

**CIVIL APPELLATE**

*Before Falshaw and Kapur, JJ.*

DES RAJ,—*Plaintiff-Appellant,*

*versus*

1951  
Nov. 26th

THE DOMINION OF INDIA,—*Defendant-Respondent.*

**Regular Second Appeal No. 591 of 1948**

*Government of India Act, 1935, section 240—Applicability—Services terminated according to conditions of the contract of service.*

D. R. joined the N. W. R. as a Signaller. In December 1920 his services were dispensed with due to retrenchment. In June 1924, he was re-employed as Signaller under the orders of Superintendent of Telegraphs, Lahore, and in 1942, he was working as Assistant Station Master, Ordinary Grade. On 9th October 1942, he was placed under suspension for certain irregularities committed by him and on 3rd November 1942, he was discharged from service and was given one month's pay in lieu of notice. In January 1946, he filed a suit for declaration that his reduction and discharge from service was illegal and inoperative and that he is still in service.

*Held*, that section 240 of the Government of India Act was not applicable as the services of the plaintiff had been terminated according to the conditions of his contract of service. Section 240 only applies where a person is "dismissed or reduced in rank". These are technical words used in cases in which a person's services are terminated for misconduct.

*Regular Second Appeal from the decree of Shri Mani Ram, Senior Sub-Judge, with enhanced appellate powers.*

*Amritsar, dated the 23rd June 1948, reversing that of Shri Ram Lal, Sub-Judge, 1st Class, Amritsar, dated the 21st February 1947, and dismissing the plaintiff's suit and leaving the parties to bear their own costs throughout.*

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A. M. SURI, for Appellant.

N. L. SALOOJA and GURDEV SINGH, for Respondent.

#### JUDGMENT

FALSHAW, J. This is a second appeal by a plaintiff whose suit was decreed by the trial Court but dismissed by the Court of first appeal. The appeal originally came up for hearing before a learned Single Judge of this Court, Bhandari, J., who has referred it to a Division Bench because of the difficulty of the point involved. The plaintiff Des Raj entered the service of the North-Western Railway as a Signaller in December 1920, but his services were dispensed with under a scheme of retrenchment in July 1923. He was, however, re-employed again as a signaller under the orders of the Superintendent of Telegraphs at Lahore in June 1924. He rose to the rank of Assistant Station Master, Ordinary Grade, in 1927, and in January 1942 was officiating as Assistant Station Master, First Grade, but in October 1942, he reverted to his substantive appointment as Assistant Station Master, Ordinary Grade. On the 9th of October 1942, he was placed under suspension in consequence of certain alleged irregularities committed by him while working as Train Despatcher at Amritsar. Charges were framed against him and his explanation was submitted and on the 3rd of November 1942, he received a communication from the Divisional Personnel Officer as follows :—

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“ You are hereby informed that in accordance with the orders passed by the Divisional Transportation Officer you are given one month's pay in lieu of notice of discharge from service with effect from the 3rd of

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November 1942, forenoon. You are released from suspension from the 2nd of November 1942."

Falshaw J. The plaintiff thereafter filed an appeal under the rules governing disciplinary action in the Railway, but his appeal was dismissed by the Divisional Superintendent on the 20th of December 1942. After serving a notice on the Crown under section 80 of the Civil Procedure Code in April 1945, the plaintiff instituted a suit in January 1946, for a declaration that his reduction to the post of Assistant Station Master, Ordinary Grade, and discharge were illegal and inoperative and that he was still an Assistant Station Master of the First Grade. The Governor-General in Council was impleaded as defendant. After certain preliminary objections raised by the defendant had been decided the following issues were framed :—

1. Is the order of reduction of the plaintiff wrong, illegal and *ultra vires* and had the officer passing the order no authority to do so ?
2. Is the order by which the plaintiff has been removed from service illegal, wrong and not binding on the plaintiff and had the officer passing the order no authority to do so ?
3. Can this Court determine that no proper opportunity was granted to the plaintiff to defend himself ?
4. If issue No. 3 be proved, was proper opportunity granted to the plaintiff ?

The findings of the trial Court on these issues were that the first did not arise as the plaintiff had not been reduced in rank but had merely been reverted to his substantive post, that the officer who passed the order discharging the plaintiff had no authority to do so and

that this order amounted to removal from service, and that while the Court could go into the question whether the plaintiff had been given a proper opportunity to defend himself or not, the proper procedure had been complied with in the plaintiff's case. In view of the second of these findings the plaintiff was granted a declaration that the order of his discharge from service was illegal, void and *ultra vires* and that he was still an Assistant Station Master, Ordinary Grade. On the defendant's appeal the learned Senior Subordinate Judge held that the final order of discharge must be considered to have been passed by the Divisional Traffic Superintendent who dismissed the plaintiff's service appeal and who was a competent authority to pass the order. He also held that the plaintiff had been rightly dismissed and dismissed the plaintiff's suit.

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It seems that when the second appeal came before this Court the matter was considered from a rather different standpoint, namely, whether in view of the fact that the contract of service under which the plaintiff was employed by the Railway provided for the termination of his service by one month's notice by either party, his discharge with one month's pay in lieu of notice could be regarded as dismissal within the meaning of subsection (3) of section 240 of the Government of India Act, subsection (1) of which reads :—

“Except as expressly provided by this Act, every person who is a member of a civil service of the Crown in India, or holds any civil post under the Crown in India, holds office during His Majesty's pleasure.”

Subsection (2) provides that no such person shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed, and subsection (3) provides that no such person shall be dismissed or reduced in rank until he

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has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

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The learned Single Judge before whom the appeal was first argued found it difficult in the absence of any authority to decide the question whether a person who has entered into a contractual relationship with Government, and whose terms of agreement provided that his services may be terminated at any time with a particular notice being given, and who is served with the prescribed notice and required to relinquish his appointment, can be said to have been dismissed within the meaning of the expression in subsections (2) and (3) of section 240.

I myself feel some doubt on the point whether railway servants of the class to which the present plaintiff belongs fall at all within the category of servants of the Crown mentioned in subsection (1) of section 240, but I do not think it is necessary to give any final decision on this point in the present case. It is clear that the plaintiff was employed under a contract of service which contained a clause regarding the termination of his service on one month's notice, and although no decided case seems to have been available when the matter came up before the learned Single Judge, we have been able to find two recent decisions which appear to be directly in point. The first of these is a decision by my Lord the Chief Justice in Civil Miscellaneous No. 264 of 1950, dated the 20th of August 1950. This decision was in a writ petition under Article 226 of the Constitution by Mr N. S. Kohli whose services as Assistant Secretary in the Industrial Development Board had been terminated with one month's salary in lieu of notice by the Director of Industries, this being in accordance with a clause in his contract of service, on the 3rd of May 1950, i.e., after the Constitution had come into force. The petitioner relied on Article 311 of the Constitution which in essentials does not differ from section 240 of the Government of India Act. In particular he relied on

the provision that he was not liable to be dismissed or removed or reduced in rank without being given a reasonable opportunity of showing cause against the action proposed to be taken against him. My Lord the Chief Justice rejected the contention that Article 311 had any application to cases of contract service whereby a person is employed by Government on the express condition that his services are terminable by so much notice, and he observed that he was not aware of any instance in which it had been held or even pleaded that a person under contract of service similar to that of the petitioner had any rights under Article 311 of the Constitution or section 240 of the Government of India Act. There is also a case of *Jayanti Prasad v. The State of Uttar Pradesh* (1), a decision by Agarwala and Brij Mohan Lall, JJ. The petitioner in that case was employed in the Civil Supplies Department of the State of Uttar Pradesh and his services were terminated by notice under a clause contained in his contract of service. The views of the learned Judges were expressed in the following words :—

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“ Article 311 applies only to a case in which a person is dismissed or removed or reduced in rank. These are technical words used in cases in which a person's services are terminated for misconduct. They do not apply to cases in which a person's period of service determines in accordance with the conditions of his service. It is not so much a question of the post being held temporarily or it being of a permanent nature; the real question is whether a person's services are being dispensed with before his normal period of service has terminated by reason of misconduct on his part, or otherwise. If a person's services are sought to be terminated before the

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(1) A. I. R. 1951 All. 793.

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period of his service has expired, on account of some misconduct, then, whether the employee is temporary or permanent, the procedure prescribed in Article 311 has to be followed unless of course the case falls within any one of the three provisos to clause (2). If, on the other hand, a person's services are sought to be terminated at the expiry of the term for which he was engaged, or at the expiry of the period of notice by which, in accordance with the conditions of his service, his services could be terminated, there is no question of dismissal, removal or reduction in rank and Article 311 does not come into operation."

I am in respectful agreement with these views, and therefore consider that section 240 of the Government of India Act of 1935, on which the plaintiff's suit was based, was not applicable. The suit was thus rightly dismissed and I would dismiss the appeal but leave the parties to bear their own costs.

KAPUR, J. I agree.