

(1979) 07 DEL CK 0008

In the Delhi High Court

Case No : Civil Writ Appeal No. 735 of 1976

Prafulla Kumar Samal

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 30-07-1979

Acts Referred:

Citation : (1979) 16 DLT 243

Hon'ble Judges : H.L. Anand, J

Bench : Single Bench

Advocate : G.D. Gupta and K.N. Kataria, for the Appellant;

Judgement

H.L. Anand, J.

(1) This petition under Article 226 of the Constitution of India by a former Joint Secretary to the Union Government assails the validity of the Presidential order compulsorily retiring the petitioner from service under Rule 56 (i) of the Fundamental Rules, on the eve of his attaining the age of 57 years, on the ground that the President was of opinion that it was in public interest to do so, and raises an interesting question if premature retirement could be justified merely on the ground that, on account of notoriety or unsavory reputation that a public servant may have acquired on account of adverse publicity of certain charges, forming subject matter of departmental or criminal proceedings, which otherwise could not be taken into account, he was not acceptable to any Ministry or Department of the Central Government and it was, Therefore, not possible to utilise his services in any effective and meaningful manner.

(2) The following resume of the service career of the petitioner provides the necessary backdrop. The petitioner (b.: 2.11.1918) joined the Central Government by direct appointment to a Class I post in 1942 and rose to be the Joint Secretary to the Union Government, which is by itself considered meritorious for a civil servant, who was never a member of the coveted Indian Civil Service. During his long service career spanning more than 30 years, the

petitioner admittedly held important and responsible assignments, like Regional Director of Food, Coordination and Sales Manager of the Marketing Division of the Indian Oil Corporation and Joint Secretary to Government in the Ministries of Information and Broadcasting and Ministry of Foreign Trade. Between the years 1943 and 1972, the petitioner not only successfully completed the various assignments that he was called upon to handle from time to time and his work and conduct were adjudged satisfactory, but was also a frequent recipient of commendations and kudos from his superior officers, including a member of Central Ministers. A perusal of his character roll, which was placed before the Court, indicates that he was very highly spoken of, both with reference to his work and conduct, at almost all levels. In 1953, the Chairman of the Public Accounts Committee described him as a tower of strength to the Committee and having shown "outstanding ability and insight" in dealing with problems. His contribution to the deliberations of the committee was said to be "characterised by remarkable originality of approach born out of an analytical mind, quick grasp and clear thinking and a sound and balanced judgment". His drafting was described as being "vigorous, lucid and comprehensive" and a recommendation was made to the then Hon"ble Minister of Communications that the petitioner was "a positive acquisition to our Central Administrative Service and is fully competent to shoulder much higher responsibilities." In the same year, the then Minister of Communications was impressed by the petitioner "as efficient, hard working and much above the average" and as having a promise "to be an officer of great capacity, ready to undertake any responsibility demanding hard work and quick judgment". In 1963, his Minister described him as having "remarkable tact, enterprise and resourcefulness" and of being an outstanding officer in the Government of India. The only dissenting note during the period in the long chain of compliments was a near condemnation of the petitioner in 1966 by the then Chairman of the Indian Oil Corporation. He was, however, a recipient of high praise from late Humayun Kabir, the the then Minister in the Ministry of Petroleum and Chemicals as also from O. V. Alegasan, who succeeded him. While late Humayun Kabir commended the work of the petitioner as Coordination and Sales Manager of the Marketing Division of the Indian Oil Corporation in Laudatory term Mr. Alegasan went a step further and made a severe indictment of the former Chairman of the Indian Oil Corporation and attributed his condemnation of the work of the petitioner as being the result of alias probably attributable to the fact that before he relinquished, the former Chairman "was completely unhinged and everybody felt that his behavior was unworthy of a person of his position and seniority and of the traditions of the civil service". It is for this reason that part of the adverse remarks made by the former Chairman was eventually ordered to be expunged. In 1967, the petitioner received high praise for his work and conduct from the then Minister of Information and Broadcasting followed by a similar assessment by his successor, Shri K.K. Shah, in 1969. It is unnecessary to multiply references to the assessment of the work and conduct of the petitioner during this period because after he attained the age of 50 years, in 1968, the case for his retention in service beyond the age of 50

years was reviewed by the Senior Selection Board in January 1970, quite interestingly enough after expiry of almost two years from the date he attained the age of 50 years, and his retention in service was recommended. In the year 1970, the then Minister of Foreign Trade described the petitioner as being "of exceptional ability and absolute integrity". He acknowledged that the petitioner "has been a source of strength to the Ministry and has the rare capacity of imparting a sense of point, purpose and direction to his charge." The petitioner, according to the Minister, will make an ideal Additional Secretary as well as Chairman of any major public sector undertaking. The commendations were repeated in some what similar terms in January 1973 in respect of the period ending December 1971.

(3) It, however, appears that in the year 1972, the petitioner fell on evil days and his conduct became subject matter of two vigilance cases. In the first case, the allegations pertain to contravention of certain conduct rules in the matter of financial transactions and the abuse of his official position in the matter of issue of an import license to a firm. The Central Vigilance Commission advised initiation of Departmental proceedings and a minor penalty was eventually recommended but the proceedings were dropped as meanwhile the petitioner had been compulsorily retired. In the second case, the petitioner was charged with an offence of conspiracy to obtain compensation for his land from Government to which he was not entitled. The Central Bureau of Investigation filed a charge sheet against him in a criminal Court in Orissa. The Court discharged the petitioner and the discharge has since been upheld by the High Court and the Supreme Court judgment is reported as Union of India (UOI) Vs. Prafulla Kumar Samal and Another, . Proceedings were also initiated against the petitioner for being in possession of assets incommensurable with his financial position but these were dropped for want of any material. An unfortunate aspect of these charges and the proceedings has been that on account of premature adverse publicity of these in the press, either because the petitioner held sensitive positions or because some one was interested in such adverse publicity, word had gone round the Central Ministries and Departments that the petitioner was not a desirable person so as to be entrusted with any position of power or authority. That the adverse publicity and prejudicially affected the interests and future of the petitioner is fully reflected not only in some of the subsequent remarks in his character role but also because the Ministry of Social Welfare, in which he was then working and was put on a supernumerary post, was keen to get rid of him and some of the Ministries and Departments of Central Government, which were sounded for a possible venue of posting the petitioner, had shown unwillingness to take in the petitioner.

(4) It was under the shadow of these circumstances that in 1973, the Additional Secretary, Department of Social Welfare, under whom the petitioner had worked only for a few months, observed that the petitioner "seems to have got mauled in his last job and has just recovered from the effects". the report for the period ending 31st December, 1973, described the petitioner as having "intelligence and

knowledge of the Secretariat working" but with a rider that "(This may be attributable to the cloud that overhangs him) his attitude has been casual and performance below the level of his expected capacity". The then Secretary to Government observed that "the Cabinet Secretary is aware of certain charges against the integrity". This was endorsed by the then Minister of Education, Social Welfare and Cultural in April, 1975, with the observation that he was willing "to take the charitable view that the quality of his work would have been much better if he had not been under the emotional strain of defending against charges regarding the integrity." This assessment was reiterated in respect of the period ending December, 1974 and both the assessments are of April, 1975. Meanwhile, the petitioner attained the age of 55 years on November 2, 1973.

(5) The petitioner had been holding a supernumerary post of Joint Secretary in the Department of Social Welfare since September, 1972, pending his posting elsewhere. Between February 1973 and November, 1973, his name was proposed for posting in a number of Ministries and Departments but he was "not picked up by any one of the Ministries/Departments". In November, 1973, the Ministry of Finance are reported to have observed that "the delay in finding a berth for Shri Samal was becoming actually embarrassing and any further delay would expose the Government to legitimate criticism." It was, Therefore, desired that "efforts may be redoubled to place him in a regular vacancy." The petitioner's name was approved by the Senior Selection Board/Appointments Committee of the Cabinet for appointment as Joint Secretary under the Department of Community Development and Cooperation, but that Department was unwilling to accept the petitioner. In May 1974, the Senior Selection Board considered the question of finding a suitable posting for the petitioner and the Board is reported to have "desired that since no Department was willing to accept Shri Samal, it might be examined if he could be compulsorily retired from service". This is how the consideration of the question of the compulsory retirement of the petitioner was initiated in June, 1974. The process of consideration culminated only in July 1975, when the then Prime Minister approved the proposal for the compulsory retirement of the petitioner.

(6) In the course of the affidavit filed on behalf of the Union, by way of return to the Rule, it was contended, by way of defense to the charge that the impugned order was punitive in that it was based on a consideration of the departmental or the criminal proceedings, that neither the departmental nor the criminal proceedings were taken into account in the determination of the question if it was in public interest to order the premature retirement of the petitioner. The affidavit sought to justify the premature retirement on the basis of overall assessment of the work and performance of the petitioner in the context of "the adverse and indifferent reports" earned by him during certain years, a contention which could not possibly be sustained with reference to the records, and at the hearing of the petition, Therefore, counsel for the Union frankly conceded, and this is consistent with the process of consideration of the consistent with the process of consideration of the question that the decision with regard to

premature retirement was solely based on the fact that because of involvement in departmental and criminal proceedings, the petitioner had come to acquire such unsavory reputation that he was not acceptable to any Ministry or Department of the Central Government with the result that it had not been possible for Government to find him any regular posting and it was not feasible to keep him indefinitely on a supernumerary post because even the Department of Social Welfare, where he was working, had sought his transfer from that Department. According to official records, the premature retirement of the petitioner was not and could not have been justified with reference to his service record and the premature retirement was the only way out of a difficult situation in which Government found itself in that on account of the petitioners reputation, arising out of the pendency of these proceedings. Government was unable to find any place of posting for him. At one stage in the course of consideration, Government was warned that being primarily based on the pending proceedings, the proposed order of premature retirement would suffer from serious legal infirmity and may be successfully challenged in a court of law. A proposal was also made to defer consideration of the question until after the conclusion of the proceedings. It was also pointed out that the premature retirement of the petitioner in the circumstances would be perilously close to the case of one Chatterjee in which the officer had successfully challenged a similar order in the Calcutta High Court and the judgment of the learned Single Judge of the High Court had been upheld even in appeal and Government had been advised not to take the matter any further. The matter was, however, considered at considerable length and at various levels, and, even though the Government was not unaware of the legal infirmity, the decision to compulsorily retire the petitioner was sought to be distinguished from the case of Chatterjee on the ground that "because of the notoriety that the officer had acquired, he is no longer in a position to function effectively in any senior position to which he is entitled and it is considered that it would not be in public interest to let him continue in service." It may be useful to reproduce the comments of the then Secretary to Government and the Minister of State who dealt with the matter :-

"9. In the instant case, the recommendation made by S. S. B. at its meeting on 3.3.1975 that Shri Samal be retired under FR. 50 (j) was based on the fact that it had not been found possible to fix the officer elsewhere. This fact makes the case dangerously like the case of B. N. Chatterjee in which the officer successfully challenged the validity of the order of his compulsory retirement before the Single Judge and the Division Bench of the Calcutta High Court. In this contention, the details of the case may be seen at p. 27-30 ante, and para 3 of Law Ministry's note on p. 33 ante. In ordering the compulsory retirement of Shri Samal, we have, therefore, to take the risk of the order being challenged in a court of law. The line of reasoning adopted by the SSB in recommending the compulsory retirement of the officer was that Shri Samal's general reputation was unsavory and it had received general credence in all the Ministries/ Departments, for as many as twelve of them had refused to accept him, as it was

not feasible to employ him on a useful job of work, because of his had reputation, it would be in the public interest to retire him under Fr 56 (j). In a way, Therefore, the Ssb did not recommend Shri Samal's compulsory retirement solely on the ground that it had not been found possible to fix him elsewhere.

10. If Ms (DP & AR) is inclined to accept the SSB's recommendation that Shri Samal be compulsorily retired after giving him 3 month's pay in lieu of 3 months' notice, such acceptance should be in full awareness of the fact that the order will in all probability be challenged by the aggrieved officer as mala fide. sd/- B. P. Bagchi Secretary 24.4.75.

"I have gone through this case very carefully. It is clear that Shri Samal has acquired unsavory reputation and Therefore it has not been possible to give him a regular posting since September, 1972. He is holding a supernumerary post since then. The Department of Social Welfare where he is posted at present is also not prepared to keep him any longer. Since he has thus outlived his utility in public service it will be in the public interest to retire him under F. R. 56(j). I agree that he may be given three months pay in lieu of notice. sd/- Om Mehta 8.7.75.

(7) What then was the material which was or could be considered by Government in determining the question as to whether it was in public interest to retire the petitioner? How far could the material justify the impugned order? These are the questions that call for decision. Government did not, as indeed it could not, take into account the charges, forming subject matter either of the departmental or of criminal proceedings. If that be so, the factum of the pendency of these proceedings would also be beyond the area of consideration. This exclusion is based on the principle that any decision which takes into account the charges or their pendency would be punitive in its nature and would be vitiated because the decision would be tantamount to a condemnation of the officer even while the matter was under consideration and may culminate in his exoneration. The only material before Government was their inability to find a regular posting for the petitioner because the adverse publicity to these charges had created a widespread impression in the Ministries and Departments, with regard to the integrity of the petitioner, which was prejudicial to him. If neither the charges nor the factum of pendency of proceedings in relation to them would be within the area of consideration, could the reputation of the petitioner arising out of publicity of these charges or of the proceedings be any different. There is perhaps a distinction between the two but without any difference. If it would be punitive to base compulsory retirement on any charges or the pendency of proceedings, it would perhaps be worse if it is based on a reputation born of adverse publicity of such charges or proceedings. Such reputation could not constitute legitimate material as its very basis is yet to be tested and may be wholly illusory and non-existent. The Supreme Court decision in the case arising out of criminal prosecution has completely exonerated the petitioner and demonstrated how a mountain was made out of a mole hill and it would be

unfortunate if in the meanwhile he was condemned merely because for some reason wide spread publicity was given to the charges. The inability of Government to find a proper posting for the petitioner, who had completely acquitted himself during a long course of service, is a clear confession of the failure of Government to protect a civil servant, who is a victim of adverse publicity of pending enquiry and criminal proceedings.

(8) True, Government decision to retire the petitioner was arrived at after deep consideration of the different aspects of the question. A number of attempts were made to provide a regular berth for the petitioner in different Ministries and Departments of the Central Government and the decision was found to be the only way out of a difficult situation in which an otherwise competent and efficient civil servant could not be provided with proper work and it was becoming increasingly embarrassing for it to keep him on a supernumerary post in a Department, which was also desirous of getting rid of him. Government was, however, not unaware that after the adverse publicity of the charges and the proceedings, the petitioner had become controversial and if that would have justified compulsory retirement, he would have been retired then. If it was not in a public interest to keep the petitioner in service where was the occasion for Government to sound half a dozen Ministries and Departments to provide a regular posting for the petitioner and if there was nothing wrong with the petitioner, even though he had become subject matter of controversy because of pending proceedings, how could the Government countenance any reluctance or refusal on the part of a Ministry or Department to provide a berth to the petitioner. A Ministry or a Department would certainly not be justified in avoiding an officer merely because he had become controversial on account of proceedings, which were still pending, and which may ultimately result in complete exoneration of an officer. If that be so, how could unjustified refusal of Ministries and Departments possibly justify the compulsory retirement of a civil servant. If inspired by the controversy around the petitioner. Government went about looking for a posting for the petitioner because the matter was subjudice, it was for Government to protect the petitioner from the effect of adverse publicity. There is, Therefore, no escape from true conclusion that the impugned order had its genesis in the charges and the pendency of proceedings and was wholly unconnected with the suitability and integrity of the petitioner.

(9) There is, however, no justification for the further relief of retrospective promotion to the post of Additional Secretary as the petitioner could not be said to be entitled to promotion as of right and also because the petitioner has since attained the age of superannuation. This claim also ignores the fact that the post of Additional Secretary did not form part of the cadre of the Central Secretariat Service to which the petitioner belonged. It is doubtful if in the circumstances the petitioner was even entitled to be considered for the post.

(10) In the result, the petition succeeds and the impugned order of compulsory retirement of the petitioner is quashed. The petitioner has since crossed the age

of superannuation and would, Therefore, be deemed to have retired on attaining that age. He would be entitled to the consequential benefits accordingly. I would, Therefore, make the rule absolute. The petitioner would also have his costs. Counsel's fee Rs. 500.00 .