
(1979) 07 AHC CK 0073

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 426 of 1977

Paras Nath

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 10-07-1979

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1979) AWC 696

Hon'ble Judges : K.N. Singh, J;B.D. Agarwala, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.D. Agarwala, J.—By this petition under Article 226 of the Constitution, Petitioner has challenged the order of the Senior Personnel Officer (T) retiring the Petitioner compulsorily under Clause (k) of Rule 2046 of the Indian Railway Establishment Code.

2. The Petitioner was appointed Clerk on 22nd March 1945 in the Oudh Tirhut Railway Gorakhpur (North Eastern Railway), he was promoted as a Senior Clerk in the year 1954 and was confirmed on that post in 1956. Later he was promoted as Head Clerk in the year 1962 in which post he was confirmed in 1965. The Petitioner was compulsorily retired by the order of the Senior Personnel Officer (T) dated 11-1-77.

3. The order of compulsory retirement is sought to be assailed firstly on the ground that since departmental proceedings were already going on in respect of certain charges against the Petitioner, the impugned order compulsorily retiring him could not have been passed. It has been alleged by the Petitioner that departmental proceedings of the year 1971 were pending against him. in the counter affidavit filed by the Senior Personnel Officer (T) who has be arrayed as Respondent No. 2 to the writ petition, it has been averred that the chargesheet issued to the Petitioner in the year 1971 was not pursued and the chargesheet

issued in the year 1975 has been enquired into and closed as the charges were not substantiated and the Petitioner was also communicated of the order passed in this regard. There is no reason to disbelieve this averment made in the counter affidavit. Thus, no departmental proceedings were pending against the Petitioner when the order of compulsory retirement was passed. Accordingly, in view of this factual position the first ground of attack against the impugned order fails.

4. The counsel for the Petitioner then submitted that the impugned order compulsorily retiring the Petitioner was arbitrary and was not passed in public interest. It has been alleged by the Petitioner that no adverse entry was awarded against him except in the years 1971 and 1975. Upon a perusal of the averments made in the counter affidavit it appears clear that there were adverse reports against the Petitioner in several years and more particularly his work for the last three years was adversely commented upon by his superiors. The Petitioner had been given adverse entries for the years 1974, 1975 and 1976 for unsatisfactory work. These averments made in the counter affidavit have been attempted to be controverted, in rejoinder affidavit of the Petitioner. It has been averred that no adverse entry had been awarded to the Petitioner for the year 1974 and that the entry of the year 1975 was the basis of the departmental proceedings against him. As mentioned above, the chargesheet issued in the year 1975 had been enquired into and the charges were found not substantiated. This, however, could not mean that the adverse entry for the year 1975 would be of no consequence and could not be taken into account while considering the question of his compulsory retirement. But assuming that no adverse entry had been awarded to the Petitioner for the year 1974 even then on an overall consideration of the working of the Petitioner including the adverse entries awarded against him for the other years, certainly constituted relevant material to enable the authority concerned to come to the conclusion that the compulsory retirement of the Petitioner was in public interest. This Court in proceedings under Article 226 of the Constitution cannot act as an appellate court. The impugned order clearly states that the appointing authority was of the opinion that it was in public interest to compulsorily retire the Petitioner. In the light of the aforesaid facts, it cannot be said that no reasonable person could have on the relevant materials before him formed the requisite opinion that it was not in public interest to compulsorily retire the Petitioner. In *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, , the Supreme Court held that opinion of the appointing authority that a government servant be retired in public interest, cannot be challenged before courts and the order of compulsory retirement can be challenged only on the ground that either the requisite opinion was not formed or that the order was passed arbitrarily or on collateral grounds. Since that is not the case here, as, we are of the opinion that it is not open to this Court to interfere with the impugned order of compulsory retirement. As already found the impugned order was not capricious or arbitrary instead it is based upon a consideration of relevant material. In *the State of U.P. v. S.M. Banerji* 1974 ALJ 238, a Division Bench of

this Court has taken a similar view.

5. In the result, the petition fails and is accordingly dismissed but in the circumstances of the case there will be no order as to costs.