

(2008) 08 JH CK 0153
In the Jharkhand High Court

Ghanshyam Das	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 28-08-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 4 JCR 415

Hon'ble Judges : M.Y. Eqbal, J; Dilip kumar sinha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

D.K. Sinha, J.—Petitioner has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India for quashment of the order No. MSI-729 Estt/PF/897 dated 30.4.2003 as well as the order No. 6-28/1A.11 (AE) dated 20.12.2004 passed by the Disciplinary Authority and the Appellate Authority respectively and also the order dated 21.4.2006 in part, drawn by the Circuit Bench at Ranchi of Central Administrative Tribunal, Patna in O.A. No. 13 of 2005 confirming the above orders of the said authorities of compulsory retirement of the petitioner from his service.

2. Grievance of the petitioner is that the decision of his compulsory retirement was taken arbitrarily on collateral grounds, without any evidence by showing biasness by alleging that the petitioner had been raising voice against the authorities of the institution. Yet, it was held by the Central Administrative Tribunal that the petitioner was entitled only to his retiral benefits, whereas admitted dues of his subsistence allowance from 26.5.1998 to 30.4.2003 was not paid by the respondents to which he was legally entitled to. The petitioner sought direction upon the respondents for an order in this regard for payment of the aforesaid dues with increment in his salary and further restraining the respondents from deducting the rent of his quarter at the market rate which was under occupation of the petitioner from August, 1999 till his ejectment and providing other medical facilities to which he was entitled to.

3. Further grievance of the petitioner was that being the member of Grievance Committee, he had filed a Public Interest Litigation against the then Director, Dr. Satish Chandra Agrawal of Indian Lac Research Institute (ILRI), Ranchi and simultaneously, a compliant case was also filed against him including five other Officers and ultimately, the said Director suffered compulsory retirement.

4. The petitioner was put under suspension vide order dated 25.5.1998(Annexure-3) and was transferred to Central Institute of Agricultural Engineering (CIAE), Bhopal vide order dated 22.5.1999 and ultimately, the petitioner joined at CIAE, Bhopal. Beforehand, the petitioner had preferred O.A. No. 3 of 2000 before the Central Administrative Tribunal, Patna, Circuit Bench, Ranchi challenging the order of his transfer to another state during the period of his suspension and enquiry set up against him at ILRI, Ranchi and even before the submission of enquiry report His transfer order was set aside by the Central Administrative Tribunal on the ground that transfer order was punitive in nature. Respondents moved before this Court in C.W.J.C. No. 707 of 2001 wherein vide order dated 1.3.2002, joining of the petitioner was directed to be accepted on the rolls of his establishment at Bhopal, at the same time, all his arrears of pay and subsistence allowance due to him were directed to be released within a period of four weeks (Annexure-6). In compliance whereof, the petitioner joined at Bhopal on 5.4.2002 during his suspension and later on vide order dated 2.5.2002 his suspension was revoked (Annexure-8) by the Director, Central Institute of Agricultural Engineering, Bhopal. The copy of the enquiry report dated 11.3.2003 was served upon him by the Director-cum-Disciplinary Authority enabling the petitioner for making any submission in writing, if he so liked. The enquiry report reflected that except the Charges No. 3 and 6(d), rest all charges were proved against him, on the basis of which, the Director-cum-Disciplinary Authority, CIAE, Bhopal by the order dated 30.4.2003 awarded major punishment in the nature of compulsory retirement of the petitioner from his service (Annexure-10).

5. Being aggrieved by the order of his compulsory retirement, the petitioner preferred O.A. No. 135 of 2003 before the Ranchi Bench of Central Administrative Tribunal Patna and the Tribunal vide order dated 23.5.2001 directed the respondents to consider the representation filed by the petitioner on 19.4.2003 and to dispose of the same by reasoned and sneaking orders. The petitioner explained that before approaching the Central Administrative Tribunal, he had already represented before the Director, CIAE, Bhopal on 19.4.2003 for sympathetic reconsideration on the order of his compulsory retirement. The Director, CIAE, Bhopal vide his order dated 25.7.2003 declined to interfere with the order dated 30.4.2003 keeping in view the gravity of the charges, which were proved against him and it was further observed that the said order of compulsory retirement was passed in persuasion of humanitarian ground also.

6. The petitioner again moved before the Circuit Bench, Ranchi of Central Administrative Tribunal in O.A. No. 260 of 2003 and on hearing the parties, the

Tribunal vide order dated 23.8.2004, directed the Secretary, Indian Council of Agricultural Research, New Delhi to consider and dispose of the appeal of the petitioner within a period of two months and in the meantime the petitioner was permitted to retain the quarter allotted to him. Pursuant to such direction, the Secretary, Indian Council of Agricultural Research, New Delhi disposed of the appeal of the petitioner vide order dated 20.12.2004, upholding the order dated 30.4.2003 passed by the Disciplinary Authority (Annexure-13).

7. Learned Counsel for the petitioner submitted that the Secretary, Indian Council of Agricultural Research, New Delhi disposed of the representation/appeal of the petitioner without considering and taking into account that the major punishment so awarded to him was disproportionate to the charges proved against him and by ignoring the natural justice that before awarding such punishment of compulsory retirement, the requisite opinion was not formed. On the other hand, the decision was taken by the Secretary arbitrarily on collateral grounds. He overlooked that the major punishment that was awarded to the petitioner was under biasness, against the evidence for justifying the misconduct and even no adverse entry was found in his Annual Confidential Report as no adverse comment was ever communicated to him.

8. Learned Counsel exhorted that the impugned major punishment Was awarded without considering the right of the petitioner of his employment and that too on extraneous consideration and in that manner gross illegality was committed which calls for interference of this Court under writ jurisdiction. The major punishment awarded to the petitioner by way of his compulsory retirement from service from the post of T-1-3 certainly was disproportionate to the charges which were allegedly proved against him without opportunity to place his defence.

9. Finally, the learned Counsel submitted that without considering the gravamen of the allegation and the very genesis of his victimization, the Central Administrative Tribunal passed the impugned order in the following manner,

We, however, note that the Disciplinary Authority has apart from imposing the penalty of compulsory retirement also held that the applicant will only he paid 75% of the pension and gratuity.

The learned Counsel for the respondents has staled that the ICAR has adopted the CCS [CCA] Rules.

There is no such penalty in the CCS [CCA] Rules. Normally, a cut in pension/ gratuity is ordered only when either the proceedings cannot he completed till the date of retirement or an inquiry is instituted after retirement in accordance with rules. However, this part of the order is severable.

We, accordingly, quash that part of the order of the Disciplinary Authority by which only 75% of the pension and gratuity has been held to be payable. Vie applicant shall instead be entitled to entire pension and gratuity. The arrears on this account shall be paid within three months of the receipt of the order failing

which interest at the rate of 9% will be payable beyond this period.

The OA succeeds only to this extent. The order of compulsory retirement is field to be in accordance with law.

The OA is disposed of, accordingly, with no order as to costs.

10. In the counter-affidavit filed on behalf of the respondent Nos. 2 to 5 following statements were made,

That the petitioner was found guilty of misusing the L.T.C. Advance and using unparliamentary language against the Directors of the Institute apart from oilier proved charges, so keeping in view of the proved charges he has been compulsorily retired in public as well as in administrative interest and loss of confidence.

The misuse of L.T.C. advance and abusing to the senior officers are wry very serious charges which amounts to dishonesty and unloyalty on the part of the petitioner (Vide Para-18 of the impugned order dt. 21.4.2006, Annex. 14).

That the petitioner is quite a chronic litigant minded person. He has filed so many frivolous cases against the Department and he has lost almost all those cases.

The details of some of those cases are as follows:

i) C.W.J.C. No. 3875/96 (R) (PIL) and Civil Review No. 23/97 (R) : Annexure-1
ii) Cr. Complaint Case No. 252/97 : Annexure-2 iii) C.W.J.C. No. 2332/99 (R) : Annexure-4 iv) O.A. No. 3/2000 : Annexure-5 & 9 v) O.A. No. 135/2003 : Annexure-11 vi) O.A. No. 260/2003 vii) O.A. No. 13/2005 : impugned Order viii) Misc. Appeal No. 5/2005 : Against eviction from quarter. That petitioner is not entitled for relief as sought for in para-1 of this Writ Petition, because he had not raised or taken such plea before the Central Administrative Tribunal except the plea of his compulsory retirement.

The petitioner had not sought for any relief before the Tribunal for payment of his subsistence allowance and restraining the respondents from deducting rent of the quarter at market rate and for providing medical facilities, hence, he cannot raise all these new facts and grounds for the first time in the writ case.

However, it is submitted that concerned dues/subsistence allowances Rs. 1,38,661 has already been paid to the petitioner by Bank Draft dt. 3.5.2002 vide receipt thereof signed by the petitioner dated 3.5.2002. (vide letter dated 3-5-2002, Bank draft dt.3.5.2002 and receipt dated 13.5.2002)

11. Learned Counsel for the respondents submitted that the dues/subsistence allowances have been paid to the petitioner as would be dear from the letter No. F. No1-729/99/Estt./PF dated 3.5.2002 (Annexure-A). The petitioner was absent from the duties unauthorizedly and a sum of Rs. 1,38,661/- was given to him on the settlement of his account towards subsistence allowance. It was quite

evident from the nature of charges which were proved that the petitioner did not deserve to continue in service any more only because of his unbecoming and anti-institutional behaviour and that he was found guilty of misusing L.T.C. advance, using unparliamentary words against the senior officers, thereby he lost confidence of his superiors and employer and in view of the seriousness of the charges. Therefore, the order of his compulsory retirement was not at all harsh, arbitrary, malafide, illegal or drawn in violation of Central Civil Services (Classification, Control and Appeal) Rules, 1965.

12. Learned Counsel for the respondents attracted our attention that the petitioner was occupying the quarter within the premises of the Director, Indian Lac Research Institute, Ranchi (respondent No. 4) unauthorisedly even after his transfer to Bhopal and even after the order of his compulsory retirement. For that an eviction proceeding was initiated against him by the Department under Public Premises (Occupation and Eviction) Act and the Estate Officer, after giving an opportunity to the petitioner, recorded an order of eviction on 7.2.2005 calling upon the petitioner to vacate the quarter within time frame. Against the said order of the Estate Officer the petitioner preferred Misc. Appeal No. 5/2005, which was dismissed by the Additional Judicial Commissioner, VIth, Ranchi on 3.12.2005 upholding the order of the Estate Officer. When the petitioner did not vacate the quarter in question even after the said orders and created law and order problem, the Director, Indian Lac Research Institute, Ranchi (respondent No. 4) preferred W.P.(C) No. 2818 of 2005. More this Court seeking direction to the local administration to provide help to the Department for execution of the order of the Estate Officer and only after the direction of this Court dated 28.6.2005, the police protection was given and the petitioner was evicted from the quarter through the process of law and by the order of the Court and it was false to say that he was ejected from the quarter forcibly.

13. The learned Counsel further added that the conduct of the petitioner during his service period was never satisfactory. His activities were against the discipline, office administration and interest of the Department who went on filing cases after cases against the Department, Senior Officers/Scientists and harassing them on frivolous grounds. The order of punishment of compulsory retirement was neither malafide nor in the nature of victimizing him rather based on proved charges of dishonesty and other allegations aforesaid and punishment therefore, so awarded of his compulsory retirement was quite proportionate to the nature of grave charges and the Central Administrative Tribunal upon careful consideration approved by upholding the punishment of his compulsory retirement.

14. As regards payment of pension, the petitioner never submitted necessary required documents in the prescribed format in spite of repeated letters issued by the respondents to him and for such reason, pension paper of the petitioner could not be prepared. The learned Counsel for the respondents by giving details, submitted that in this regard letters were sent to the petitioner on

5.8.2005, 23.6.2006 and 17.7.2006, therefore, claim of the petitioner for interest on the pensionary benefits was not tenable as there was no fault on the part of the respondents.

15. Concluding his argument the learned Counsel with reference to paragraph-31 of the counter-affidavit, submitted that on retirement, the ICAR pensioners are eligible for a fixed medical allowance of Rs. 100/- per month. For O.P.D. treatment alternatively, the pensioners can exercise their option to avail the facility of Dispensary vide para 2 and 6 of the ICAR Circular No. 3(1)/93-Per.IV Dt 22.1.99. But the petitioner did not exercise his option of medical facilities as yet, which was required to be submitted along with his pension papers for processing the same. The reliefs as claimed by the petitioner in the writ petition are therefor, not tenable.

16. Having regard to the facts and circumstances of the case, we are conscious about the fact that the petitioner Ghanshyam Das was retired compulsorily with immediate effect by the order of the Director-cum-Disciplinary Authority, CIAE, Bhopal having been satisfied that there was sufficient cause to impose penalty under Rule 11(VII) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

17. We further find from the order passed by the Disciplinary Authority (Annexure-10) dated 30.4.2003 that the Enquiry Officer, in course of enquiry against the petitioner, proved almost all the imputations except the Charges No. 3 and 6(d) and it was observed that the petitioner thereby contravened the provisions of Rule (1)(i)(ii)(iii), 11(2) and 11(5) of the Central Civil Services (Conduct) Rules, 1964.

18. From perusal of the imputations, we do not find any kind of malice or motive involved or Disciplinary Authority was biased so as to impose major penalty for compulsory retirement against the petitioner. Second part of the said penalty whereby certain amount of the petitioner was forfeited from 25.5.1998 to 3.4.2002 during the period of his suspension except whatever amount he was receiving as his subsistence allowance, has been directed to be released by the order of the Central Administrative Tribunal, Circuit Bench, Ranchi and the same has not been challenged by the either side.

19. We are further conscious that the petitioner has assailed the major penalty of his compulsory retirement by stating that it was disproportionate to the charges proved against him. In this connection, the learned Central Administrative Tribunal observed that one of the charges against the petitioner was of misusing of L.T.C. Advance and/or using unparliamentary language not only against the existing Director but also against the earlier Directors and that misuse of L.T.C. Advance was grave offence as it used to reflect on the integrity of the employee concerned. That apart, in view of the charge proved against him in totality, we are in agreement with the finding of the learned Central Administrative Tribunal that the major penalty of compulsory retirement imposed upon the petitioner

does not call for interference in exercise of writ jurisdiction under Article 226 of the Constitution of India.

However, if the subsistence allowance for the period from 26.5.1998 to 30.4.2003 has not been paid, the authorities concerned are directed to pay for the admissible period within four weeks of the order. At the same time, we further direct the respondents to prepare the pension proposal of the petitioner within four weeks on presentation of the application in the prescribed format by the petitioner.

21. There being no merit, this writ petition is accordingly dismissed with the observation made hereinabove.