 was considered by the DCS and the punishment already awarded on 14-7-61 was re-affirmed. The plaintiff then went in appeal against the order dated 12-10-61 Ex. A/1 and it was rejected by the Divisional Superintendent vide order dated 30-11-61 Ex. 4 It is admitted by the plaintiff that on the rejection of his appeal by the Divisional Superintendent, he filed a review petition which was also rejected. All these circumstances clearly go to show that the plaintiff was given an opportunity to inspect the relevant record and thereafter his defence was reconsidered and order dated 14-7-61 was re-affirmed by the DCS as well as by the Appellate Authority, namely, Divisional Superintendent. If that is so, it does not lie in the mouth of the plaintiff to say that the order imposing penalty of withholding increment was made without giving him an opportunity to inspect the record. The learned District Judge, in the circumstances, rightly held that opportunity to inspect the record was afforded to the plaintiff.

5. The learned Counsel for the plaintiff-appellant has next contended that the plaintiff being a Trains Clerk was directly under the subordination of of the Divisional Operating Superintendent & not the DCS & as such the latter had no authority to punish him. Suffice it to say that there is no evidence on the record to show that the plaintiff was directly under the subordination of the Divisional Operating Superintendent. The plaintiff has appeared in the witness-box but did not dare to say so. On the other hand, the defendant's witness DW 1 Tapeswarsingh has clearly deposed that the competent authority to impose penalty of withholding increment was either Divisional Personnel Officer or the

DCS He has further deposed that the case against the plaintiff was initiated on a public complaint which could be dealt with only by the DCS. He has further deposed that the Divisional Personnel Officer & the DCS are both Class I Officers. I therefore find no substance in the argument of the learned Counsel for the plaintiff-appellant that the competent authority to impose penalty on the plaintiff was the Divisional Operating Superintendent and not the DCS.

6. The learned Counsel for the plaintiff-appellant, the last resort, has argued that neither the order dated 14-7-61 nor the order dated 12-10-61 Ex. A/1 is a speaking order and as such it is no order in the eye of law. This objection was neither raised in the plaint nor in any of the two courts below. This point was also not raised in the memorandum of appeal. If such a plea had been taken by the plaintiff, it might be that the defendant would have produced a well reasoned order which might have been passed by the Disciplinary Authority. In the circumstances, the plaintiff-appellant cannot be permitted to raise the new point for the first time.

7. There is no force in the appeal and it is dismissed with costs. The prayer for leave to appeal is refused.