

(1998) 01 GAU CK 0001
In the Gauhati High Court
Case No : Civil Rule No. 526 of 1997

Md. Ali Saikia

APPELLANT

Vs

Meghalaya State Electricity Board and Others

RESPONDENT

Date of Decision : 08-01-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 1 GLT 82 : (1999) 3 LLJ 683

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : D. Das, A.C. Das and K.R. Surana, for the Appellant; D.R. Gogai, for the Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, J.—In this application under Article 226 of the Constitution, the petitioner Md. Ali Saikia has prayed for quashing the order dated January 24, 1997 whereunder he has been compulsorily retired from the service of Meghalaya State Electricity Board, and also for quashing the order dated January 28, 1997 by which the Assistant Executive Engineer, Umtru Maintenance Sub-Division of the Meghalaya State Electricity Board has been requested to take over the charge from the petitioner before February 1, 1997 pursuant to the said order of compulsory retirement.

2. The facts briefly are that the petitioner was initially appointed as work charge employee under the Assam State Electricity Board on November 24, 1961. His services were regularised in the post of Engineer Subordinate-Grade-III in the year 1971 by the Assam State Electricity Board. After the bifurcation of the State of Meghalaya from the State of Assam, the Meghalaya State Electricity Board was constituted and the petitioner was retained in the service of the Meghalaya State Electricity Board. By order dated November 4, 1996, the petitioner was posted at the Byrnihat Guest House No. 4. While he was so posted at Byrnihat, he received an order dated January 2, 1997 issued by the Secretary, Meghalaya State

Electricity Board placing him under suspension with effect from January 1, 1997. But thereafter by an order dated January 15, 1997, the aforesaid suspension of the petitioner was revoked and he was reinstated in the service with immediate effect. But by the impugned order dated January 24, 1997 issued by the Secretary, Meghalaya State Electricity Board, the petitioner was compulsorily retired from the service of the Meghalaya State Electricity Board on his attaining the age of 50 years and also on his completing more than 25 years of continuous service in the Board with effect from February 1, 1997. In the said impugned order, it was further stipulated that in lieu of the statutory notice of three months, the petitioner was entitled to draw three months' pay and allowance. The said impugned order dated January 24, 1997 was followed up by order dated January 28, 1997 issued by the Executive Engineer, Umiam Maintenance Division, M.S.E.B., Barapani to the Assistant Executive Engineer, Umtru Maintenance Sub-Division, M.S.E.B., Byrnihat, requesting him to make arrangement to take over the charge from the petitioner before February 1, 1997.

3. At the hearing of the writ petition, Mr. Diganta Das, learned counsel for the petitioner, contended that the sequence of events leading to the compulsory retirement of the petitioner, i.e. his suspension by order dated January 2, 1997, his reinstatement by order dated January 15, 1997 and his compulsory retirement by the impugned order dated January 24, 1997 would show that the entire object was to get rid of the service of the petitioner by a short-cut method without following the procedure prescribed by the Rules for disciplinary proceeding in contemplation of which the petitioner was initially suspended from service. Considering the peculiar facts and circumstances on which the petitioner was compulsorily retired, the order of compulsory retirement was vitiated by malafide and is liable to be quashed. Mr. Das further contended that to the knowledge of the petitioner he had a good service record and no adverse entry in the ACRs of the petitioner was ever communicated to him and that the Review Committee appears to have taken into account the uncommunicated adverse entry, if any, in the ACRs of the petitioner and recommended compulsory retirement of the petitioner. Such recommendation of the Review Committee on the basis of the adverse entries in the ACRs of the petitioner which have not been communicated to him amounts to violation of the principle of natural justice, and the impugned order of compulsory retirement is arbitrary and is liable to be quashed. Mr. Das further contended that the impugned order of compulsory retirement has not been passed in the public interest and is contrary to the law on compulsory retirement laid down by the Apex Court in several cases. He cited the decisions of the Supreme Court in the cases of Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, S. Ramachandra Raju Vs. State of Orissa, and State of Orissa and others Vs. Ram Chandra Das, in support of his aforesaid contentions.

4. In reply, Mr. D. R. Gogoi, learned Standing Counsel appearing for the Meghalaya State Electricity Board, relied on the averments made in paragraphs 8, 9, 10, 11, 12, 13 and 14 of the affidavit-in opposition filed on behalf of the

respondents and submitted that there was no malafide on the part of the authorities in compulsorily retiring the petitioner and that the ACRs of the petitioner were placed before the Review Committee and the Review Committee after examining the same concluded that the petitioner's continuance in the service of the Board. was against the public interest and on the basis of the said recommendation of the Review Committee the petitioner was compulsorily retired from service in accordance with the provisions of FR 57(b) which has been adopted by the Meghalaya State, Electricity Board. Mr. Gogoi further stated that" the requirements of FR 57(b) had been fully complied with and that this was not a fit case in which this Court in exercise of its power of judicial review under Article 226 of the Constitution should interfere with the impugned order of compulsory retirement of the petitioner. Mr. Gogoi also produced the relevant records called for by this Court.

5. On perusal of the said records produced by Mr. Gogoi, I find that on January 14, 1997 a Review Committee was held in the Office chamber of the Chairman of the Meghalaya State Electricity Board and the ACRs of the petitioner for the years 1991, 1992, 1993, 1994 and 1995 were placed, before the said Review Committee and after perusal of the same as well as the leave records of the petitioner for the said periods, the Review Committee took a view that the petitioner was an unproductive employee of the Board and therefore was not fit to be retained in the Board's service and recommended his compulsory retirement in the interest of the Board in accordance with the provisions of FR 57(b) of the Meghalaya F.R. & S.R. duly adopted by the Board. On a perusal of the ACRs of the petitioner for the said five years i.e. 1991, 1992, 1993, 1994 and 1995, I find that the Reporting Authority has made several adverse entries in the said ACRs and found the performance of the petitioner as not satisfactory and has remarked that "more improvement is needed". The petitioner however stated in his affidavit-in-reply that none of the said adverse entries had been communicated to him and the respondents have not controverted the said averment made in the said affidavit-in-reply nor produced any material to show that the said adverse entries made in the ACRs of the petitioner for the years 1991, 1992, 1993, 1994 and 1995 have ever been communicated to the petitioner asking him to improve his performance in future. That apart, none of the ACRs of the petitioner for the years 1991, 1992, 1993, 1994 and 1995 contained the comment of the Reviewing Authority and no explanation whatsoever has been furnished before the Court as to why the Reviewing Authority has not made any comment either agreeing or disagreeing with the Reporting Authority. As a matter of fact, the said ACRs of the petitioner for the years 1991, 1992, 1993, 1994 and 1995 do not even contain the signatures of the Reviewing Authority and yet the Review Committee appears to have been influenced by the uncommunicated adverse entries made by the Reporting Authority in the ACRs of the petitioner for the years 1991, 1992, 1993, 1994 and 1995 and has taken a view that the petitioner should be compulsorily retired from service. On the other hand, the ACRs of the petitioner for the years 1984,

1985, 1986, 1987 and 1988 contained the remarks of not only the Reporting Authority that the performance of the petitioner was fully satisfactory but also the remarks of the Reviewing Authority to the effect that the petitioner has acquired good basic technical knowledge in Civil Engineering works, like survey, estimating and maintenance of store accounts and that he was obedient, hard-working and disciplined. But the said ACRs of the petitioner for the years 1984, 1985, 1986, 1987 and 1988 have not been placed before the Review Committee which considered the case of the petitioner for compulsory retirement. In other words, the recommendation of the Review Committee for compulsory retirement of the petitioner and the impugned order of compulsory retirement on the basis of the said recommendation are based on the adverse entries in the ACRs of the petitioner made by the Reporting Authority for the years 1991, 1992, 1993, 1994 and 1995 which have not been communicated to the petitioner, and not based on the entire service records of the petitioner.

6. In the case of *S. Ramchandra Raju v. State of Orissa*, (supra) the Supreme Court held that the competent authority must make a total evaluation of the entire service record of the officer whose case is being considered for compulsory retirement and that the entire service record, more particularly, the latest should form the foundation for opinion to compulsorily retire the officer, and in the facts of the said case the Supreme Court found that the solitary adverse report for the year 3 987-88 was the foundation to compulsorily retire the appellant of that case from service and that the Review Committee had not considered the earlier reports or the subsequent reports; and held that the exercise of the power for compulsory retirement of the appellant was an arbitrary exercise of the power and, accordingly, set aside the order of compulsory retirement. Again, in the case of *Sukhdeo v. Commissioner, Amravati Division, Amravati and Anr.* (supra), the Supreme Court found that the controlling officer while writing the confidential report and character roll had not given prior and sufficient opportunity in writing informing the concerned officer of the deficiency noticed for improvement and had made the adverse remarks in the ACRs, and held that the power exercised by the controlling officer in making the adverse remarks was per se illegal and did not interfere with the judgment of the Tribunal in that case setting aside the order of compulsory retirement of the concerned officer based on the said adverse remarks. Following the said two decisions of the Apex Court in the case of *5. Ramchandra Raju v. State of Orissa* (supra), and *Sukhdeo v. Commissioner, Amravati Division* (supra), I am of the view that since the entire service records of the petitioner have not been considered by the Review Committee, rather the service records of the petitioner for the years 1984, 1985, 1986, 1987 and 1988 showing satisfactory performance by him have been ignored altogether and, on the other hand, adverse entries made by the Reporting Authority in the ACRs of the petitioner for the years 1991, 1992, 1993, 1994 and 1995 which have neither been communicated to the petitioner nor confirmed by the Reviewing Authority constituted the foundation for the opinion of the Review Committee for compulsory retirement of the petitioner pursuant to which the impugned order of

compulsory retirement was passed, the order of compulsory retirement of the petitioner was arbitrary and is liable to be quashed.

7. In the result, the order dated January 24, 1997 compulsorily retiring the petitioner is quashed, and the respondents are directed to reinstate the petitioner within a month from today and give him the consequential service benefits within three (3) months from today.

The writ petition is allowed. However, looking to the entire facts and circumstances of the case, I leave the parties to bear their own costs.