

PETITIONER:
GYAN CHAND

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT 04/12/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
PARIPOORNAN, K.S.(J)

CITATION:
1996 SCC (7) 184 JT 1995 (9) 222
1995 SCALE (7) 302

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

The only relevant question for decision is whether the appellant is entitled to the benefit of proviso to Rule 1802 of the Railway Establishment Code. This Court on 24th April, 1995 passed the following order:

"Issue Notice. Limited to the question as to why the proviso to Rule 1802 should not be applied to the petitioner, namely, Gyan Chand while is continuing in officiating Group 'B' post, if the authority intends to take action for retiring the officer in public interest, he would be entitled to be informed and if opted for reverted to the substantive Group 'C' post. In this case, the said action has not been done. Therefore the respondents are at liberty to show cause why the proviso should not be applied to the petitioner and direction be given to make the order in terms thereof."

Pursuant thereto, the counter-affidavit has been filed by the respondents. Therein, the Rule has been extracted which states thus:

"Notwithstanding anything contained in this Rule, the appointing authority shall, if it is of the opinion that it is in the public interest to do so, have the absolute right to retire any railway servant by giving him notice of not less than 3 months in writing or 3 months pay and allowances in lieu of such notice- (i) if he is in Group 'A' service or post or in a Group 'C' service or post in a substantive capacity but

officiating in a Group 'A' or Group 'B' service or post and had entered Government service before attaining the age of thirty five years, after he has attained the age of fifty years. (ii) in any other case, after he has attained the age of fifty five years: Provided that a railway servant who is in Group 'C' post or service in a substantive capacity, but is holding a Group 'A' or 'B' post or service in an officiating capacity shall, in case it is decided to retire him from the Group 'A' or Group 'B' post of service in the public interest, be allowed on his request in writing, to continue in service in the Group 'C' post or service which he holds in a substantive capacity."

It is not in dispute that on promotion to Group 'B' service of Mechanical Department the appellant continued till 3rd March, 1985 and thereafter in senior scale from March 4, 1985 to July 3, 1989. It is contended for the appellant that in view of the admitted fact that no confirmation of probation was made till date of his compulsory retirement, he must be deemed to be continuing on probation and that, therefore he is entitled to the benefit of the proviso. We find it difficult to give acceptance to the contention.

The proviso clearly indicates that a railway servant who is in Group 'C' post or service in a substantive capacity, but is holding a Group 'A' or 'B' service of post in an officiating capacity, shall in case of compulsory retirement, be allowed on his request in writing to continue in Group 'C' post or service, which he holds in a substantive capacity. It is seen that in view of the fact that the appellant continued in Group 'B' post not only in ordinary scale but also in senior scale of pay till July 3, 1989, for 10 years to the date on which he was compulsorily retired, it could not be said that he continued only on officiating basis for 10 years. It would be obvious that he continued in substantive capacity as Group 'B' officer. He could not simultaneously continued in Group 'C' service in a substantive capacity. Therefore, the proviso has no application to the facts of this case.

Under these circumstances, it cannot be said that the order of retirement made in respect of the appellant is vitiated by any error of law warranting our interference.

The appeal is accordingly dismissed. No costs. 3763