
(1979) 03 DEL CK 0002

In the Delhi High Court

Case No : Civil Writ Appeal No. 711 of 1978

Atam Parkash

APPELLANT

Vs

Comptr. and Audj. Gen. of India and Others

RESPONDENT

Date of Decision : 06-03-1979

Acts Referred:

Citation : (1979) 16 DLT 276

Hon'ble Judges : H.L. Anand, J

Bench : Single Bench

Advocate : E.X. Joseph and K.N. Kataria, for the Appellant;

Judgement

H.L. Anand, J.

(1) This petition under Article 226 of the Constitution of India is directed against an order of compulsory retirement under Rule 56 (j) of the Fundamental Rules.

(2) The petitioner joined Government service in May, 1950, and was compulsorily retired from service on September 15, 1964, after 14 years of service, as a punitive measure in an apparently ex parte proceedings, because the notice sent to the petitioner was returned with the remark that the petitioner had refused to receive it, the contention of the petitioner being that, while the proceedings were going on, the petitioner was under treatment in the medical institute at Rohtak and had submitted a medical certificate. The Department apparently found some substance in the plea of the petitioner that he had been under medical treatment and, Therefore, even while declining to review the order, decided to re-employ the petitioner as Upper Division Clerk on a temporary basis. This is how the petitioner was re-employed in the Department on July 29, 1966. He crossed the usual efficiency bar in 1970 and became quasi-permanent in January, 1971. The petitioner passed Part I of the S.A.S. Examination in 1971 and part II in 1972. He was promoted as Accountant in February 1973 and was re-designated as Section Officer. In May, 1975, he was sent as Accounts Officer on deputation to the Indian Council of Agriculture Research Laboratory, Bombay, and returned to the

parent Department in August, 1975. On September 2, 1975, the petitioner came to adverse notice on account of alleged participation in a protest meeting of the staff. By a memorandum of September 16, 1975 the petitioner was informed that he remained absent from his post and attended the meeting of the nongazetted staff Association, raising slogans against the action taken by the Department against some of the employees and the petitioner was informed that his action had been viewed seriously by the Accountant General, Central Revenues, New Delhi. This was followed by an order of September 30, 1975, by which the petitioner was compulsorily retired under Rule 56 (j) of the Fundamental Rules on attaining age of 55 years on December 31, 1975. The retirement was to be effective from the afternoon of January 1, 1976, or from the date of expiry of three months from the date of service of the aforesaid order on the petitioner.

(3) The impugned order was assailed on the following grounds : (1) The petitioner was not liable to be compulsorily retired under Rule 56 (j) of the Fundamental Rules. (2) The action was punitive in nature. (3) The action was arbitrary and taken without a positive order as to how it was in public interest to retire the petitioner.

(4) In support of the 1st ground, two contentions were urged. The first contention was based on certain observations of this Court in the case of K. R. Tahaliani. In that case, while dealing with the question if the public servant was liable to be compulsorily retired under sub-clause (i) or (ii) of clause (1) of Rule 56 of the Fundamental Rules, it was observed that retirement from public service was a concept peculiar to permanent service and was wholly foreign to temporary service and/or adhoc or officiating status, and that, Therefore, the stage at which the question of premature retirement could be considered must also have relation to the service or post which a civil servant holds permanently to which he, but for the liability to retire has the right. These observations are of assistance to the petitioner because being a quasi-permanent Government servant, his services could be terminated in the same circumstances and in the same manner as a Government servant in permanent service in view of the provision of Rule 7 of the Central Civil Service (Temporary) Rules, 1965, and that being so, there is nothing in rule 56 which would keep the petitioner outside the reach of the rule. Even otherwise, even though the concept of retirement is peculiar to permanent service, there is nothing to prevent Government from retiring prematurely or otherwise, even a temporary Government servant instead of invoking the Central Civil Services (Temporary) Rules, 1965, should the Government consider such a course to be proper. In the second instance, it was urged that the liability to compulsory retirement on attaining the age of 55 years in terms of 56 (j) (ii) was linked with the right to terminal benefits at that age and since the petitioner would not be entitled to terminal benefits on such premature retirement by virtue of being a re-employed person, such a Rule could not be invoked to compulsorily retire the petitioner. There is no substance in this contention either. It is true that the genesis of the rule with regard to the age at

which a public servant may be compulsorily retired is in the fact that under the relevant Pension Rules, he is entitled terminal benefits, but that does not restrict the operation of the Rule. The case of the petitioner is not that of an ordinary public servant because he had been compulsorily retired before after 14 years of service and had been re-employed. Ordinarily, he would have been re-employed for a fixed term and there would have been no question of his retirement or of compulsory retirement or of any age of superannuation. For reasons which are not clear, the re-employment was not for a fixed term, but was without any limitation, and that being so, the petitioner would be liable to be retired on attaining the age superannuation and consequently of being compulsorily retired, if the requirements of the aforesaid rule, are satisfied. The fact that at the stage when he becomes liable to be compulsorily retired, he would not qualify for any terminal benefits by virtue of the unusual course of his career, would not justify the conclusion that he would be outside such a Rule. This contention must also fail.

(5) In support of the second ground, it was urged that the action against the petitioner was punitive in nature in that by the impugned order, the petitioner has been deprived of certain benefits that he had earned and the action has its genesis in the alleged participation by the petitioner in a meeting of the Employees Association, to which Government had taken exception. There is no force in either of these contentions. If, as is admitted by the petitioner, he had not qualified for any terminal benefits, when he was required to retire, there was no question of the petitioner being deprived of the benefits that he may have earned. The compulsory retirement, of course, would deprive the petitioner of the opportunity to receive his salary but salary cannot be said to be such a benefit because the right to receive salary is denied to every public servant from the date he ceases to be in such service. That does not involve deprivation of any earned benefit. That is, the benefit a public servant would earn if he was allowed to discharge his duties. The action could not be said to be punitive as having its genesis in the incident of September 2, 1975. It is not disputed that on September 2, 1975, the members of the Employees Association met to protest against certain action of the Department against certain employees. It is also not disputed that the petitioner was among the employees who abstained from work and may perhaps have, Therefore, participated in the meeting. It is not disputed that a Memorandum of September 16, 1975, was issued to the petitioner conveying to him the displeasure of the Department over his participation in the meeting. It is, however, not possible to link the order of premature retirement either with the incident of September 2, 1975, or with the Memorandum based on that incident for the simple reason that the consideration with regard to liability of certain employees of the Department to premature retirement, including the petitioner, was considered on August 27, 1975. The premature retirement of the petitioner was recommended by the Screening Committee on or before August 27, 1975, because the note of Senior D.A. G. forwarding the case for consideration to the A.G. is of that date. The note of A.G. also of August

27, 1975, which confirms the recommendation. The question as to the premature retirement of the petitioner having , Therefore, been considered prior to the incident of September 2, 1975, could not, Therefore, have its genesis in that incident and could not be said to be punitive for that reason.

(6) In support of the third ground, it was urged that the decision to compulsory retire the petitioner was arbitrary in that the purported satisfaction of the Authority that such retirement was in public interest was wholly illusory and not based on any objective material. It was urged that neither in the impugned order nor indeed in the return to the rule, filed in the present proceedings, had the respondents spelt out the ground or grounds for which or the material on the basis of which the authorities were satisfied that it was in public interest to prematurely retire the petitioner from service. It is well settled that the absence of any recital in the order of compulsory retirement that it was made in public interest or any omission in such an order of an amplification of public interest would not be fatal so long as there is the power to make any order of compulsory retirement in public interest and the power, in fact, is shown to have been exercised in public interest. It is also well settled that sub-rule (j) of rule 56 confers the right to retire a Government servant if the authority is of opinion that it is in public interest to do so But the right or power can be exercised only subject to the conditions mentioned in the Rule and it is open to an aggrieved party to contend that the requisite opinion has not been formed or that the decision was based on collateral grounds or that it is otherwise arbitrary. Where the action is challenged as being arbitrary, it is for the authority to satisfy the court, either by the necessary averments in the return, or with reference to the original records, that the decision was not arbitrary and was arrived at on a consideration of material, which was germane to the question. Applying these principles to the facts of the present case, we find that the impugned order merely reproduces the language of the sub-clause when it says that the Accountant General was of the opinion that is is in public interest to retire the petitioner. There is no indication in the order as to how it was in public interest to retire the petitioner and what, if any, are the reasons which prompted the Government to form such an opinion. The language of the order is, however, not determinative. The petitioner had raised a specific ground that the order was arbitrary and the requisite opinion had not been formed on the basis of any material or ground which could be germane to the question as to whether it was in public interest to retire the petitioner, Ons would have, Therefore, expected that in the return to the Rule Government would have spelt out the reasons for the order or indicated the material or the ground on the basis of which the opinion had been formed. No such attempt was made in the return. According to the return, the appropriate authority was of opinion that the retirement of petitioner was in public interest. It is further claimed that the authorities arrived at the decision on perusal of the record and taking into account all the circumstances. These averments do net make any one wiser as to why and on what material it was considered in public interest to compulsorily retire the

petitioner. From the chronology of events set out above, it is clear that even though the petitioner was re-employed, his record of service has, by and large, been satisfactory and he has not only been allowed to cross efficiency bars, but was made; quasi-permanent, passed parts I and II of the S.A.S. Examination was promoted as Section officer in an officiating capacity and was even sent on deputation in the higher grade of an Accounts Officer as late as May, 1975. In view of this, the respondents were required to produce the service record of the petitioner, as well as the proceedings of the Screening Committee, which had recommended his retirement and which eventually formed the basis of the satisfaction by the authority with regard to his premature retirement. It was not disputed that there was absolutely nothing in the service record of the petitioner for the period prior to April 1974, which could possibly have justified the opinion that it was in public interest to compulsorily retire the petitioner because the petitioner's performance and conduct has throughout been satisfactory. The Screening Committee which met in August 1975, to consider the cases of number of employees for premature retirement, apparently pursuant to a policy decision to prematurely retire Government servants who were considered "deadwood", recommended his premature retirement on the ground that the official who was re-employed in A.G.C.R. on 29.7.76 after his compulsory retirement from the office of the A.G.C.W. & M., New Delhi, in September 1964, was not fit to continue in service and should, therefore, be retired from service in public interest. The proceedings of the Screening Committee do not indicate either the ground for the opinion or the material on which it was based. The report of the Screening Committee was forwarded by the senior D.A.G. (Administration) to the A.G., who expressed the view that in his opinion formed independently of the recommendation of the Committee it is necessary to retire the petitioner in the public interest. This note also does not spell out as to what had weighed with the A.G. in arriving at that conclusion. One would, however, presume that the opinion was based either on the fact that he was a re-employed person or because of his performance during the few years proceeding the date of decision. It was not disputed that the mere fact that he was a re-employed person would not justify premature retirement, particularly having regard to the circumstances in which he had been re-employed and that if such a person had given satisfaction in spite of it premature retirement could not be justified. That leaves for consideration the reports with regard to his work and conduct for the period April 1974 to March 1975, the petitioner was described as just adequate and having not taken any interest in the work. The report for the period April 1975 to August 1975, describes him as barely competent and attributes to him lack of sense of discipline. Interestingly enough, both the reports were made. In August 1975, the former on August 23, 1975 and the latter on August 16, 1975, the first being on the date on which Screening Committee first met and the second barely a week before that date. The latter report is also in relation to his work as Accounts Officer on deputation in Bombay, a period which was described on behalf of the petitioner as being the most turbulent of his career in that during that period he came in conflict with a

number of officers because the petitioner took, during the period, a very active interest in exposing the irregularities and malpractices in the administration and openly came in conflict with some of his superior officers and it was not disputed that, for "that reason, the petitioner was recalled to the parent Department. It would be sufficient in this connection to refer to his representation (Annexure VII) which was sent in July 1975, in which he invited attention to the various irregularities in the administration. Whatever else may be said of these adverse remarks in the two reports, referred to above, the worst is that these remarks were conveyed to the petitioner on or about September 4, 1975, when he lodged a strong pretest and made representations on September 22, 1975, which were apparently considered and rejected thereafter and an intimation of the rejection was sent to the petitioner in February, 1976, with the result that these reports were considered and relied on for an adverse decision with regard to premature retirement in August, 1975, even though they were communicated to the petitioner only in September, 1975, and the intimation of the rejection of the petitioner's representation was sent to the petitioner in February, 1976, after the petitioner had already been prematurely retired. If, Therefore, the representations against the adverse remarks were still under consideration when the decision was taken to prematurely retire the petitioner and the Screening Committee and the competent authority had taken into consideration the adverse remarks even when the same had not even been conveyed to the petitioner, the process of consideration was obviously vitiated, and, if there was nothing in the record of the service of the petitioner prior to the period to which the two reports relate, there was no ground or material which could possibly have justified the conclusion that it was in public interest to retire the petitioner.

(7) For all these reasons, the petitioner succeeds, the Rule is made absolute and the order of compulsory retirement of the petitioner is quashed. The petitioner would also have his costs. Counsel's fee is assessed at Rs. 500.00