

(2009) 12 DEL CK 0104

In the Delhi High Court

Case No : Writ Petition (C.) No. 7287 of 2008

Narender Kumar Gupta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-12-2009

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 11, 14, 19

Constitution of India, 1950 — Article 226

Citation : (2009) 12 DEL CK 0104

Hon'ble Judges : Vipin Sanghi, J;Anil Kumar, J

Bench : Division Bench

Advocate : Sheshdutt Sharma, for the Appellant; Shravanth Shankar, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has filed the present writ petition impugning the order dated 11th August, 2008 passed in OA No. 2261 of 2007 Narender Kumar Gupta v. Union of India and Ors. dismissing the original application of the petitioner. The said original application had been filed to challenge the order dated 4th October, 2005 imposing the punishment of compulsory retirement from service on the petitioner and the order dated 20th July, 2007 and 13th September, 2006 dismissing his appeal and intimating the effective date of compulsory retirement of the petitioner and declining the request of the petitioner for reinstatement in the service with all the consequential benefits.

2. The petitioner had remained absent without leave with effect from 28th March, 2004 to 10th April, 2005 and again from 12th April, 2005 till the passing of the order dated 4th October, 2005 imposing the punishment of compulsory retirement on account of absence without prior permission of the competent authority. The punishment of compulsory retirement was imposed on the petitioner after a memo dated 18th February, 2005 under Rule 14 of CCS (CCA)

Rules, 1965 was issued to the petitioner at his residential address available in the records of the respondents which was received back undelivered. A notice under Rule 19 (ii) dated 21st March, 2005 was also published in the local newspapers, Dainik Jagran and Indian Express on 28th March, 2005.

3. It had also transpired that complaint dated 10th February, 2005 was received from Sh. Inder Singh Ruhill along with photocopy of arrest warrant issued against the petitioner and another complaint dated 19th April, 2005 was received from Shri Raj Singh regarding non-refund of loan amount of Rs. 1.00 lakh. The cheque given by the petitioner to these persons had also bounced.

4. The petitioner was proceeded ex parte in the enquiry proceedings. However, later on while challenging the order of punishment imposing the punishment of compulsory retirement, the petitioner had contended that he was sick and he had requested for leave but instead of considering his request for leave, he was issued major penalty chargesheet vide memo dated 17th February, 2005 which was never served on him and the Inquiry Officer did not follow the prescribed procedure while giving his report. It was also contended that the copy of the inquiry report was not served on him and, therefore, the order dated 4th October, 2005 compulsorily retiring him from service is wrong, illegal and liable to be set aside. The applicant also contended that he was transferred on 1st February, 2005. The transfer order was also sent on the wrong address and therefore, he could not receive it. The petitioner also contended that he was absent due to sickness and he had submitted the medical certificate.

5. The Tribunal while considering the petitioner's original application took into account adoption of all possible modes and methods by the respondents to put the petitioner to notice about the chargesheet and the letters sent to the petitioner to join duties at the addresses which were in the records maintained in the office of the respondents. The Tribunal has also considered the letters written to Deputy Commissioner of Police to know the whereabouts of the petitioner. This has not been established that the petitioner had given his changed address or intimated the new address to the respondents.

6. The petitioner had joined the duty for one day on 11th April, 2005 on which date a copy of the chargesheet dated 17th February, 2005 was handed over to him. During the inquiry, neither the petitioner appeared nor gave any statement nor joined the duties. In the circumstances, the petitioner cannot make a grievance that adequate opportunity was not given to him and the finding of the authorities that petitioner had been given adequate opportunities and he was proceeded ex parte after taking adequate steps to serve and intimate him, cannot be faulted.

7. The letters relied on by the petitioner allegedly intimating the authorities about the change of address were sent on 2nd February, 2006 and 3rd March, 2006, whereas the penalty order had been passed on 4th October, 2005. The petitioner has failed to show sufficient reason for his non-appearance during the

inquiry proceedings till the penalty order dated 4th October, 2005 of compulsorily retiring the petitioner was passed.

8. The Tribunal has also considered the letter dated 2nd February, 2006 on which the petitioner relied to contend that he had sent the medical certificate. However, perusal of the letter reveals that no medical certificate was submitted by the petitioner even at that stage. The respondents in order to verify the correctness of the allegations made by the petitioner regarding his illness had also written letter to Chief Medical Superintendent, UNHM Hospital, Kanpur and in response it was clarified by the concerned doctors that they had never suggested any medical leave to the petitioner. Though the petitioner had placed reliance on the medical prescriptions, but from the prescriptions it was inferred that they do not suggest any medical leave to the petitioner and in the circumstances the petitioner had not been able to make out any sufficient cause for his absence from the office. Taking into consideration the warrants of arrest issued against him and the fact that he had not paid the loan amount, it was inferred that the petitioner deliberately and without any justifiable reason absented from the duties in order to avoid legal proceedings initiated against him by his creditors and the inferences of the authorities concerned, therefore, cannot be faulted on any of the grounds raised by the petitioner.

9. The Tribunal had also declined to interfere with the punishment of compulsory retirement on the ground that the decision of the competent authority is not to be interfered specially regarding awarding the punishment in exercise of its power of judicial review unless the inferences of the competent authorities suffer from an apparent error or the penalty has been imposed in violation of the principle of natural justice. The order of the Tribunal relying on various precedents of the Supreme Court, therefore, does not suffer from any such illegality which shall entail interference by this Court in exercise of its power under Article 226 of the Constitution of India.

10. Learned Counsel for the petitioner has very emphatically argued that the penalty of compulsory retirement could be awarded only in consonance with Rule 56(j)(ii) of Fundamental Rules and not as a major penalty. Learned Counsel for the petitioner has relied on 2001 (1) SLR 171 Union of India v. Kishan Singh; 1998 (2) SLR 45 Kanhaiya Lal v. State of Rajasthan and Ors.; M.S. Bindra Vs. Union of India and Others, ; Pritam Singh Vs. Union of India (UOI) and Others, in support of his contention.

11. The precedents relied on by the learned Counsel for the petitioner are distinguishable as they deal with the compulsory retirement under Rule 56(j)(ii) of the Fundamental Rules which contemplates compulsory retirement from service in public interest in accordance with the procedure contemplated under the same rule. The precedents relied on by the petitioner do not contemplate that an employee cannot be imposed major penalty of compulsory retirement as contemplated under Rule 11(vii) of the CCS (CCA) Rules.

12. In *Union of India v. Kishan Singh* (supra), the authorities had failed to furnish any material to demonstrate that the employee was retired in public interest and consequently the order of compulsory retirement was held bad in law. In another precedent, 1996 (6) SLR 272 *Narender Kumar V. Parikh v. State of Gujarat*, the order of compulsory retirement was based on allegation of misconduct and it was held that it was punitive in nature and consequently Bombay Civil Services Rules, 1959, Rule 161(1)(aa)(i) could not be invoked. In *Kanhaiya Lal* (supra), it was held that the compulsory retirement was an order of punishment in reality and since the order of compulsory retirement was passed without following the principle of natural justice and fair play, therefore, the order was set aside. In contradistinction, the order of compulsory retirement has been passed against the petitioner after conducting an inquiry and the findings of the Inquiry Officer and the Disciplinary Authority cannot be faulted on the grounds raised by the petitioner. In *M.S. Bindra* (supra) also, it was held that the doubt about integrity could not be entertained on some surmises and on these grounds it was held that an employee could not be compulsorily retired allegedly in the public interest invoking Fundamental Rules, FR 56(j). In case of invoking Fundamental Rules 56(j), it was held that public interest is the primary consideration. In *Pritam Singh* (supra), it was held that an employee having an unblemished record of 31 years could not be compulsorily retired under Rule 56(j) of Fundamental Rules and the order of compulsorily retiring such an employee was held to be arbitrary and was set aside.

13. The precedents relied on by the petitioner are apparently distinguishable. The ratio of any decision must be understood in the background of the facts of that case. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It must be remembered that a decision is only an authority for what it actually decides. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. In *Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others*, , the Supreme had observed:

It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

14. The Supreme Court in *Bharat Petroleum Corporation Ltd and Anr. v. N.R. Vairamani and Anr.* AIR 2004 SC 778 had also held that a decision cannot be relied on without considering the factual situation. In the same judgment the Supreme Court also observed:

Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret

words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

In *Padmasundara Rao and Others Vs. State of Tamil Nadu and Others*, , the Supreme Court had held as under:

There is always a peril in treating the words of judgment as though they are words in a legislative enactment and it is to be remembered that judicial utterances are made in setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusion in two cases.

In *Rafiq v. State* 1980 SCC (Crl) 946 it was observed as under:

The ratio of one case cannot be mechanically applied to another case without having regard to the fact situation and circumstances obtaining in two cases.

15. In CCS (CCA) Rules 11(vii) contemplates compulsorily retirement as a major penalty and consequently pursuant to an inquiry conducted against the petitioner and the major penalty of compulsory retirement imposed on him, cannot be faulted on the ground that the petitioner could be compulsorily retired only under Rule 56(j)(ii) of Fundamental Rules. Compulsory retirement in public interest is dealt with in F.R. 56(j) whereas compulsory retirement by way of penalty is provided in Rule 11(vii) of the CCS (CCA) Rules. They are two different actions and cannot be mixed up as the considerations which go into taking these actions are entirely different. The plea of the petitioner is without any legal basis and the order compulsorily retiring the petitioner is not liable to be set aside on any of the grounds raised by the petitioner.

16. The writ petition, in the facts and circumstances, is without any legal basis and the order of the Tribunal dismissing the petition of the petitioner by order dated 11th August, 2008 in OA No. 2261 of 2007 *Narender Kumar Gupta v. Union of India and Ors.* does not require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition is therefore without any merit and it is dismissed. Parties are however, left to bear their own costs.