
(2008) 11 AHC CK 0130
In the Allahabad High Court
Case No : Writ Petition No. 1935(SB) of 2000

P.N.Shukla

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 05-11-2008

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2008) 11 AHC CK 0130

Hon'ble Judges : Pradeep Kant, J and Shabihul Hasnain, J

Final Decision : Disposed Of

Judgement

1. This writ petition by P. N. Shukla, challenges the orders passed by the Senior Divisional Safety Officer, N.E.R., Lucknow dated 211990, compulsory retiring the petitioner from service and also the order passed by the Central Administrative Tribunal dated 711993, by means of which, the original" application preferred by him was dismissed and also the order dated 152000, passed on the review petition by the Central ON Administrative Tribunal.

2. The petitioner was appointed on the post of Assistant Station Master on 1361958. He g was promoted to the post of Station Master in the year 1982. He was compulsory retired vide order dated 211990, having put in more I than 30 years of service he was treated to be in the field of mischief for being considered ? for compulsory retirement. The order of com pulsory retirement mentions that it is being passed under subclause (k) of Rule 2046 ofu Indian Railway Establishment Code.

3. Sri Abdul Moin, learned counsel for the petitioner assailing the aforesaid order submitted that the petitioner since was governed by the pension rules, he could not have been retired compulsorily, as no such rule existed at that time. The order of compulsory retirement shows that the petitioner was retired under Clause(k) of Rule 2046 of the Indian Railway Establishment Code.

4. Rule 2046 (k) says as under:

"Notwithstanding anything contained in clause (h) the appointing authority shall, if it is of the opinion that it is in the public interest to do so, have the absolute right to retire a railway servant in Class III service or post who is not governed by any pension rule after he has completed thirty years" service by giving him notice of "not less than three months in writing or three months" pay and allowances in lieu of such notice."

5. Subclause (I) says that a railway servant in Class III service or post who is not governed by any pension rule, may by giving notice of not less than three months in writing to the appointing authority, retire from service after he has completed thirty years" service.

6. Subclause (h) of Rule 2046 deals with the compulsory retirement, but that clause would be applicable to the railway servant, who does not stand exempted by virtue of subclause (k).

7. Since counter affidavit was not filed, despite repeated opportunity being given to the Railways, this Court vide order dated 2507, while noting the argument that on the date of passing of the order of compulsory retirement of the petitioner, the unamended Rule 2046 was in force, which did not permit a Class III employee, who was holding a pensionable post, to be retired compulsorily, and the amendment in the said provision came into force by Paras 1802 and 1803 of Indian Railways Establishment Manual, by virtue of an amendment, which appears to have taken place after the passing of the order of compulsory retirement, gave last opportunity to Sri Manik Sinha, appearing for the Railways to file a counter affidavit. Till date, counter affidavit has not been filed. In the order dated 2507, it was also directed that the respondents shall show cause that in case the Rule, under which the petitioner could have been retired compulsorily, was not in force at the relevant time, then in case of success of the writ petition, the amount of salary and other monetary benefits to which the petitioner would be entitled, be not directed to be recovered from the officers, who are responsible for making such an order. No cause has also been shown in pursuance of the said order.

8. We have thus, proceeded to hear the arguments on the basis of existing material on record and the rules, which have been put before us and has also been filed by the learned counsel for the petitioner.

9. As already observed, subclause (k) of Rule 2046 of the Indian Railway Establishment Code did not permit at the relevant time to retire a Class III railway servant compulsorily who was holding a pensionable post or was governed by any pension rules. The petitioner was a Class III employee, is not in dispute. He was governed by the pension rule, is also not in dispute. Thus, unless there was any other rule, which could permit to retire the petitioner compulsorily, the order of compulsory retirement cannot be sustained.

10. It has also been brought on record by the petitioner that the amendment in Rule 2046(k) was made by introducing a new Rule 1803 vide amendments dated

1371992 and 1251998 and likewise new Rule 1802 came into force in place of Rule 2046(h)(i)(j) through amendments of Railway Board dated 1451998 and 771999. These rules do not indicate that they have been brought in force with retrospective effect nor they can be made applicable, even otherwise, to matters prior to the enforcement of these rules.

11. The petitioner thus, on the date of compulsory retirement was retired under the unamended Rule 2046(k), which did not permit him to retire compulsory. The subsequent amendment in the rule is of no avail to the Railways for supporting the order of compulsory retirement.

12. The Central Administrative Tribunal did not enter into the question about the applicability of the rule regarding compulsory retirement, but was swayed by the fact that the petitioner was punished 30 times and several adverse entries were awarded to him during his service and, therefore, even if, he had earned "accident free" award, that would not make the order of compulsory retirement bad in law.

13. The, question of scrutinizing the service record would have only arisen in case there was power with the Railways to retire the petitioner compulsorily. If the Railways, unfortunately lack the said power, the service record had no relevance in determining the dispute. Of course, if the petitioner was not an employee fit for being retained in service in the absence of provisions of compulsory retirement, the Railways could have adopted any other measure for terminating his service in accordance with law, but could not have taken any such action, for which it had no authority.

14. It will be apt to mention here that the Central Administrative Tribunal initially being, prima facie, convinced about the aforesaid plea of lack of authority or jurisdiction of the Railways in passing the order of compulsory retirement in view of unamended Rule 2046 (k), passed an interim order on 241990 mentioning the said plea and, therefore, stayed the operation of the order of compulsory retirement, but later on when the matter was heard on merits, the said plea was totally left.

15. We thus, hold that the order of compulsory retirement having been passed without any authority and without there being any rule or provision for passing such an order, the order of compulsory retirement dated 211990 is thus liable to be set aside, which is hereby quashed. Consequent to the order of compulsory retirement being quashed, the petitioner would be deemed to be in continuous service till he attained the prescribed age of superannuation.

16. As a consequence to the quashing of the aforesaid order, the petitioner will be entitled to be in continuous service till he reached the age of superannuation. He will also be entitled to all service benefits like arrears of salary, promotions, if at all he is entitled to such promotions and also the post retiral dues, to be settled accordingly. He would also be entitled to get the aforesaid period counted for purpose of determining of pension and other post retiral dues.

17. We, accordingly direct that the petitioner shall be paid all service benefits treating him to be in continuous service, till he reached the age of superannuation and he shall also be paid arrears of salary with all consequential benefits, as aforesaid. The arrears of salary with all consequential benefits of service, shall be made available to the petitioner within a maximum period of four months from the date of receipt of a certified copy of this order.

18. Before parting, we would also like to observe that since the Railways did not file any counter affidavit, despite repeated opportunity being given and the matter had to be adjourned for the reason time and again and despite issuance of notice as to why the payment which may be directed to be paid to the petitioner, in case of his success in writ petition, be not recovered from the erring officers, and no cause having been shown for not ordering so, we further provide that the payment aforesaid shall be made within the time prescribed above by the respondents, but it will be open to Railways to recover such amount from the erring officer(s), who had passed the aforesaid order and also the officers/officials, who were instrumental in passing of such an order.

19. The writ petition is allowed with costs, which we assess as Rs. 10, 000. The cost shall be deposited by the Railways within one month with the registry of this Court, which shall be deposited in the accounts of the Mediation Centre.