(1988) 07 CAL CK 0051

In the Calcutta High Court

Case No : C.O. No. 4488 (W) of 1986

A.L. Goel APPELLANT

Vs

Punjab National Bank and Others RESPONDENT

Date of Decision : 01-07-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 310, 311(2)

Citation : (1988) 2 CALLT 210 : 93 CWN 59

Hon'ble Judges : Umesh Chandra Banerjee, J

Bench : Single Bench

Advocate : Manotosh Mukherjee and Mr. Alak Chakraborty, for the Appellant;Tapas Banerjee, Suprokash Banerjee and Miss Artti Sarkar, for the Respondent

Final Decision : Dismissed

Judgement

Umesh Chandra Banerjee, J.—The focal point for consideration in this matter is the order of premature retirement issued against the petitioner.

2. Dr. Mukherjee appearing in support of the petition challenged the order of premature retirement on three (3) counts namely :-

(i) Violation of natural justice ;

(ii) Order of premature retirement amounts to a stigma in the service record of the petitioner consequently a penalty and

(iii) Order of premature retirement shows bias and mala fide.

3. Apart from the three counts noted above, Dr. Mukherjee also contended that regulation 19 is violative of Article 14 & 16 of the Constitution being arbitrary and by reason of confirment of unguided powers onto the authority.

4. Before dealing with the three counts, however, and turning onto the last noted contention first it is to be noted that apart from a bare statement, there is no

other material or facts in support of the same in this petition, neither there is any prayer to that effect. While it is true that in order to do proper and effective justice the Court can mould the prayers for the purpose of giving redress but that does not by itself mean and imply that even without a proper averment in the petition the Court will lend its assistance to a person seeking such a relief. Technicalities ought not to outweigh the course of justice but that again ought to depend upon the facts and circumstances of the case under consideration. In my view, a bare statement by itself would not entitle the petitioner for such a declaration. There must be proper averments and material on record in the absence of which the Court cannot and ought not to embark such an Enquirer. In that view of the matter the contention of Dr. Mukherjee as regards the invalidity of regulation 19 of the Punjab National Bank Officers Service Regulation 1979 as violative of constitutional safeguard cannot be accepted. In any event the constitutionality of such a provision was before the Supreme Court in the case of T.G. Shivacharana Singh and Others Vs. The State of Mysore, wherein the Supreme Court upheld the constitutional validity of such a provision.

5. Before, however, adverting onto other three contentions raised by Dr. Mukherjee, a brief reference to the facts ought to be made at this juncture.

6. The petitioner joined the Punjab National Bank at Bombay in the year 1951 as a Clerk. In November 1979 by reason of promotions from time to time, the petitioner was placed in the middle management grade in Scale III at Bombay. Subsequently the petitioner was transferred to Bangalore and then further to Madras. In July 1980 the petitioner was transferred to the Branch office at N. S. C. Bose Road at Madras. Whilst at Madras the petitioner in the year 1981 was promoted to grade A being intermediate grade between the scale III and scale IV.

7. On 11th February 1983 it appears that the General Manager of the Bank intimated the petitioner about the serious irregularities as pointed out in the inspection report. It was further intimated that the Executive Committee advised the petitioner not to indulge unauthorised/irregular business in future. In March 1983, however, the petitioner was informed about his promotion to scale IV and was posted as the Chief Manager at Bombay upon such promotion. On 14th October 1983, however, the petitioner was served with a chargesheet to the effect inter alia that while functioning as Manager, N. S. C. Bose Road, Madras during the period from 31.7.80 to 28.4.83 the petitioner failed to follow the procedural instruction as contained in Chapter I of the Book of Instruction and thereby causing monetary gain to S.R.C. Group of Industries. It was stated that the petitioner did not bring to the notice of the authorities to such an unauthorised accommodation allowed to S.R.C. Group of Industries by reason where for the petitioner caused loss of revenue to the Bank. The charge-sheet also contained that under the Credit Authorisation Scheme of the Reserve Bank of India accommodation was offered to S.R.C. Group of Industries much beyond the limits. It was further noted in the chargesheet that the petitioner failed to submit control returns in the account of S.R.C. Group of Industries to the

Regional Office and has also put huge funds of the Bank a jeopardy by financial accommodation to the borrowers.

8. In pursuance of the above noted charge, the Deputy General Manager, Head Officer, New Delhi was appointed as the Enquiry Officer and the Chief Inspection Officer, Head Office, New Delhi was appointed as the Presenting Officer. The confirmation in the post of Chief Manager in Scheme IV was withheld on the ground of initiation of disciplinary proceedings. Subsequently, however, another Enquiry Officer as well as another Presenting officer were appointed by reason of inability of the earlier officers to conclude and complete the proceedings. On 5th January, 1985, however, a 2nd charge-sheet was issued which reads as follows:

Shri A. L. Goel, during his incumbency at BO:NSC Bose Road, Madras committed the following irregularities :-

Article-I

He allowed undue/unauthorised accommodation to various parties placing Bank''s funds in difficulty, thus committed misconduct in terms of Regulation 3.1 of PNB Officer Employees (Conduct) Regulations, 1977.

Article-II

He helped the borrowers in evading the payment of excise duty & sales tax, thus committed misconduct in terms of Regulation 3.1 PNB Officer Employees (Conduct) Regulations, 1977

Article-III

He did not conduct proper pre-sanction appraisal, thereby jeopardising bank''s interest, thus committed misconduct in terms of Regulation 3.1 of PNB Officer Employees (Conduct) Regulation, 1977.

Article-IV

He did not exercise prescribed post-sanction safeguards and jeopardised bank''s interest, thus committed misconduct in terms of Regulation 3.1 of PNB Officer Employees (Conduct) Regulations, 1977.

9. After the issuance of the second charge-sheet, an Enquiry Officer was appointed for the second charge. During the pendency of the second charge-sheet a First Information Report was lodged before the Central Bureau of Investigation and on 11th December, 1985 the petitioner was served with an order of suspension with retrospective effect from 7th December 1985. The order of suspension, however provided that further disciplinary proceeding was kept in abeyance pending investigation by the Central Bureau of Investigation. The petitioner thereafter preferred an appeal against the order of suspension before the Chairman-cum-Managing Director and the appeal was dismissed on 11th February 1986 with the following observations :-

Keeping in view the gravity of the charges framed against Sri Goel and the amount of loss likely to be suffered by the bank, I do not find any ground to interfere with the decision of the competent authority in placing him under suspension. The appeals submitted by Sri Goel against the order of suspension is, therefore, rejected

10. On 20th March 1986, however, the petitioner was served with a Memorandum issued by the Zonal Manager to the following effect :

In accordance with the provision of Regulation 19 of the PNB (Officers) Service Regulation, 1979, on the recommendations of the Special Review Committee, the Board of Directors in its meeting held on 12th March 1986 have decided that you be retired from bank''s service with immediate effect.

A cheque No. PNB 251217 dated 20th March 1986 of Rs. 16,115.50 paise being an amount equivalent to three months substantive salaries/pay and allowances in lieu of notice period is enclosed ....

11. It is this order of premature retirement which is under challenge in this writ application on the grounds noted above. It would be useful to note Regulation 19 at this stage of relevant extracts of which is set out hereunder :

19(1) ....

12. The guideline of the Government in respect of the above are as under :-

(1) ....

(2) An officer employee of the bank recruited prior to 19th July 1969 but promoted as officer on or after 19th July 1969 shall retire on completion of 60 years of age

(3) ....

Provided that the Bank, at its discretion, on review by the Special Committee as provided hereinafter in sub-Regulation (2) retire an officer employee on or an any time after the completion of 30 years of total service as an officer employee or otherwise whichever is earlier :

Provided further that before retiring an officer employee, at least three months notice in writing or an amount equivalent to three months'' substantive salaries/ pay and allowance shall be given to such officer employee. ....

19(2) The bank shall constitute a Special Committee consisting of not less than three members, to review whether an officer employee should be retired in accordance with the First Proviso of this Regulation. Such Committee shall, from time to time, review the case of each officer employee and no order of retirement shall be made unless a Special Committee recommends in writing to the competent authority the retirement of the officer employee

13. As regards the issue of premature retirement amounting to stigma and consequently a penalty the decision of the Supreme Court in the case of Union of

India (UOI) Vs. M.E. Reddy and Another, ought to be noticed at this juncture. The Supreme Court while considering and allowing issue in terms of Rule 16(3) of the All India Service (Death- cum- Retirement) Rules 1958 observed :-

On a perusal of the impugned order passed by the Government of India it would appear that the order fully conforms to all the conditions mentioned in Rule 16(3). It is now well settled by a long catena of authorities of this Court that compulsory retirement after the employees has put in a sufficient number of years of service having qualified for full pension is neither a punishment nor a stigma so as to attract the provision of Article 311 (2) of the Constitution. In fact, after an employee has served for 25 to 30 years and is retired on full pensionary benefits, it cannot be said that he suffers any real prejudice. The object of the Rule is to weed out the dead wood in order to maintain a high standard of efficiency and initiative in the State Services. It is not necessary that a good officer may continue to be efficient for all times to come. It may be that there may be some officers who may possess a better initiative and higher standard of efficiency and if given chance the work of the Government might show marked improvement In such a case compulsory retirement of an officer who fulfils the conditions of Rule 16(3) is undoubtedly in public interest and is not passed by way of punishment. Similarly, there may be cases of officers who are corrupt or of doubtful integrity and who may be considered fit for being compulsory retirement in public interest, since they have almost reached the fag end of their carrier and their retirement would not cast any aspersion nor does it entail any civil consequences. Of course, it may be said that if such officers were allowed to continue they would have drawn their salary until the usual date of retirement. But this is not an absolute right which can be claimed by an officer who has put in 30 years of service or has attained the age of 50 years. Thus, the general impression which is carried by most of the employees that compulsory retirement under these conditions involves some sort of stigma must be completely removed because Rule 16(3) does nothing of the sort.

14. The Supreme Court thereafter in no uncertain language , pointed out that if the order of retirement under Rule 16(3) does not attract Article 311 (2) that no stigma or punishment is involved.

15. Considering the above and without dilating much on this score it can thus be said that question of having a stigma by reason of the factum of compulsory retirement by itself does not and cannot arise.

16. Let us at this stage, therefore, consider whether in the facts and circumstances of the case under consideration premature retirement of the petitioner can be termed to be a punishment.

17. Departmental proceedings were initiated against the petitioner. The matter is even now pending adjudication. During the pendency of the departmental enquiry a complaint was lodged with the Central Bureau of Investigation which was at the material time pending before the Investigating Agency. During the

pendency of the matter as above, it has been intimated to the petitioner that the departmental proceedings would be kept in abeyance. At that juncture the performance appraisal reports and other relevant details of all the officers in scale IV and V were perused and examined. Each case was discussed in detail and after considering all aspects of the matter the Executive Committee decided that the cases of three officers including the petitioner be recommended to the Board for retirement from service in accordance with Regulation 19 of the Service Regulations. The case of Sri O. P. Trechan as also of Sri C. L. Khanna were sent to the Board. The Executive Committee decided that the other officers in scale IV and V may be allowed to continue in service. The Board in its turn at its meeting on 12th March 1986 approved the recommendations of the Executive Committee to retire the three officers including the petitioner. Incidentally it is to be noted that the Board under the Bank Nationalisation Act consisted of nominees of Reserve Bank of India, a nominee of Government of India, representative of workmen, representative of officer employee. The decision of the Board in regard to the three officers noted above was unanimous. From the records produced before this Court it does not appear that the petitioner was asked to retire prematurely on the back drop of charges levelled against the petitioner. In the normal course the Board considers the cases of all its employees who fall within the ambit of regulation 19 and the Board thought it fit to order premature retirement as against three officers. I do not find any justification to interfere with the finding of the Board on this score on the basis of the submission made by Dr. Mukherjee that a stigma has been attached by reason of premature retirement of the petitioner.

18. A faint attempt was made on the part of the petitioner to submit that during the pendency of the departmental proceeding issuance of an order of premature retirement cannot but be termed to be an illegality. Compulsory retirement cannot in my view be any stretch be termed to be an illegality. It is a power vested onto the Government or Governmental agency which can not be interfered with unless patently wrong and have been in mala fide exercise of power. In the event the Government Authorities energise the administration by shading dead wood , can it be said that the governmental action is an illegality ? The Government ought to be allowed the free hand in choosing its administrative officers considering the public interest public interest and public benefit are the two most predominant factors which ought to be noted in Governmental action. In this context, reference may be made to the decision of the Supreme Court in the case of Union of India (UOI) Vs. Col. J.N. Sinha and Another, . The Supreme Court in that decision observed :

Compulsory retirement involves no civil consequences. The aforementioned Rule 5(j) is not intended for taking any penal action against the Government servants. The Rule merely embodies one of the facts of the pleasure doctrine embodied in Article 310 of the Constitution. Various considerations may weigh with the appropriate authority while exercising the power conferred under the Rule. In some cases, the Government may feel that a particular post may be more usefully held ill public interest by an office more competent than the one who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have a more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organisations and more so in government organisations, there is good deal of dead wood. It is in public interest to chop off the same. Fundamental Rule 56(j) holds the balance between the rights of the individual government servant and the interests of the public. While a minimum service is guaranteed to the government servant, the government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest.

19. While it is true that a departmental proceeding pending as also there is a complaint lodged with the Central Bureau of Investigation against the petitioner, but in my view pendency of disciplinary proceeding does not in any way affect the right of the employer being governmental agency and being guided by public interest and public benefit to issue all order for premature retirement. Furthermore, a person has served the organisation for long years and at that juncture the authorities feel that the persons concerned would not be able to discharge his duties in consonance with the objective of the banking institution and at that juncture if the authority concerned takes recourse to regulation 19, question of declaring the same as an illegality does not and cannot arise. It is now well settled as noted above that premature retirement does not have any civil consequences neither any stigma is attached by reason therefor. As such I am unable to accept the contention of Dr. Mukherjee that it tends to be an illegality in the matter of compulsory retirement.

20. During the course of submission it was strenuously contended that the whole object of the authority is to get rid of the petitioner from the service. Banking institutions are very sensitive areas and when one exceeds the power or authorisation given to him there is likelihood of his exceeding his authorisation once more. Would the banking authority be justified in having such an officer on whom this confidence which is usually entrusted on him is lost. Incidentally it is to be noted that the petitioner was cautioned by reason of certain lapses. Petitioner, however , was promoted to a higher rank inspite of such irregularities on a 2nd thought the bank authority felt that the matter ought to be investigated, as such a disciplinary proceeding was initiated and subsequently a complaint was lodged and a disciplinary proceeding was kept in abeyance till the disposal of the complaint. At this juncture petitioner''s case was reviewed along with others 57 cases were reviewed out of which three were directed to be compulsorily retired subject to the sanction of the Central Bureau of Investigation. Such an order in my view cannot either be termed to be an illegality or be mala fide.

21. Dr. Mukherjee appearing for the petitioner placed strong reliance in the

decision of Supreme Court in the case of Brij Mohan Singh Chopra Vs. State of Punjab, . As appears the Supreme Court considered the service record of the petitioner for the last 10 years and on perusal of the service record, the Supreme Court observed that during the last 5 years of the service, the appellant had earned good entries which are commendable in nature. As regards the earlier years for 1971-72 and 1972-73 the appellant ascertained that even though he has filed representations in accordance with the rules against those entries, his representation has not been considered or disposed of. But the appropriate authority considered those entries against him and ordered premature retirement. On that background the Supreme Court observed :

The question which falls for consideration is whether the aforesaid two entries could be taken into consideration in forming the requisite opinion to retire prematurely the appellant from service. There is no doubt that whenever an adverse entry is awarded to a Government servant it must be communicated to him. The object and purpose underlying the communication is to afford an opportunity to the employee to improve his work and conduct and to make representation to the authority concerned against those entries. If such a representation is. made it is imperative that the authority should consider the representation with a view to determine as to whether the contents of the adverse entries are justified or not. Making of a representation is a valuable right of a Government employee and if the representation is not considered, it is bound to affect him in his service career, as in Govt. service grant of increment, promotion and ultimately premature retirement all depend on the scrutiny of the service records.

22. It is on that backdrop the Supreme Court set aside the order for premature retirement. The facts under consideration here does not involve such an issue and the last noted decision of the Supreme Court is clearly distinguishable on facts. Question of any uncommunicated adverse remarks does not arise in the facts and circumstances of the case under consideration. As a matter of fact on the basis of the adverse remarks the petitioner was cautioned and thereafter promoted to the higher post. There was no representation against the minor penalty of caution and the petitioner accepted the same without any demur and was posted at the next higher post. Subsequently the matter was considered and the order for premature retirement was passed.

23. I am unable to accept the contention of Dr. Mukherjee that the same is tainted with illegality or the same can be termed to be mala fide in nature. As noted above 57 cases were considered and out of the whole lot of officers three were asked to prematurely retired a power vested under the rules having the statutory force and exercised in accordance therewith cannot be termed to be mala fide simply because of the fact that a disciplinary proceeding is pending and the order of premature retirement was passed during the pendency of the same. Question of bias or the order under challenge being violative of the principles of natural justice does not and cannot arise in the facts of the case under

consideration.

24. In that view of the matter, this writ petition fails and is dismissed. All interim orders are vacated. There shall, however, be no order as to costs.

25. On the prayer of Mr. Aloke Chakraborty, learned Advocate for the petitioner the Punjab National Bank is directed to make available to the writ petitioner all terminal benefits as are admissible under the law within a period of 4 weeks from date. The petitioner gives an undertaking before this Court that he would vacate the quarters within a period of one week from the date of making over of the terminal benefits. Since the cheques for the notice pay has not yet been encashed by the petitioner, the Punjab National Bank is directed to revalidate and reissue the cheque upon production of the same.