

**N.C. Chatterjee Vs. K.B. Mathur and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/859366](http://sooperkanoon.com/859366)

**Court :** Kolkata

**Decided On :** Jun-26-1953

**Reported in :** AIR1954Cal187

**Judge :** Sinha, J.

**Acts :** [Constitution of India](#) - Article 226 and 226(1); ;[Government of India Act, 1935](#) - Section 241(2); ;Indian Railway Establishment Code - Rule 2021

**Appeal No. :** Civil Rule No. 1795 of 1952

**Appellant :** N.C. Chatterjee

**Respondent :** K.B. Mathur and ors.

**Advocate for Def. :** Hem Chandra Sanyal and ;Bhabesh Narayan Bose, Advs.

**Advocate for Pet/Ap. :** Balai Lal Pal and ;Arun Kumar Dutt, Advs.

**Judgement :**

ORDER

**Sinha, J.**

1. This is a Rule issued upon the opposite parties to show cause why a writ of mandamus should not issue directing them to forbear from giving effect to the orders mentioned in the petition.

2. The facts are briefly as follows: The petitioner is officiating as the Assistant Personnel Officer Eastern Railway Sealdah. The post is included in the lower Gazetted Service and as such, falls under Class II of the Railway Services. He started officiating in the Lower Gazetted Service of the Engineering Department on 12th November 1938 and was transferred to the personnel officer on 7th December 1946. The progressive increase in his pay may be charted as follows:

3. Rs. 275-25-500-E.B.-30-650-E.B.-50-300/-. The increment takes place according to a time schedule. It will however be observed that there are two efficiency bars, one after he has been drawing Rs. 500/- and the other after he has been drawing Rs. 650/- per month. Besides the above, he is entitled to draw compensatory & dearness allowance, but we are not concerned with the same.

4. The due date of the petitioner's crossing of the first efficiency bar was on or about the 2nd June 1951. On that date he was examined by the Deputy General Manager (Personnel Mr. Carmody), but failed to qualify himself. His increment was thereupon stopped by the General Manager for six months, presumably to give him an opportunity of qualifying himself once again.

5. On the 5th March 1952, the petitioner appeared in another test before Mr. Carmody and Mr. P. C. Vaish, his successor-in-office. This time he was successful and declared fit. He was in consequence granted an increment from Rs. 500/- to Rs. 530/- p.m. with effect from 6th March 1952. Pursuant to this, the Chief Accounts officer Eastern Railway, certified the increased pay. The General Manager (Opposite party No. 3) however refused to accept the results of the efficiency test and ordered that the petitioner should appear for a test by a Committee of the heads of the departments presided over by the General Manager himself.

On the 30th May 1952, the petitioner was given notice that he should have to appear before a Committee consisting of the Chief Engineer and the Chief Electrical Engineer, and presided over by the General Manager himself. He was granted one month's time so that he could prepare himself for the test. The petitioner attacks this order as being illegal, mala fide and without jurisdiction. On the 13th June 1952, the petitioner appealed to the Director, Establishment Railway

Board, New Delhi. On the 23rd June 1952, it was intimated to the petitioner that he must appear before the Committee in a test on a date to be shortly fixed. Thereupon this rule was taken out. The opposite parties have been restrained from carrying out the test, pending this application.

6. It is as well to state now that the scope of such an application as this is indeed a very limited one. This Court can only investigate as to whether the law has been observed. The Railways are now nationalised and are run by the Government. There are elaborate rules which had been promulgated by the Governor-General-in-Council under Sub-section (2) of Section 241 of the Government of India Act 1935, condensed into Codes. I have only to see that these rules have not been violated. If however any 'administrative error' has been committed, I cannot remedy that. This Court cannot interfere in the day-to-day administration of the Railways.

7. Learned Advocate for either side have placed the rules before me at great length. In the concluding stages, Mr. Sariyal appearing on behalf of the opposite parties raised a very interesting point as to whether the Railway-Board has at all been invested with the power to make rules regarding the conduct of railway employees. This larger question seems to me to require a more exhaustive consideration than is called for in this application. As I am able to decide the application without deciding this larger question, I have not attempted to do so.

8. The rules may be considered step-by-step, otherwise there is likely to be confusion between the large number of rules which lie scattered in the body of the Codes and the appendices. For the sake of convenience I shall refer to the accepted abbreviations, namely 'R' for the 'Indian Railway Establishment Code' and 'G' for the 'Indian Railway General Code'.

(1) It is admitted that the petitioner belongs to the 'lower Gazetted Service', described more properly as 'The Railway Services, class II. Gazetted' ('R'. Vol. 1-pp. 3-r. 104(2)).

(2) Recruitment to such service is done by the Railway Board ('R'. Vol. 1, pp. 14, Rule 132).

(3) Rule 2020 ('R'. Vol. II, pp. 13) deals with the general law applicable to increments on the time scale. The authority who can withhold such increment is the 'competent authority' which is the Railway Board ('R'. Vol. II, pp. 2, rule 2003(5) and 'R'. Vol. II, pp. 225, App. XXXII, item 7).

(4) But Rule 2021 ('R'. Vol. II, pp. 13) is the rule which is applicable to the present case, because an efficiency bar has been prescribed in the time-scale and the increment asked for is the one, next above the bar. This rule is as follows:

'2021 (P. R. 25) 'Increment above an efficiency Bar'. Where an efficiency bar is prescribed in a time scale, the increment next above the bar shall not be given to a Government servant without the specific sanction of the authority empowered to withhold increments'. (5) Withholding of increments, including stoppage at any efficiency bar is one of the penalties which can be imposed upon Gazetted officers (('R'. Vol. 1, pp. 185/6, Rule 1728(ii) ).

(6) The authority who can withhold such increment in the case of Gazetted officers class II are (I) The Railway Board (II) The General Manager CR'. Vol. 1. pp. 186, Rule 1729, pp. 192, Schedule II, items 2 and 3).

(7) It follows that the authority to sanction increment immediately over the efficiency bar is the Railway Board or the General Manager.

(8) In fact, the sanction must be supported by a declaration from the authority empowered to allow the increment that it has satisfied itself that the railway servant in question is fit to pass the bar ('G'. Vol. 1, pp. 238, rule 1647).

9. The question next resolves itself into this - Can the General Manager delegate this power to his Subordinates and has he done so.

10. The power of delegation is contained in certain supplementary rules appearing in Ap-pendix X to the Indian Govt. Railway General Code which runs as follows:

'In supersession of all existing orders on the subject, the Governor General in Council is pleased to make the following rules prescribing the case in which the General Manager of State-managed railways and the Boards of Directors of

Company managed Railways may not sanction expenditure or deal with other matters without the previous sanction of higher authority. Subject to the observance of these rules and the canons of financial propriety and also subject to the provisions of the existing Codes rules and regulations, the General Manager of State-managed Railways and the Boards of Directors of Company-managed Railways have full power to sanction expenditure and except as may hereafter be specifically provided for, to delegate their powers or any portion of them to authorities subordinate to them with power to redelegate to lower authorities'

11. A controversy was raised before me as to whether the 'Existing Code, rules and regulations' are applicable to State-owned railways, since a foot-note seems to suggest that they have reference only to individual Company managed Railways. I think it is irrelevant to consider this because the power of delegation by General Managers is not dealt with anywhere else in the Code or the rules. The next question is as to whether these rules refer to the general powers of the General Manager or his special powers for sanctioning expenditure. The words '(See paragraph 804)' appearing at the top, rather suggest the latter. But the matter is made clear in the preamble itself where it says..... 'may not sanction expenditure or deal with other matters' and again:

'Have full power to sanction expenditure and .....to delegate their powers or any portion of them' to authorities subordinate to them..' Thus, it refers also to general powers. In my opinion there is a clear power of delegation conferred upon the General Managers.

12. The next question is as to whether the General Manager has in fact delegated the power of sanctioning increments to the D. G. M. (Personnel) so far as the increment next to an efficiency bar is concerned.

13. My attention is drawn to a circular Issued by the General Manager being Circular No. A. E 721 dated 31st October 1951. The preamble of this circular starts with the complaint that principal officers and Deputy General Managers were exercising powers on the footing that the powers were delegated to them by the General Manager, without any reference to him. He has annexed four schedules to the circular setting out the items where particular officers could exercise

such powers without his personal sanction (Sch. A) or without reference to his office (Sch. B) or subject to periodic sanctions being obtained (Sch. C & D). Rule 8 is as follows: 'In regard to other establishment matters not covered by the Schedules Deputy General Manager (P) will exercise the full powers of the General Manager subject to the limitations where they exist, on the powers of the General Manager to redelegate them to Subordinate authorities'.

Item 12 of the Schedule 'A' is as follows: '12. Permitting Gazetted officers to Paragraph 2021-R cross efficiency bar in Junior scale.

Volume II'.

Mr. Pal argues that the word 'Junior Scale' implies that the reference is to Gazetted officers class I ('R-Vol. I, pp. 324-325, 327, 328) whereas in the case of class II officers the expressions used are 'Scale A' and 'Scale B'.

14. It appears to me rather pointless that the General Manager should reserve the right to personally sanction the crossing of the efficiency bar in the case of class I officers in the junior scale and none others, but I may be unaware of some administrative expediency which makes it of greater importance to control the promotion of such officers. Apart from this, I think I must accept the argument of Mr. Pal. The word 'junior scale' is peculiar to officers in class I. In class n, the 'junior scale' would be scale 'B' and it is nobody's case that the petitioner is an officer drawing his pay in 'Scale B' of class n.

15. The result is that the General Manager has delegated to Deputy General Manager (Personnel) all his powers of sanctioning increments next over the efficiency bar, except as regards class I officers or the junior scale.

16. That this has been the accepted position, appears from the conduct of everyone concerned. It appears that all such tests are held by the Deputy Managers (Personnel). The last test in which the petitioner failed was held in that manner. The present test was held by Deputy General Manager (Personnel) and this declaration of fitness was duly accepted by the Accounts Department. In fact the accounts department felt difficulty in withholding the Increment unless the

sanction was cancelled. (Annex. D & E to petition).

17. My further attention has been drawn to a letter circulated by the Railway Board with the sanction of the Governor General which runs as follows:

'Subject: Efficiency bars in the prescribed scales applicable to class II officers. The Board had under consideration the question of prescribing suitable tests for permitting officers in Railway Services class II to cross the efficiency bars introduced in the prescribed scales of these services and they have decided that the following procedure should be observed in this connection.

(a) For first efficiency bar

(i) Viva-Voce test and

(ii) A review of the officer's work during the past 3 years personally by the head of the department concerned.'

Regard being had to the definition of 'Department' contained in the Code ('R'-Vol. I, pp. 1, Rule 101(5)), I have no doubt that the official concerned would be the Deputy Manager (Personnel). In fact it is that official who has tested the petitioner and granted the declaration dated 25th March 1952 (Annexure 'A' to the petition).

18. The result of these findings may be summarised as follows:

19. The authority who can sanction the increment next above the efficiency bar, or at least one of the authorities, is undoubtedly the General Manager. The General Manager has been given, by Rules having the force of law, power to delegate his powers, which includes the power of granting increment next over efficiency bars. The General Manager has kept for his personal consideration only the cases of Class I gazetted officers in the junior scale, but with regard to others has delegated his powers to the Deputy Manager (Personnel). According to a letter circulated by the Railway Board themselves, it is intended that the Heads of the particular department concerned should conduct these tests. The test in this particular case has been conducted by the person who has been duly authorised by law to conduct it and the petitioner has been duly declared fit. The effect of this

is that he has passed the efficiency bar.

In my opinion, therefore, it is not open to the opposite parties to withhold his increment or to compel him to undergo another test. Firstly, there is no provision in the Rules for the holding of another test and the withholding of increment can only be now made as a penalty and I find no materials before me that this is being imposed upon the petitioner as a penalty, nor is it the case of the opposite parties. I will again emphasise the fact that this Court is not concerned with administrative errors. But it appears that the General Manager is under a misconception when he thinks that these tests are being held under some administrative error. These tests are being held by virtue of powers delegated by him according to law.

It is open to the General Manager to revoke the delegation of such powers, in which case the D. G. M. (P) can no longer exercise the same. But until he does so, I can find no warrant for his laying down the law which does not exist. I might also point out that the opposite party No. 1, the General Manager, himself signed the circular delegating the powers and I cannot help noticing the fact that he has not filed an affidavit himself stating that there has been no such delegation. However that is a question to be gathered from the Rules as they stand and, in my opinion, the petitioner has succeeded in showing that the General Manager had validly delegated his power to the Deputy General Manager (Personnel), who in his turn validly exercised it.

20. This application must therefore succeed and the Rule is made absolute. The opposite parties are restrained from withholding the increment of the petitioner and/or from holding any further test in respect of his first efficiency bar.

21. I make no order as to costs.

22. The status quo will continue for four weeks inasmuch the opposite parties intend to file an appeal against this order. After that date, any further order, if necessary, must be obtained from the Appeal Court.