
(1980) 03 DEL CK 0055

In the Delhi High Court

Case No : Civil Writ Appeal No. 243 of 1978

B.L. Sharma

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 13-03-1980

Acts Referred:

Citation : (1980) 18 DLT 56

Hon'ble Judges : S.S. Chadha, J

Bench : Single Bench

Advocate : S.C. Gupta and P.P. Malhotra, for the Appellant;

Judgement

S.S. Chadha, J.

(1) This petition under Article 226 of the Constitution of India seeks the quashing of the order dated September 12, 1975 passed in exercise of the powers conferred by clause (h)(i) of Rule 2046 of the Indian Railway Establishment Code, Volume II whereby a notice was given to the petitioner that he having already attained the age of 50 years on September 17, 1972 shall retire from service with effect from the afternoon of December 12, 1975 or from the date of the expiry of three months computed from the date of the service of the notice on him, whichever is later. In the impugned order, it was expressed that the Railway Board is of the opinion that it is in the public interest to do so.

(2) Subsequent to the issue of the impugned order of compulsory retirement, the petitioner was served with a memorandum dated September 14, 1976 alleging that the petitioner while functioning as Station Superintendent Western Railway at Bombay and at Ahmedabad during the period between May 30, 1966 and July 11, 1973, was found on July 11, 1973, in possession of assets which were disproportionate to his known sources of income to the extent of Rs. 46,023.22 suggesting that the petitioner had acquired the said disproportionate assets by questionable means and/or from dubious sources and thereby he failed to maintain absolute integrity in contravention of Rule 3 of the Railway Services

(Conduct) Rules, 1966. The memorandum further stated that the Railway Board considered the Petitioner's services cannot be certified to be thoroughly satisfactory and that, Therefore, the Dgrg ordinarily payable to him should be withheld. The petitioner on the receipt of the memorandum filed his representation and at the same time fled a petition to the Minister for Railways for quashing the impugned order dated September 12, 1975 of compulsory retirement. Having waited for some time for the decision on his representation, the petitioner filed the present writ petition on March 2, 1978.

(3) Rule 2046 of the Indian Railway Establishment Code, Volume Ii reads as follows:

"2046(F. R. 56)-(a) Except as other provided in this rule, every railway -servant shall retire on the day he attains the age of fifty-eight years. (h) 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 giving him notice of not less than three months in writing or three months" pay and allowances in lieu of such notice : (1) if he is in Class I or Class Ii service or post and had entered Government service before attaining the age of thirtyfive years, after he has attained the age of fifty years. (2) in any other case after he has attained the age of .fifty-five years."

(4) Power is thus conferred on the appointing authority to retire a public servant in public interest. An order of retirement passed under Service Rules without condemning the Government servant, cannot be said to be punishment. Orders of compulsory retirement of a public servant in terms of Service Rules in public interest without adverse comments is not punitive or vocative of Article 311 of the Constitution. The orders in the present case do not cast any stigma on the petitioner and are in unexceptional form. The argument, of Mr. S. C. Gupta, the learned counsel for the petitioner mainly proceedings on the submission that the circumstances proceeding or attendant on the order of termination of service have to be examined to find out whether the misconduct is the motive or foundation of the order of compulsory retirement. The contention is that if the misconduct comprises of objective facts which could be varified and has a direct cause of termination, then the misconduct has to be inferred as the very foundation of the order of termination. Reliance is placed by the counsel on R.C. Roy Vs. Union of India and Others, where a Division Bench of this Court examined all the then existing decisions of the Supreme Court on the question and laid down the criteria to determine when a termination could be said to be simple termination and when it could be said to be by way of punishment. In the light of that decision, the counsel contends that if some incident arising otherwise in the case of administrative routine was viewed to operate against the employee and was the cause of the termination of his services, then such an incident should have formed a charge against the employee who should have had the opportunity of rebutting the same. If without giving such opportunity, the Government acts on such a charge and terminates the service of the employee,

then the charge would be a foundation of the termination which would then amount to a punishment. Reliance is also placed on "Ram Chander Sagar v. Delhi Administration and Others" I. L. R. (1975) I Del 284 where a Full Bench of this Court held that the attendant circumstances may amount either only to a motive for the termination or may become the very foundation on which the termination is based. If they are subjective or a general opinion about suitability or assessment of work, they are only a motive. They are a remote but not a direct cause of termination. If they are objective facts which could be verified and a direct cause of termination, they could be foundation of it. If they only supply the motive then they do not vitiate the termination. But if they are the foundation of the termination, they would be a part of the termination order which may then amount to punishment.

(5) On the other hand, Mr. P. P. Malhotra, the learned counsel for the Railway Administration submits that the mere fact that a Government servant is compulsorily retired, before he reached the age of superannuation, does not by itself cast a stigma and that where the authorities make an order of compulsory retirement and no reason is mentioned in the order, it cannot be predicted that the order of retirement has inherent stigma in the order. Reliance is placed on the "State of U. P. v. Sri Shyam Lal Sharma" 1971(2) S. L. R. 716 wherein it was held that unless it is established from the order of compulsory retirement itself that a charge or imputation against the officer is made the condition of the exercise of that power or that by the order the officer is losing benefits already earned, the order of retirement cannot be said to be one for dismissal or removal in the nature of penalty or punishment. Reliance is also placed on "Anant Prasad Singh v. The State of Bihar and others" 1978(2) S. L. R. 756 and "Brigadier Bhupinder Singh v. Union of India and others" 1976(1) S. L. R. 772. The counsel then invited my attention to the affidavit of Shri K. Parameswaran, Joint Secretary, Railway Board, New Delhi wherein it is deposed that the impugned order under Rule 2046 of Indian Railway Establishment Code, Volume II was passed by the competent authority after taking into account the entire service record of the petitioner. The analysis of the confidential reports of the petitioner for the years 1971-72 to 1975-76 and the statement showing the details of the case in which the petitioner had figured, are annexed with the affidavit. The learned counsel produced the original record for the perusal of the Court that the entire service record including the statement showing details of the cases in which the petitioner had figured, was placed before the competent authority. The counsel took me through the record to support the order of compulsory retirement in public interest.

(6) In "Bhupinder Singh's" case (supra), a Division Bench of this Court expressed as to what "public interest" term is :

"It is true that "public interest" is a much wider concept than "suitability" of a particular individual and would certainly involve considerations which may be wholly extraneous and irrelevant for a limited determination as to the suitability

of a person to a position or post or service. which would have relation to his physical fitness, his integrity and his entire record of service as in the present case but in considering if it is in public interest to continue a person in service or to put him in a particular, position or post will involve much larger questions of public policy, morality etc. It is, however, equally true that if a person is unsuitable for being continued in service, it could not be said that his continuance would be in public interest. It is the requirement of public interest that a suitable person should be put in a particular position and an unsuitable person should not be entrusted with the duties which he is unable to carry out effectively or honestly and in that sense, public interest would certainly be adversely affected if an unsuitable person was allowed to continue in service....."

(7) The right of the Government to compulsorily retire a Government servant in terms of Rule 2046 of the Indian Railway Establishment Code, Volume II is absolute and it is not open to this Court to judge the sufficiency of the material on which the decision is based. The order of compulsory retirement can, however, be impugned on the ground that it was either malafide or based on collateral grounds for irrelevant and extraneous considerations or it was arbitrary in the sense that there was no material on the basis of which any reasonable person would have come to the conclusion that it was in public interest to exercise that power. The statement showing details of the cases in which the petitioner had figured, is Annexure "R-2" to the affidavit which is as under ;

"S.No. Particulars of cases Action taken 1. In the year 1965 certain serious irregularities were detected in Vigilance Commission, major the matter of allotment of reserved penalty proceedings were initiated against Shri Sharma trains starting from Bombay and he was awarded penalty Central Station of Western Railway. of reduction by one stage in As a result of the enquiry the time scale of pay of Rs.650- made, it was found that Shri 1200 for a period of 6 months B.L. Sharma who was working and his pay was thus reduced as Station Superintendent, Bombay from Rs. 1200.00 to Rs. 1160.00 . Central at that time, was responsible Along with some other officers for irregular allotment of reserved accommodation. 2. In April, 1966 Shri B.L.Sharma Shri Sharma was prosecuted was trapped by Suptd. Police and tried in the Court of of the Special Police Establishment Special Judge, Bombay, who while accepting an illegal convicted him for one year of gratification. rigorous imprisonment u/s 161 Pc as well "as u/s 5(l) read with Section 5(2) of the Prevention of Corruption Act. Subsequently on appeal, the High Court of Bombay acquitted Shri Sharma of the charges brought against him. The C. B. 1. did not file any appeal against the judgment. 3. In Nov., 1972, a source information The matter was investigated received from G. B. 1. and it was found that Shri against Shri B.L. Sharma, who Sharma had unauthorisedly was working as Station Supdt. changed the composition of Ahmedabad. It was alleged train. In consultation with the therein that the officer had Central

Vigilance Commission committed certain irregularities it was decided to administer a in the matter of allotment of recorded warning to Shri parcel wagons. Sharma. 4. In the year 1973, another case The matter was investigated came to the notice in which it and it was found that Shri was alleged that Shri Sharma Sharma arbitrarily allowed en- had been showing undue fav hancement in the rates of certain our to the Catering Contractor items sold by the private vend- for the enhancement of rates ing contractors. This case was of certain items, under consideration when deci- sion was taken to retire Shri Sharma. 5. In April, 1975, a report was This case was under reference to received from the G. B. 1. the Central Vigilance Commis- which held the allegation of sion when decision was taken in. possession of disproportionate Nov., 1975, to retire Shri Sharma assets as substantiated. The compulsorily. On the advice of C.B.I, recommended initia- Central Vigilance Commission at lion of regular departmental the time of passing the retirement action against Shri Sharma. order the departmental proceedings with regard to the charge of disproportionate assets were kept open and Shri Sharma was served with a show-cause notice in Sept., 1976, to explain as to why the death-cum-retirement gratuity payable to him should not bewithheld. The reply received from Shri Sharma is under consideration of the Competent Authority." _____

(8) The competent authority took into consideration at that time a report received from the G.B.I, which held the allegation of possession of disproportionate assets as substantiated and the G. B. 1. had recommended initiation of regular departmental action against the petitioner. The case was then under reference to the Central Vigilance Commission when the decision was taken for the compulsory retirement of the petitioner. The petitioner was not served with any charge-sheet and no enquiry was initiated against the petitioner. The misconduct is a factor that enters into account in the case of compulsory retirement under Service Rules and in one case it may merely furnish the background and in another case, it may form the very basis of the orders. The core question to be determined in this case is whether the report received from the G. B. 1. which held the allegation of possession disproportionate assets as substantiated, is merely a motive or the foundation of the order of dismissal. If the material before the competent authority while considering the retirement of the petitioner in public interest was restricted to the report from the G.. B.I. holding the allegation of pos- session of disproportionate assets as substantiated, then an argument could be built but on the facts of the present case, there are five cases mentioned above in which the petitioner had figured. The first is the penalty of reduction by one stage in the time scale of Rs. 650-1200 for a period of six months imposed on the petitioner in 1965. Mr. S. C. Gupta's argument is that this penalty is deemed to have been washed offwhen it was reported in the year 1972-73 that the petitioner is fit for promotion. The confidential report) the extract of which is "Annexure "R-1" only shows that the petitioner may be tried out in an officiating capacity but there is no definite finding of fitness for

promotion. The weight that could be attached to the penalty of reduction may be insignificant but still it forms the part of the service record of the petitioner. In November, 1972 it was found that the petitioner had unauthorisedly changed the composition of the train and in consultation with the Central Vigilance commission it was decided to administer a recorded warning to the petitioner. Then in the year 1973, it was found that the petitioner arbitrarily allowed enhancement in the rates of certain items sold by the private vending contractors. The material before the competent authority was germane to the consideration of the retirement of the petitioner in public interest. Whether that material was sufficient or insufficient to pass an order of compulsory retirement, is not open to judicial review in a proceedings under Article 226 of the Constitution. Then the case that the petitioner possessed assets disproportionate to his known sources of income, was also brought to the notice of the competent authority. The observations of the Joint Secretary, Railway Board in the memorandum dated September 14, 1976 that the conduct of the petitioner cannot be certified to be thoroughly satisfactory because of the allegations contained in that memorandum, cannot be read as is argued by Shri Gupta that the other service record of the petitioner was satisfactory. At that time, the Railway Board was concerned with making allegations against the petitioner that he had failed to maintain absolute integrity for the reason that the petitioner was in possession of the assets which were disproportionate to his known sources of income and for that reason, the petitioner's service could not be certified as thoroughly satisfactory. The allegations of the possession of assets by the petitioner disproportionate to his known sources of income could have been verified, but in my opinion, with the material on the record referred to above, it was not the direct cause of termination of the services of the petitioner. The entire service record of the petitioner was taken into consideration by the competent authority when it expressed his opinion that the retirement of the petitioner is in public interest. For these reasons, the law laid down by this Court and relied upon by Shri Gupta has no application to the facts of this case.

(9) For the above reasons, the writ petition fails and is dismissed with no order as to costs.