

PETITIONER:
GENERAL MANAGER, NORTH EAST FRONTIERRAILWAY

Vs.

RESPONDENT:
SACHINDRA NATH SEN

DATE OF JUDGMENT:
22/08/1969

BENCH:

ACT:
Indian Railway Establishment Code, Rules 148 and 149 held invalid by Supreme Court as violative of Art. 311 (2) of the Constitution of India-Railway Board deciding that only employees whose services were terminated under said Rules within a period of six years before Supreme Court judgment would be reinstated-Validity of limit of six years.

HEADNOTE:
The, services of the respondent as an Assistant Traffic Superintendent on the North East Frontier Railway were terminated after one month's notice under Rule 148 of the Indian Railway Establishment Code with effect from December 2, 1957. An appeal to the General Manager was held not to be competent. On being offered a lower post the respondent accepted it. By letter dated December 31, 1959 he was informed that his representation to the Railway Board had been rejected. On December 5, 1963 this Court in Moti Ram Deka's case held that Rules 148(3) and 149(3) of the Indian Railway Establishment Code were invalid being violative of Art. 311(2) of the Constitution. The respondent made a representation in 1964 to the General Manager for reconsideration of his case in the light of the said judgment. The representation was turned down on the ground that the Railway Board had decided to instate only those employees whose services had been terminated in terms of Rules 148/149 within a period of six years prior to the date of the Supreme Court's judgment. The respondent filed a petition under Art. 226 of the Constitution which was allowed by the High Court. The General Manager appealed.

HELD: The fixing of a period of six years was on the face of it arbitrary and there was no valid or reasonable explanation as to why this limit was fixed by the railway authorities. If the termination of service of an employee in terms of Rule 148 was wholly illegal and void because of violation of Art. 311(2) of the Constitution, his reinstatement should have followed as a matter of course. The contention that the railway authorities would have found a lot of difficulty and inconvenience in reinstating employees without taking into consideration the period which had elapsed was devoid of merit and could not be accepted.

[67 F--G]

Moti Ram Deka etc. v. General Manager, N.E.F. Railway etc. [1964] 5 S.C.R. 683, applied.

JUDGMENT:
CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1839 of 1967.

Appeal by special leave from the judgment and decree dated February 16, 1967 of the Assam and Nagaland High Court in Civil Rule 2 of 1965.

V.A. Seyid Muhammad and S.P. Nayar, for the 'appellants.

A.K. Sen and D.N. Mukherjee, for the respondent.

66

The Judgment of the Court was delivered by Grover, J. This is an appeal by special leave from a judgment of the Assam & Nagaland High Court by which a petition under Art. 226 of the Constitution filed by the respondent challenging the termination of his service was allowed.

The respondent was serving the railways as an Assistant Traffic Superintendent prior to December 2, 1957. His services were terminated by serving on him one month's notice under Rule 148 contained in the Indian Railways Establishment Code. The respondent filed an appeal to the General Manager but he was informed by means of a letter dated February 3, 1959 that no appeal was competent. In June 1959 he was offered reemployment as a Statistical Inspector in the scale of Rs. 200 to Rs. 300 plus the usual allowances on terms and conditions applicable to temporary employees. It appears that the respondent accepted the offer and was appointed to the post. He was finally informed by means of a letter dated December 31, 1959 that his representation had been considered by the Railway Board relating to the termination of his services as Assistant Traffic Superintendent but the same had been rejected. On December 5, 1963 this Court decided by majority in Moti Ram Deka etc. v. General Manager. N.E.F. Railways etc.(1) that Rules 148 (3) and 149(3) of the Indian Railway Establishment Code were invalid. The respondent made a representation thereafter in 1964 to the General Manager to reconsider the case of the termination of his services in the light of the law declared by this Court. The General Manager sent a reply dated June 3, 1964 saying that the question of the respondents reinstatement could not be considered as it was not covered 'by limits of law, i.e. it does not fall within a period of six years from the date of your termination of service". This was followed by another letter dated December 7, 1964 in which it was stated:

"It has now been clarified by the Railway Board that the claim for reinstatement of the Ex: Employees whose services were terminated in terms of Rule 148/149 within a period of six years prior to 5-12-63 (the date of the Supreme Court's judgment), and whose representation is still pending is only to be considered. Since your services were terminated on 2-12-57 which is more than six years counting backwards from 5-12-63, it is regretted that your request for reinstatement cannot be acceded to".

Thereupon the respondent filed a petition under Art. 226 of the Constitution in the High Court. As stated before the petition

(1) [1964] 5 S.C.R. 683.

67

was allowed principally on the ground that the railway authorities were not legally justified in making a distinction between officers whose services had been terminated within six years prior to the judgment of this Court in Moti Ram Deka's(1) case and the cases of those

whose services had been terminated earlier. As pointed out in the judgment of the High Court that respondents services were terminated on December 2, 1957, he was behind time by 3 days only. It was found that such an artificial demarcation between the two kinds of cases was hit by Art. 14 of the Constitution. The other point that the respondent had accepted reemployment and must be deemed to have waived his rights to reinstatement to his original office was also repelled.

In Moti Ram Deka's(1) case this Court held that the termination of the services of a permanent servant authorised by Rules 148(3) and 149(3) of the Railway Establishment Code was inconsistent with the provisions of Art. 311 (2) of the Constitution. The termination of the services of a permanent servant authorised by those Rules was no more and no less than removal from service and Art. 311(2) was at once attracted. In view of the law laid down by this Court the termination of the services of the respondent in December 1957 was wholly void and illegal. The railway authorities recognised, as indeed they were bound to do, the implications and effect of the judgment of this Court but created a wholly illegal and artificial distinction by saying that only those employees whose services were terminated in terms Rule 148 within a period of six years prior to December 5, 1963 and whose representations were pending were to be considered for reinstatement, whereas the employees like the respondent whose services had been terminated on a date which was more than six years counting backward from December 5, 1963 would not be reinstated. The fixing of the period of six years was on the face of it arbitrary and no valid or reasonable explanation has been given as to why this limit was fixed. If the termination of service of an employee in terms of Rule 148 was wholly illegal and void and was violative of Art. 311 (2) of the Constitution his reinstatement should have followed as a matter of course. The submission of the learned counsel for the appellant that the railway authorities would have found lot of difficulty and inconvenience in reinstating employees without taking into consideration the period which had elapsed is devoid of any merit and cannot be accepted.

The appeal fails and it is dismissed with costs.

G.C.

dismissed.

(1) [1964] 5 S.C.R. 683.

68

Appeal