

(1970) 03 DEL CK 0019

In the Delhi High Court

Case No : Civil Writ Petition No. 568 of 1967

P.P. Yajurvedi

APPELLANT

Vs

C.L. Handa and Others

RESPONDENT

Date of Decision : 26-03-1970

Acts Referred:

Citation : AIR 1970 Delhi 211

Hon'ble Judges : S.I. Rangarajan, J

Bench : Single Bench

Advocate : G.D. Gupta, for the Appellant; Brijbans Kishore and J.P. Gupta, for the Respondent

Judgement

1. The short question on which the present writ petition can be disposed of (no other point taken by the petitioner arises for consideration in the view I take) is whether the petitioner, who was working as Extra Assistant Director in the Central Water and Power Commission, and completed 55 years of age on 18-4-67, was validly retired by the issue of the impugned notice (Annexure-I), dated 17-10-66 which reads as under:-

"No. 14/198/62-Admn. V"

Government of India

Central Water & Power Commission,

(Water Wing)

New Delhi, the 17th October, 66 Asvina 1888.

NOTICE

WHEREAS the Chairman, C.W. & P.C., is the opinion that it is in the public interest so to do.

Now, Therefore, in exercise of the powers conferred by Clause "J", of rule 56 of

the Fundamental Rules, the Chairman, C. W. & P.C. hereby gives notice to Shri P.P. Yajurvedi, a permanent Supervisor and at present officiating as an E.A.D. in the Central Water & Power Commission (Water Wing), that he shall retire from service with effect from the afternoon of the 18th April, 1967, the date on which he will attain the age of 55 years.

Sd/-

G. L. Handa,

Chairman

Central Water & Power Commission."

2. He was not given any show cause notice prior to the issue of Annexure I. The contention on behalf of the petitioner is that the rules of natural justice were violated since it was admittedly passed without giving the petitioner any opportunity to show cause against the same.

3. A similar question arose for decision before a Division Bench of this High Court (consisting of Hardayal Hardy and T.V.R. Tatachari, JJ.) in J. N. Sinha v. Union of India through Secy. Minister of Education and Youth Services, New Delhi reported in 1970 Ser Lr 213 . Tatachari, J., who spoke for the Bench observed:

"9. Shri. B. N. Kirpal, learned counsel for the petitioner, contended firstly that the impugned order was vocative of the principles of nature justice. He argued that the petitioner to whom Fundamental Rule 56 (j) applied, had a right to be in the civil employ till he attained the age of 58 years that the impugned order under Fundamental R. 56(J) defeated the said right, and has thus interfered with the civil right of the petitioner and that the said order which had civil consequences was vocative of principles of natural justice in that it was passed without giving a reasonable opportunity to the petitioner to show cause against the same. This contention appears to us to be well founded. By virtue of Rule 4(d) of the 1950 rules, the petitioner had the right to continue in the Survey of India until the age of superannuation from civil employment, and by virtue of the provision in Fundamental Rule 56(i), he as a Military Officer in Civil Department, would cease to be in civil employ only on the date he attained the age of 58 years. In other words, he had right to continue in the civil employ till he attains the age of 58 years. By the order under Fundamental Rule 56 (j) retiring him compulsorily on an earlier date, he was deprived of the said right. In fact, rule 56 (j) itself is a provision which has civil consequences. By virtue of the provision in the Fundamental Rule 56(a) and 56(i), the officers who fall within the said provisions have a right to continue in civil service till they attain the age of 58 years. If then, the order under Fundamental Rule 56(j) is passed, it has necessarily the effect of affecting the said civil right of the officer concerned and has, thus, civil consequences. As laid down by the Supreme Court in State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, and A.K. Kraipak and Others Vs. Union of India (UOI) and Others, eve administrative orders which involve civil consequences

have to be passed consistently with the rules of natural justice. That being so, even if an order passed under Rule 56(j) has to be regarded as an administrative order, it has to be passed in accordance with the principles of natural justice. The impugned order was admittedly passed without giving any opportunity to the petitioner to show cause against the same. It was, Therefore, violative of principles of natural justice and is liable to be quashed on that ground."

4. I am bound by the said decision of a Division Bench of the Court.

5. The said decision has been followed in this Court in two other cases: by Rajinder Sachar, J., in *G. P. Srivastava v. General Manager, Government of India Press, New Delhi*, Civil Writ Petn. No. 204 of 1970, D/- 3-3-1970 (Delhi); and Shankar, J., in Civil Writ Petn. No. 1063 of 1967, (Delhi) *H. G. Vidhani v. Union of India*, D/- 25-3-1970.

6. Mr. J. P. Gupta, who appeared for Mr. Brij Bans Kishore, counsel for the respondent referred to the difficulty which the Government faced in the matter of giving a show cause notice in either event, of either holding the person concerned fit or unfit after an enquiry. If found fit, Mr. Gupta pointed out, he would have to be retained; but if he is unfit, it would amount to a stigma and Article 311 of the Constitution of India may be attracted. I can, however, visualise no such difficulty. In- the former event, public interest would not require his compulsory retirement; in the latter event, even a full-fledged enquiry as contemplated under Article 311 may not be necessary for the competent authority has only to act fairly and with due regard to the minimum requirement of rules of nature justice. If the Government is obliged to conform to principles of natural justice in the matter of dealing with its own servants, it cannot seek to avoid conforming to those principles on any supposed ground of inconvenience.

7. On the other hand, Mr. G. D. Gupta appearing on behalf of the petitioner, has invited my attention to certain dicta, especially of the Supreme Court, in varying contexts, about the need for conforming with the rules of natural justice. In *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, , Shah, J., speaking for the Supreme Court observed that the State has undoubtedly authority to compulsorily retire a public servant who is superannuated. But when that person disputes the claim he must be informed of the case of the State and the evidence in support thereof and he must have a fair opportunity of meeting that case before a decision adverse to him is taken. This followed, it was pointed out, from the duty to act judicially, the duty to act judicially itself arising from the very nature of the function of the authority.

8. In *Rohtas Industries Vs. S.D. Agarwal and Others*, , Hegde, J., pointed out that if, in any case, the formation of the requisite opinion was subjective, even then the existence of circumstances relevant to the formation of the opinion, as *sine qua non* for the said action must be demonstrable; if their existence is questioned, it has to be proved at least *prima facie*. Mere assertions would not

be sufficient because those assertions would afford no real proof of what those circumstances really are; hence, the need to refer specifically to the circumstances which can help reach certain definite conclusion.

9. In *M. Gopala Krishna Naidu Vs. State of Madhya Pradesh*, the Supreme Court was concerned with an order to be passed under Fundamental Rules 54 at the termination of a departmental enquiry against a Government servant. Since, at this stage, it was necessary to enquire whether the employee was fully exonerated and whether the suspension of that employee was fully justified or not, it became imperative to give an opportunity to the person affected to show cause notice (sic) against the kind of action proposed to be taken under Fundamental Rule 54. It was pointed out that since the very nature of the function implied a duty to act judicially, an opportunity to show cause against the proposed action was necessary and that an order passed without giving such opportunity violated the principles of natural justice and have to be struck down.

10. In *R.L. Butail Vs. The Union of India and Others*, , a Division Bench of this Court (consisting of S. K. Kapur and S. N. Andley, JJ.) while dealing with an order of compulsory retirement observed as follows:-

"The next argument of the petitioner is that even if Clause (j) of Fundamental Rule 56 is not ultra vires, the compulsory retirement of the petitioner in the circumstances of this case was mala fide and, Therefore, amounted to a punishment within the meaning of Clause (2) of Article 311(2) of the Constitution. So far as this contention is concerned, the respondents, in their counter affidavit, took the stand that it is for the appropriate authority to decide whether or not it was in the public interest to compulsorily retire a Government servant; that its opinion on the point cannot be challenged before a Court of law and since satisfaction had to be merely subjective, it was not necessary for the Government to specify the grounds on which the satisfaction was founded and that the matter of satisfaction was not justiciable. During the course of arguments, however, the learned Solicitor General did not rightly urge this extreme Contention. All that he argued was that Clause (j) of Fundamental Rule 56 provides a subjective test and an order of compulsory retirement cannot be challenged unless it is shown to be mala fide or made without application of mind. This stand is in accord with the view which had been expressed by the Supreme Court in the case of *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, , where it has been held that if it is shown that the circumstances did not exist or that they were such that it was impossible for any one to form an opinion therefore suggestive of the aforesaid things, the opinion was challengeable on the ground of non-application of mind or perversity or on the ground that it was formed on collateral grounds and was beyond the scope of the statute. It has also been held that though an order passed in exercise of power under a statute cannot be challenged on the ground of propriety or sufficiency, it is liable to be quashed on the ground of mala fides, dishonesty or corrupt purpose or on grounds which are such that no one can

reasonably arrive at the opinion or satisfaction requisite under the legislation."

11. My attention has also been drawn to a very recent decision of the Supreme Court in *The Board of High School and Inter-mediate Education, U.P. and Others Vs. Kumari Chitra Srivastava and Others*, . The context in which the following observations concerning the need to conform to the principles of natural justice was somewhat different, but they are instructive. Sikri, J., speaking for the Supreme Court observed as follows:-

"The principles of natural justice are to some minds burdensome but this price - a small price indeed - has to be paid if we desire a society governed by the rule of law."

12. In these circumstances having regard to the above principles which have been authoritatively settled, the impugned order of compulsory retirement, admittedly passed without giving any opportunity to the petitioner to show cause against the action proposed to be taken against him, was vocative of principles of natural justice and hence is liable to be quashed. The writ petition is accordingly accepted with costs and the impugned order is quashed. Counsel's fee. Rs. 150/-.

13. Petition accepted.