
(1990) 01 MAD CK 0078
In the Madras High Court

R. Narasimhan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-01-1990

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1990) 2 MLJ 55

Hon'ble Judges : S. Nainar Sundram, J;S. Nainar Sundaram, J

Bench : Division Bench

Judgement

S. Nainar Sundram, J.—The appellant was the petitioner in W.P. No. 4079 of 1982. The respondents herein were the respondents in the Writ Petition. We shall refer to the parties as per the nomenclature assigned to them in the Writ Petition. The petitioner, who was working as a Travelling Ticket Examiner, at the relevant point of time was visited with an order of compulsory retirement from service under paragraph 2(2) of Section I of Railway Ministry's Letter dated E-48 CPC/208 dated 8.7.1950 and the said order dated 14.5.1982 shall hereinafter be referred to as the impugned order. The body of the impugned order reads as follows:

Whereas the Sr. DCS is of the opinion that it is in the public interest to do so.

Now, therefore, in exercise of the powers conferred by Para 2 (2) of Section 1 of Railway Ministry's letter No. E.47 CPC/208 dated 8.7.1950, the Sr. DCS hereby retires Shri R. Narasimhan S. No. 13205, T.T.E., with immediate effect, he having already completed 30 years of service qualifying for pension. Shri R. Narasimhan, shall be paid a sum equivalent to the amount of his pay plus allowances for a period of three months calculated at the same rate at which he was drawing them immediately before his retirement.

The petitioner challenged in the Writ Petition the impugned order of compulsory retirement. Six grounds were urged before the learned single Judge, who heard the Writ Petition and they were as follows:

(1) The order of compulsory retirement passed against the petitioner is contrary to the statutory rules.

(2) The order of compulsory retirement in this case has been passed by the third respondent who is subordinate to the second-respondent, the appointing authority and as such it is void and illegal.

(3) The impugned order of compulsory retirement is penal in character and vindictive and therefore, it is void.

(4) Even assuming that the relevant rules enable the third-respondent to pass the impugned order, still the power not having been exercised at the time of his completing 30 years of service, it is not open to the respondent to exercise the power to retire after such completion of 30 years.

(5) The power to compulsorily retire the petitioner has been exercised in this case arbitrarily and mala fide and the power cannot be exercised on general and uncorroborated complaints.

(6) The provision in the statutory rules providing for compulsory retirement is void, still-born and unconstitutional for violation of Article 14 of the Constitution of India.

The learned single Judge, taking up points 3 and 5, repelled them holding that the order of compulsory retirement cannot be questioned as having been passed either mala fide or with vindictive motive. Regarding point No. 2, the view of the learned single Judge was that this point was without substance and hence this point was rejected. On point No. 1, the learned single Judge adverted to the contention, put forth on behalf of the petitioner, that the exercise of power of compulsory retirement is referable only to Rule 2046 of the Railway Establishment Code and rejected it holding that the power could be exercised and has been exercised as per paragraph 620 of the Railway Pension Rules, 1950, and in that view the order of compulsory retirement is sustainable. It must be noted here that paragraph 2(2) of Section 1 of the letter referred to in the impugned order got incorporation in paragraph 620 of the Railway Pension Rules. Taking up point No. 4, the learned single Judge opined that taking into account the Earned leave availed of by the petitioner, he would have completed thirty years of qualifying service only in January 1981 and as such this point could not survive. Thus rejecting all the points urged by the petitioner, the learned single Judge dismissed the Writ Petition by order dated 9.3.1983. This obliged the petitioner to prefer the present Writ Appeal and the Writ Appeal was earlier dealt with by a Bench of this Court and the judgment of that Bench was rendered on 22.4.1987. The Bench took up the question of propriety of maintaining the order of the Railway Pension Rules and negatived the same and without going into the other contentions raised by the petitioner, allowed the Writ Appeal and quashed the order of compulsory retirement. The respondents took up the matter to the Supreme Court of India by way of Civil Appeal No. 1583 of 1987 and the Supreme Court by its judgment dated 1.8.1988, differing from the view of the

Bench of this Court, upheld the validity of paragraph 620 of the Railway Pension Rules and the propriety of the reliance placed thereon by the respondents. However, finding that the petitioner has got other contentions to be urged and since they have not been dealt with by the Bench of this Court, remanded the case to this Court for a disposal afresh in the light of the submissions to be made by the petitioner on the other, contentions raised by him. That is how the Writ Appeal has once again come to be heard by this Court and we, having heard same, are dealing with the points raised by the petitioner through his learned Counsel in seriatim.

2. The first point urged by Mr. N.C. Raghavachari, learned Counsel for the petitioner, is that the petitioner joined the services on 6.11.1950 and even as per paragraph 620(ii) of the Railway Pension Rules, he completed thirty years of qualifying service on 6.11.1980 and as contemplated in paragraph II(1) of the Consolidated Instructions issued by the first-respondent on 15-11-1979 with regard to premature retirement of railway-servants; the case of the petitioner ought to have been sent for review six months before 6.11.1980 and this admittedly did not happen; because even as per the stand of the respondents in the counter-affidavit filed in the Writ Appeal the case of the petitioner was placed before the Review Committee only in February, 1982.

3. Paragraph 620(ii) of the Railway Pension Rules reads as follows:

The authority competent to remove the Railway servant from service may also require him to retire any time after he has completed 30 years qualifying service provided that the authority shall give in this behalf, a notice in writing to the Railway servant, at least three months before the date on which he is required to retire or three months' pay and allowance in lieu of such notice.

Paragraph II(1) of the Consolidated Instructions dated 15.11.1979, reads as follows:

The cases of Railway servants covered by Rule 2046(h) R.II or Rule 2046 (k)-R.II or para 2(2) of Section I of Railway Ministry's letter NO.E-48 CPC/208 dated 8.7.50, incorporated as para 620 of the Manual of Railway Pension Rules 1950 should be reviewed six months before they attain the age of 50/55 years or complete 30 years of service /30 years of qualifying service, whichever occurs earlier.

If a railway servant is to be prematurely retired, that there should be a review of the case of the Railway servant six months before he completed thirty years, of qualifying service could not be and is not being put in issue before us. The present point was not expressed and urged before the learned single Judge. But, this has been allowed to be raised by permitting the petitioner to file an affidavit in the Writ Appeal and a counter-affidavit has also been filed by the respondents. There was a factual controversy raised on behalf of the petitioner that he completed thirty years of qualifying service on 6.11.1980. The contention of the respondents is that for counting thirty year of qualifying service, the Earned

Leave taken by the petitioner should be taken into account and if so done, he completed thirty years of qualifying service only in January 1982. The learned single Judge accepted the stand put forth by the respondents. There is no need to go into this factual aspect at all, because even if we take the case of the respondents that the petitioner completed thirty years of qualifying service only in January, 1982, the admitted position is, the case of the petitioner was placed before the Review Committee only in February 1982. Hence, it could not be stated that there was due compliance with paragraph 620(ii) of the Railway Pension Rules, as exemplified by the Instructions set out in paragraph II(1) of the Instructions dated 15-11-1979. That the Instructions supplement the Rules and they have a binding force on the respondents and they cannot be violated to the prejudice of the petitioner cannot be disputed. The sanctity of instructions, like the present one, and their binding nature have been upheld by the Supreme Court in *State of Uttar Pradesh Vs. Chandra Mohan Nigam and Others*, .

4. In support of his contention, Mr. N.C. Raghavachari, learned Counsel for the petitioner, places reliance on a pronouncement of a Full Bench of this Court in *P.A. Manickam v. Government of Tamil Nadu* 1984 Writ L.R. 1 There, the implications of Fundamental Rules 56(d) read along with the requisite Instructions issued therefore came up for consideration. The main part of that Rule reads as follows:

F.R.56(d): "Notwithstanding anything contained in this rule, the appropriate authority shall if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months" pay and allowances in lieu of such notice, after he has attained the age of thirty years or after he has completed twenty-five years of qualifying service. Any Government servant who has attained the age of fifty years or who has completed twenty-five years of qualifying service may likewise retire from service by giving notice of not less than three months in writing to the appropriate authority.

There were instructions issued with regard to the construction of the Review Committee and the procedure to be followed for the scrutiny and implementation of the recommendation relating to compulsory retirement. Paragraph I of the concerned instructions is relevant and it is extracted as follows:

The list of gazetted officers should be sent to the Chairman of the Review Committee six months before the date of review.

Paragraph VII of the Instructions may also be relevant and it stands extracted as follows:

Once it is decided to retain an officer beyond the age of 50 years, he should be allowed to continue upto the normal age of retirement, viz. 55 years without any fresh review unless this is justified for any exceptional reasons, such as his subsequent work or conduct or the state of his physical health which may necessitate his earlier retirement.

This paragraph underwent an amendment on 4-7-1978 and Clause (a) relating to the amendment in the concerned Government Order reads as follows:

In modification of the orders issued in paragraph VII in annexure 11 of the G.O. first read above, the cases of all Government servants and those in Public Sector Undertakings, autonomous bodies, etc. should be reviewed for a second time when they attain the age of 53 years (58 years of age in the case of the last grade Government servant).

The binding nature of the instructions as per the pronouncements of the Supreme Court was taken note of by the Full Bench and with reference to non-compliance with the guidelines, this is what the Full Bench, adverting to the facts of that case, observed:

We have already noticed that the appellant herein has completed 25 years of age on 8-11-1975. Since the Government is given an option either to consider his case for compulsory retirement when he completes 25 years of qualifying service or when he will attain the age of 50 years, the case of the appellant should have been considered by the review committee in terms of the instructions in G.O. Ms. No. 761, Public (Service-A) Department, dated 19.3.1973 either before the 1st of July, 1974 if the Government intended to take action with reference to completion of 25 years of service or before 1-1-1975 if the Government intended to take action on completion of 50 years of age. Factually, the Government had done neither. They seem to have referred the case of the appellant to the review committee only some time prior to 1st July, 1976 along with other cases which are considered for the period from 1.7.1976 to 31.12.1976. Clearly therefore, there is a violation of the instructions issued with regard to consideration by the review committee for compulsory retirement. The question that arises for consideration in such circumstances is as to what is the affect of not referring the matter to the review committee six months before the officer attained the age of 50 years or completed 25 years of service. Since there is a direction to all the Heads of Departments to submit their proposals with recommendation asking for a certain officer to be retired from service to the administrative department in the secretariat six months before the date of review and the secretariat in turn to place the proposal before the review committee in accordance with the instructions for their consideration, there is a duty cast on all the Heads of Departments and the Departments of the Secretariat to consider every one of the cases of persons who are due for review in accordance with the instructions, and in such circumstances, it shall be presumed that if an Officer's name has not been sent up to the review committee, the Heads of Departments and the Government considered that there were no grounds for sending up the proposal to the review committee in respect of that officer. We cannot presume that a Head of Department had not done his duty. In fact we are directed to assume by law that official action shall be deemed to have been done unless the contrary is proved. We are therefore of opinion that if an officer's name who is due to attain the age of 50 years or has completed 25 years of service has not been sent to

the review committee, it shall be presumed that there were no grounds for sending his name for consideration for compulsory retirement and that it is in those circumstances, the competent authority had not referred the matter to the review committee. It may ever be suggested that the competent authority considered that the grounds or circumstances are such that if the matter has been referred to the review committee it would not have suggested for compulsory retirement of the officer concerned. If a case had been referred to the review committee and the review committee did not recommend a compulsory retirement under the rules and instructions, the officer should be allowed to continue before the second review was permitted, upto the normal age of retirement of 55 years without any fresh review, unless that is justified for any exceptional reasons such as his subsequent work or conduct or the state of his physical health which may necessitate his earlier retirement. Therefore, where the case of a Government servant was not referred to a review committee with reference to his attaining the age of 50 years, it may even be presumed that there was an assessment in favour of further continuance of the officer and any review subsequent to the attainment of 50 years of age shall be considered to be a second review which could only be on the basis of either exceptional circumstances referred to in paragraph 7 of annexure 11 of G.O. Ms. No. 761, Public Works Department, dated 19.3.1973, or in accordance with G.O. Ms. No. 775, dated 4.7.1978 which permitted second review at a later stage and not otherwise.

The Government orders quoted above clearly show that the case of Government servant for compulsory retirement shall be referred to the review Committee six months before he attained the age of 50 years or completed 25 years of service as the case may be. In fact this is clearly in consonance with the recommendations of the Santhanam committee for Prevention of Corruption which suggests a review of cases of officers who are due to complete 25 years of service or to attain 50 years of age during the ensuring year. We have no doubt that the rule enabling the Government to have fresh review for any exceptional reasons such as his subsequent work or conduct or the state of his physical health which may necessitate his earlier retirement does not affect the legal position or the need to consider the case of every Government servant six months before he attains the age of 50 years or completes 25 years of service as the case may be. If therefore there was an imperative duty to consider the case of every Government servant as stated above before he attains the age of 50 years or completes 25 years of service and that was not done, either we shall presume that there was an assessment in favour of further continuance of the officer in service or any subsequent review shall be treated as the second review which could only be on fresh materials.

Ultimately the Full Bench quashed the order of compulsory retirement.

5. The endeavour of Mr. V.P. Raman, learned Counsel for the respondents, was to say that at any time after the railway-servant completed thirty years of qualifying

service, the power of compulsory retirement as per paragraph 620 of the Railway Pension Rules could be resorted to and such power should not be denied by a stringent construction of the Instructions concerned. In this connection, Mr. V.P. Raman, learned Counsel for the respondents, places reliance on paragraph II(7) of the Instructions dated 15.11.1979, which runs as follows:

Once a decision has been taken by the appropriate authority to retain a Railway employee beyond the age of 50 years in the case of employee referred to in Rule 2046(h)(i) R.II or beyond the age of 55 years in the case of others or beyond the date of completion of 30 years of service under Rule 2046(k) or 30 years of qualifying services for pension under para 2(2) of section I of Railway Ministry's letter No.E.486PC/208 dated 8.7.50 incorporated as para 620 of Manual of Railway Pension Rules 1950 he would ordinarily continue in service till he attains the age of retirement, however, the appropriate authority considers at any time after a review aforesaid that the retention of the Railway employee will not be in the public interest that authority may take necessary action to retire the officer by following the procedure laid down in this letter.

This endeavour is futile one when we take note of the categoric pronouncement of the Full Bench of this court, which is binding on us, especially in the context of the wording of the Instructions. Paragraph II(1) of the Instructions categorically says that the case of the Railway servant, who is completing thirty years of qualifying service, if he should be prematurely retired, should be reviewed six months before such completion. To the same effect is paragraph 1 of the Instructions dealt with by the Full Bench. The opinion having been expressed by a Full Bench of this Court and the same being binding on us with regard to position in law of the construction to be put on similar instructions, we cannot sustain this line of thinking put forth by the learned Counsel for the respondents. Even otherwise, learned Counsel's attempt to water down the implications of paragraph II(1) of the Instructions dated 15.11.1979 by placing reliance on paragraph VII thereof is also of no avail. Paragraph II(7) of the Instructions if at all could be invoked only after a review under paragraph II(1) of the Instructions has been gone through. Without the said review being done, it is not possible to retire the Railway servant prematurely. This we say because in the relevant portion of paragraph II(7) of the Instructions, the set of expressions "after the review aforesaid" has been consciously incorporated and this only reiterates the requirement of a review, as contemplated in paragraph II(1) of the Instructions getting fulfilled, in all cases of premature retirement of a Railway servant Hence,

6. The second point urged by the learned Counsel for the petitioner is that the impugned order of compulsory retirement is tainted with bias on the part of the third-respondent. The contention of bias now advanced before us runs on a line different from the one advanced before the learned single Judge. The aspects urged before the learned single Judge on the question of mala fides and vindictive motive were not pressed before us and what is being now stated before us is that a relation of the third-respondent was meted out with

discourteous treatment at the hands of the petitioner on the occasion of her travel in train and this has been nurtured by the third-respondent to victimise the petitioner. Nothing convincing has been brought to our notice on this aspect and it is the admitted position that the memorandum of imputations issued on the above allegations against the petitioner were not prosecuted to any culmination. Apart from the fact that this point was not conceived and expressed before the learned single Judge, there is total lack of substantiation of this before us. Hence, we eschew the second point put forth by the learned Counsel for the petitioner.

7. The third point urged by the learned Counsel for the petitioner is that the third-respondent was in the Review Committee, which recommended the compulsory retirement of the petitioner and he only, assuming the role of appointing authority, accepted and acted upon the very same recommendations of the Review Committee, of which he was a member and hence it could not be stated that there was an independent consideration on the part of the appointing authority of the recommendations of the Review Committee on the question. This point has to be given due weightage in view of the admitted factual aspects staring in the face of the court. The third respondent was a member of the Review Committee, which made the recommendations for the compulsory retirement of the petitioner and he was the authority, who passed the impugned order of compulsory retirement, acting upon the recommendations, of the Review Committee. A grievance over this has been expressed by the petitioner in the affidavit permitted to be filed by him in the writ appeal. The Counter-affidavit filed by the respondents to this affidavit, does not at all traverse upon and give an answer to this grievance of the petitioner. Rightly the petitioner filed a reply affidavit to the counter-affidavit of the respondents pinpointing the lack of rebuttal by the respondents over this grievance of the petitioner. Paragraph II(4) of the Instructions dt. 15.11.1979 contemplates that the authority to take action on the recommendations of the Review Committee should record in the file that he has formed his opinion that it is necessary to retire the Railway Servant prematurely. Certainly, this contemplates an independent and uninfluenced consideration of the question by the authority concerned. When the person, who has participated in the process of recommendations and has made the recommendations cannot be stated to have acted independently of and uninfluenced by his recommendations and applied his mind impartially. The very fact that he was a member of the Review committee, which made the recommendations for the compulsory retirement of the petitioner, gives a reasonable ground for believing that there was every likelihood that the consideration by the third-respondent was not an independent one ; but on the other hand, an influenced and a prejudged one. Certainly, this would not amount to formation of an independent assessment and consideration on the part of the authority concerned, of the question and of the recommendations of the Review Committee. Hence, we must hold that on this ground the order of compulsory retirement must be frowned upon. Accordingly, we sustain the third point urged

by the learned Counsel for the petitioner. Here, we must record that Mr. V.P. Raman, learned Counsel for the respondents, brought to our notice that before the recommendations of the Review Committee was passed on to the third-respondent, the views of the Senior Deputy General Manager were obtained and the said Official had concurred with the recommendations and thereafter only the third respondent passed the impugned order. We perused the files -produced in this behalf and we find, on such perusal, that the obtaining of the views of the Senior Deputy General Manager is of no relevance at all on this aspect, because as per the Railway Board's letter concerned quoted in the note, the views of the Senior Deputy General Manager could also be taken where action is proposed. The taking of such views and the concurrence of the said Official could not be stated to have concluded the issue and ultimately it was for the third-respondent alone to accept and act. upon the recommendations of the Review Committee and this is exactly what paragraphs II(4) of the Instructions, dt. 15.11.1979 lays down. Hence, we are not able to countenance the plea of the learned Counsel for the respondents to water down the repercussions of the third respondent having had been a member of the Review Committee, which made the recommendations, himself accepting and acting upon the same as the authority passing the impugned order of compulsory retirement.

8. The fourth point urged by the learned Counsel for the petitioner is that the order of compulsory retirement has not been passed by the authority competent to remove the Railway Servant, as contemplated in paragraph 620(ii) of the Railway Pension Rules. According to the petitioner, he was appointed by the General Manager and hence no authority lower than the General Manager was competent to pass the order of compulsory retirement and the impugned order of compulsory retirement against the petitioner having been passed by the third-respondent, who did not satisfy that requirement, must fall to the ground. The petitioner has no record to show that he was appointed by the General Manager. On the other hand, the categorical finding of the learned single Judge that the entries in the Service book of the petitioner show that he was appointed only by the Assistant Operation Superintendent and not by the General Manager. The third-respondent is an authority superior to that authority, who is found to have appointed the petitioner as per the entries in the service book of the petitioner. Accordingly, we reject this point raised by the learned Counsel for the petitioner.

9. The fifth ground put forth by the learned Counsel for the petitioner is that paragraph 620 (ii) of the Railway Pension Rules contemplates the payment of three months pay and allowance in lieu of a notice of three months and in this case, there was no settlement of the allowance due to the petitioner. This point was not at all expatiated and substantiated to our satisfaction by the learned Counsel for the petitioner and we are not obliged to sustain this point and accordingly we reject it.

10. Our sustaining points 1 and 3 obliges us to interfere in Writ Appeal and accordingly, the Writ Appeal is allowed ; the order of the learned single Judge in

W.P. No. 4079 of 1982 is Set aside and that writ petition will stand allowed. It must be noted here that on account of the efflux of time and allowing of the writ petition will not enable the petitioner to get back into service and he has to work put the service benefits on the hypothesis that he retired on his attaining the normal age of superannuation. We make no order as to costs.