

## **Basant Narain Pandey vs Union Of India (Uoi) And Ors. on 24 January, 1955**

### **Equivalent citations: (1955)ILLJ754ALL**

#### **JUDGMENT**

Agarwala, J.

1. This is a special appeal against the judgment of Mr. Justice Mootham, as his lordship then was, refusing to issue the writs prayed for by the appellant in the writ application moved by him in this Court. The appellant was a commercial clerk in the service of the Northern Railway. He was a temporary employee subject to the terms of the contract executed on 21 February 1949. One of the terms of the contract was that his services could be terminated on fourteen days' notice. A charge was framed against him for misconduct but later on it was given up and his services were not terminated because of the alleged misconduct but because "his services were no longer required by the administration" and he was removed from service in terms of the conditions of service giving fourteen days' pay in lieu of notice. The order of dismissal was passed by the divisional superintendent, Kanpur area, He appealed to the divisional superintendent Northern Railway, Allahabad. His appeal was rejected. Then he appealed to the General Manager, but the General Manager does not appear to have interfered. Then he filed a writ application in this Court impleading the Union of India, the General Manager, the divisional superintendent, Allahabad, and the superintendent, Kanpur area, as opposite parties. His application was contested by all the respondents thereby showing that they were in agreement with the order of dismissal. His application was dismissed on the ground that Article 311 did not apply to the case as he had been dismissed not for misconduct but in terms of his contract of service. This view was perfectly correct vide *Jayanti Prasad v. State of Uttar Pradesh* 1951 A.L.J.R. 540; *Gopal Krishna Potney v. Union of India* ; and *Satish Chandra v. Union of India* .

2. Learned Counsel for the appellant says that he was removed from service by an order of the superintendent, Kanpur area, who was not one of the heads of departments as mentioned in Rule 1708 of the Indian Railway Establishment Code, Vol. I, although he was the person who appointed the appellant in service. Rule 1708 is as follows:

1708. Removal from Service: A railway servant shall be liable to be removed from the service in the following circumstances, viz;--

(i) inefficiency,

(ii) committing any offence for which he may be dismissed under Rule 1706,

- (iii) repeated minor offences,
- (iv) absenting himself or overstaying sanctioned leave, without sufficient cause,
- (v) incivility to the public.

Then there is a proviso to this rule on which the learned Counsel relies:

Provided that nothing in these rules shall abrogate the right of a General Manager, in exceptional circumstances, to remove a non-pensionable non-gazetted railway servant from service in terms of his agreement without application of the procedure described in the rules in this section and without assigning any reasons if he considers it desirable to do so. This power shall not be delegated to an authority lower than a head of a department.

The heads of departments are mentioned at p. 2045 of Vol. II of the Indian Railway Establishment Code. The list does not include the superintendent of a particular area. The argument of the learned Counsel is that he could not be removed from service by the superintendent, Kanpur area, under the proviso to Rule 1708. Rule 1708 relates to "removal from service" on grounds mentioned in the rule which are all grounds of misconduct. The proviso provides an exception to the general rule. This exception relates to removal of a non-pensionable non-gazetted railway servant from service in terms of his agreement. No blame is attached when a person is removed in accordance with the terms of his service. If the railway administration accepts the termination of service of a railway servant in terms of his contract of service by the authority appointing him even though that authority is not the head of the department within the meaning of Rule 1708, such termination of service cannot be disputed by the servant. In the present case it is quite obvious that the Union of India and the General Manager, Northern Railway, both accepted the position that the services of the appellant had been rightly terminated. In the circumstances we think that the appellant cannot question the termination of his service. There is no force in this appeal. It is dismissed.