

(1973) 12 AP CK 0009
In the Andhra Pradesh High Court
Case No : Writ Petition 3001 of 1972

N.D. Swaminathan

APPELLANT

Vs

The Chief Engineer, South Central Railway, Railway Nilayam,
Secunderabad and others

RESPONDENT

Date of Decision : 24-12-1973

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1973) 12 AP CK 0009

Hon'ble Judges : Obul Reddy, J

Bench : Single Bench

Advocate : N. Raghavan, for the Appellant; A. Raguvir, for the Respondent

Judgement

Obul Reddy

1. The petitioner who is working as Permanent Why Inspector in the South Central Railway has filed this application under Art. 226 of the Constitution challenging the order of the Chief Engineer, South Central Railway dated 1-4-1972 compulsorily retiring the petitioner on the ground that he had completed 30 years of qualifying service on 5-4-1972 and therefore shall retire from service with effect from the afternoon of 4-7-1972 or from the date of the expiry of three months computed from the date of service of the impugned notice on him whichever is later. Mr. N. Raghvan, the learned counsel appearing for the petitioner, assailed the order of the Chief Engineer on several grounds. According to him, the petitioner had not put in 30 years of qualifying service and the respondent had not chosen to ask the Divisional Accounts Officer as to whether the petitioner had put in 10 years of qualifying service, and therefore the compulsory retirement of the petitioner was not done in public interest and the committee that reviewed the work of the petitioner was not competent under the rules and the order is not bona fide one as it has been passed at the instance of one Raja Rao, a Divisional Engineer, who later became Secretary to the General Manager, in the counter-affidavit filed on behalf of the respondents the

allegations made against Raja Rao have been denied. It is also the case of the respondents that it is only after reference to the account section that the period of qualifying service was determined and that the Review Committee which reviewed the work of the petitioner was competent to do so and that the members of the committee were not the persons who wrote the confidential of the petitioner and that Raja Rao had nothing to do with the compulsory retirement of the petitioner. In short, it is their case that when once the petitioner completes 30 years of service, it is for the competent authority to decide whether he should be continued in service having regard to his performance, ability and record of service and in this case the committee that reviewed the work came to the conclusion that the petitioner should be retired in the public interest as he had put in 30 years of service. The committee also found that his work was below average and it was not in the public interest to continue him any longer in service and therefore he must retire from service.

2. Rule 620 of the Railway rules provides for retirement of a railway servant after he puts in 30 years of qualifying service. It is open to the railway servant to notify his intention of retiring to the appropriate authority three months before the date on which he wishes to retire, and for the competent authority to require him to retire at any time after he has completed 30 years of qualifying service. The only requirement is that he should be given three months notice before the date on which he is required to retire or three months pay and allowances in lieu of such notice. In the present case the Railway administration gave him three months notice. "Qualifying service" is defined in rule 401. It is the number of completed six-monthly periods of service which is taken into account for determining the amount of pensionary benefits. If the total qualifying service contains fraction of a day, half a day or above will be rounded off to the next full day. Service in excess of a completed six-monthly period in the total qualifying service put in by the railway servant, his service in the ex-state railway has also to be counted for the purpose of computing qualifying service. Rule 422 (x) says:

Periods of service (including a period of apprenticeship in the case of serving railway servant which is treated as dies non in terms of explanation (iii) under para 407) treated as dies non

Rule 407 reads :-

Periods which are not treated as service :- Periods of employment in any of the following capacities do not constitute service for pensionary benefits and the expression "service" used in para 408-431 does not include any of these except as provided in paras 404-406 :-

- i) in a part-time capacity ;
- ii) at casual market rates ;
- iii) as an apprentice ;
- iv) in a non-pensionable post ;

- v) in a post paid from contingencies except as provided in para 409 (ii)
- vi) on daily rated basis ;
- vii) in a temporary capacity not followed without a break by confirmation in a permanent pensionable post.....;
- viii) on a contract basis except when followed by confirmation without break.

3. The petitioner was originally entertained as a temporary clerk on 30-10-1941. He worked in that capacity till 10-1-1948 when he was appointed as a Sub-Permanent Way Inspector, He continued for some years as a sub-permanent way inspector and then became a permanent way inspector in 1964. "Temporary service" as defined in Rule 410 means "continuous officiating service in a temporary or permanent pensionable establishment prior to the date of confirmation or the deemed date of confirmation in a permanent post." As the petitioner's appointment as a clerk does not come in any one of the categories mentioned in Rule 407, his temporary service as a clerk in a Terminable post has to be counted towards qualifying service. The petitioner was confirmed as a clerk with effect from, as would be seen from the register produced before me, 1-11-1942. The date of his first appointment as a probationary clerk is 30-10-1941. The service register relating to his first appointment as a clerk on 30-1-1942 bears not only his thumb mark but also his signature. That was attested by the Divisional Engineer, Western Division. The question is not when the petitioner signed in that register and affixed his thumb mark, but whether he put his thumb mark and also put his signature in approval of the entries made in the register. Therefore for the purpose of Computing the qualifying service the date of confirmation is not quite relevant. There is nothing in the rules which says that only the qualifying service of the petitioner after he was appointed as a sub-permanent way inspector should be taken into consideration and not the previous service put in by him as a clerk, whether on probation or later on a permanent basis. The definition of "qualifying service", takes in temporary service, which means continuous officiating service in a temporary or permanent pensionable post. The petitioner was also subsequently confirmed in the post of a clerk to which he was originally appointed on 30-10-1941. The respondents however took the date 5-4-1942 as the date from which he continuously officiated for the purpose of reckoning the period of qualifying service. The service register maintained by the railway administration establishes that the petitioner had put in 30 years of qualifying service by 3-4-1972 In this connection it was argued by Mr. Raghavan that the petitioner was only 49 years and add at the date when the impugned notice was served upon him and he is entitled to continue in service till he reached the age of superannuation at his 55th year. There is nothing in the rules which says that if a railway servant had put in 30 years of qualifying service and had not completed 55 years of age, he should not be retired from services. It is open to the competent authority either to retire a Railway servant if he had not put in 30 years of qualifying service when he reaches the age of superannuation or if he had put in 30 years of

qualifying service even if he had not reached the age of superannuation. I am unable to see how it could be said that the rights of the petitioner are affected when the rules provide for such retirement. The contention of the learned counsel is that the confidentials for 1970 were written in 1971 when the rules provide for writing the confidentials in the same year. No prejudice can be said to have been caused to the petitioner as it is common that the confidentials are not usually written in the same year and that some times even after a particular superior authority is transferred he is asked to give his opinion as to the work of the subordinates who had not worked under him. The question here is not whether the confidentials were written in 1970 or in 1971, but whether there is material for the review committee to come to the conclusion that the petitioner should be retired in public interest. Three members reviewed the work of the petitioner as may be seen from the file produced Nothing has been alleged against the members of the committee who reviewed the work of the petitioner and who classified the work of the petitioner as below average for the year ending 30-3-1970 and for the year ending 30-3-1971. These officers therefore observed : "Retention beyond 30 years of qualifying service is not recommended" That recommendation was ultimately accepted by the Chairman of the committee, the Chief Engineer. It is not as if the competent authority viz. the Chief Engineer had not applied his mind to the work and performance of the petitioner. There is nothing to suggest from the material placed before me that the retirement was done arbitrarily or for collateral reasons, or the members of the committee had any animosity or ill-will against the petitioner. As had been observed by Hegde, J, in Union of India V. J.N. Sinha" "there is no denying the fact that in all organisations and more so in Government organisations, there is good deal of dead word. It is public interest to chop off the same. Fundamental Rule 56 (J) holds the balance between the rights of the individual Government servant and the interests of public While a minimum service is guaranteed to the Government servant, the Government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest." In this connection it is however argued by Mr. Raghavan that the petitioner's record shows that the petitioner had passed certain examinations with distinction and that on account of his good work he was also posted as safety counsellor and that being the case it cannot be said that he belonged to the class of "dead wood" and that he should be retired in public interest. It is for the review committee or the competent authority to assess the worth and ability of the petitioner. The fact that prior to 1970 the petitioner was given a good chit does not automatically follow that he maintained the same standard of work subsequently also. His work was not assessed by any single member but by three superior officers, who are competent to do so and the Chief Engineer, the appointing authority, felt that "public interest" demanded that the petitioner should be retired from service.

4. Another contention sought to be raised by the learned counsel is that the notice given to the petitioner earlier under Rule 2046 was cancelled and the

impugned notice was given later on it would appear from the facts placed that rule 2046 is not the rule that could be invoked against the petitioner. The petitioner submitted his explanation to the notice under rule 2046 dated 12-11-1971. Later on the impugned notice was issued to the petitioner after he put in 30 years of qualifying service. It is not necessary that a notice should be issued to show cause as to why he should not be retired and his explanation taken. When it is discovered by the Chief Engineer that the procedure adopted by him was not correct, he cancelled that notice and then served the impugned notice upon the petitioner. The impugned notice accords with the requirements of rule 620. It is not open to this court to go into the question of sufficiency of the material when once this court comes to the conclusion that the impugned order was not made for collateral reasons but was bonafide made by the competent authority. It is not the function of this court to investigate and see whether the conclusion of the competent authority that the petitioner should be retired in public interest is correct or not. The order of compulsory retirement involves no penal consequences in as much as the person retired is entitled to the full benefits of pension. He has no fundamental right to be continued in employment after he had put in qualifying service of 30 years. That has been the view of the Supreme Court and this Court.: See: (a) Union of India v. J.N. Sinha 1971 S.C. 40

(b) Ramachandraiah v. L.A. Officer, Sagar, 1973 S.C. 701.

(c) E. S. Velayudhan v. I.T. Commissioner, 1968 A.P. 50.

For the reasons recorded the writ petition fails and is accordingly dismissed, but in the circumstances without costs. Advocates fee Rs. 100/-.