
(2002) 07 PAT CK 0057
In the Patna High Court
Case No : C.W.J.C. No. 6343 of 2000

Ram Pal Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-07-2002

Acts Referred:

Citation : (2002) 07 PAT CK 0057

Final Decision : Dismissed

Judgement

Aftab Alam, J.—The petitioner was an employee of the Central Institute of Plastic Engineering & Technology (hereinafter to be referred as "the Institute"). He was posted at Patna as Manager (Processing/Testing) when an order of his compulsory retirement from service was issued on May 16, 2000. This writ petition has been filed challenging the action of the Institute in compulsorily retiring the petitioner from service. However, the order of compulsory retirement was not enclosed with the writ petition and it was stated that it was not served upon the petitioner. A prayer was, therefore, made to direct the concerned authorities to produce the order of compulsory retirement for being quashed by this Court. The impugned order, dated 16.5.2001 is brought on record as Annexure A/1 to the counter-affidavit. According to the respondent authorities the order of compulsory retirement along with a cheque for Rs. 57,444 being the petitioner's salary for three months' notice period was repeatedly sent to him but he refused/avoided to receive it.

2. From the impugned order it appears that the petitioner was retired from service in terms of F.R. 56(i). It needs to be clarified here that normally the provisions of the Fundamental Rules would not apply to anyone other than an employee of the Central Government but it seems (from the impugned order itself) that the Fundamental Rules were expressly adopted by the Institute to cover its employees.

3. The petitioner challenges the order of his compulsory retirement from service on grounds of mala fide and as a colourable exercise of power by the respondent

authorities. In support of the plea of mala fide it is stated that the petitioner was subjected to frequent transfers and some other instances are also cited which, according to the petitioner were intended to cause undue harassment to him.

4. On the other hand, in the counter-affidavit filed on behalf of the respondents details are given concerning the petitioner's inefficiency and his acts of insubordination.

5. On hearing Counsel for the parties and on going through the pleadings, I am satisfied that the pleas of mala fide and colourable exercise of power by the respondent authorities does not merit any consideration by the Court.

6. There is, however, another point which requires some consideration.

7. Dr. S.N. Jha, learned Senior Counsel appearing on behalf of the petitioner submitted that the order of compulsory retirement was illegal, had and unsustainable because it levelled charges against the petitioner and was evidently passed as a measure of punishments. The relevant portion of the impugned order of compulsory retirement is re-produced below:

Mr. R.P. Singh, Manager (P/T), CIPET, Patna is hereby informed that his performance as an officer has not been satisfactory and conducive for running the training programme. He was given adequate chance to improve and number of advisory notes were also issued. He has not taken his duties seriously which has affected the training of students adversely. The undersigned has reviewed his performance, past records and other connected papers and decided that it is in public interest to retire Shri R.P. Singh compulsorily under the rules of CIPET.

8. Dr. Jha, submitted that orders of compulsory retirement in far milder terms than the one quoted above failed the test of judicial scrutiny. Learned Counsel referred to a bench decision of this Court in *Yogendra Nath Trivedi v. State of Bihar and Ors.* 1973 (1) S.L.R. 1030. In that, decision the petitioner Yogendra Nath Trivedi was an employee of the State Government and he worked as an Assistant Commissioner of Commercial Taxes in the Bihar Finance Service. He was subjected to a disciplinary proceeding in which the order of punishment was passed on 25.2.1972. A few days thereafter on 3.3.1973 an order was issued retiring him compulsorily from service under Rule 74(a) of the Bihar Service Code. In the order of compulsory retirement, it was stated as follows:

...Shri Trivedi ki dakhta tatha aachran aisa nahin hai ki in ko sewa banaye rakhna auchityapurn samjha jai.

9. The above expressions quoted from the order of compulsory retirement were held to cast a stigma on Trivedi and consequently it was held that his compulsory retirement in fact a measure of punishment and amounted to his removal from service within the meaning of Article 311(1) of the Constitution.

10. The decision in *Yogendra Nath Trivedi (supra)* was fully based on a Constitution Bench decision of the Supreme Court in *The State of Uttar Pradesh*

Vs. Madan Mohan Nagar, In that decision the respondent Madan Mohan Nagar held the post of Director, State Museum, Lucknow in the U.P. Educational Service Senior Scale. He was compulsorily retired by an order issued under Rule 465-A of the Civil Service Regulations on 28.7.1960. The offending expression in the order of compulsory retirement was that he had outlived his utility. The Supreme Court held that the order of compulsory retirement declaring that Nagar had outlived his utility cast a stigma on him and, therefore, the order offended Article 311(2) of the Constitution.

11. Dr. Jha submitted that in the order coming under challenge in this writ petition far more severe charges were levelled against the petitioner and that made the order of compulsory retirement totally untenable.

12. At the first instance the submission appeared attractive but on a closer scrutiny it seems to be quite fallacious and unacceptable and the two decisions relied upon by Dr. Jha do not seem to have any application to the facts of this case.

13. It may be noted that in the case before the Division Bench of this Court, Yogendra Nath Trivedi was an employee of the State Government and held the post of Assistant Commissioner of Commercial Taxes in the Bihar Finance Service. Similarly, in the case before the Constitution Bench of the Supreme Court, the respondent Madan Mohan Nagar held the post of Director, State Museum, Lucknow in the U.P. Educational Service, Senior Scale. In both the cases the orders of compulsory retirement were held to be passed in violation of Article 311(2) of the Constitution.

14. Now, the protection of Article 311(2) of the Constitution is not available to the petitioner for the simple reason that he is neither a Government employee nor does he hold a civil post under the Union or a State. The petitioner used to be an employee of the Central Institute of Plastic Engineering & Technology. About the Institute, it is stated in para 5 of the writ petition that it is a Society registered under the Societies Registration Act at Madras (Chennai). In para 14 of the writ petition, it is stated about the Institute as follows:

That CIPET is a central autonomous body registered under the Societies Registration Act, 1860 having its head office at Chennai. It has 11 extension centres throughout different parts of India. CIPET is an educational training institute with 100% grant-in-aid and it comes under the Ministry of Chemical & Fertilizers, Government of India.

15. Though the Institute may be under the administrative control of the Ministry of Chemicals & Fertilizers, Government of India and though the Institute may be held to be "State" within the meaning of Article 12 of the Constitution, on that basis the petitioner or any other employee of the Institute cannot be deemed an employee of the Government of India. Being a Society registered under the Societies Registration Act, the Institute has a legal status distinct and separate from the Government of India and the employee working for the Institute must

be held to be the employee of the Institute and not of the Government of India. It is, thus, clear that Article 311(2) of the Constitution does not perse apply to the petitioner.

16. A question, however, still remains to be considered. The question is though Article 311(2) may not apply per se, whether or not analogous of natural justice must be complied with before terminating the services of an employee of the Institute? This question is fully answered by another decision of the Supreme Court in Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, In Baikunth Nath Das a three member Bench of the Supreme Court extensively considered the law of compulsory retirement, taking into consideration almost all previous decisions. Tie Supreme Court decision in Baikunth Nath Das specifically examined the scope of F.R. 56(j) in terms of which the order of compulsory retirement is passed against the petitioner. In para 34 of the judgment, the Court summarised the principles relating to F.R. 56(j) as follows:

34. The following principles emerge from the above discussion:

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehavior.

(ii) The order has to be passed by the Government on forming the opinion that it is in the public interest to retire a Government servant compulsorily. The order is passed on the subjective satisfaction of the Government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate Court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material, in short, if it is found to be a perverse order.

(iv) The Government (or the review committee as the case may be) shall have to consider the entire record of service before taking a decision in the matter of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential record/character rolls, both favourable and adverse. If a Government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration that circumstance by itself cannot be a basis for interference.

Interference is permissible only on the grounds mentioned in (iii) above. This

aspect has been discussed in para 30 to 32 above.

(Emphasis added)

17. It is, thus, to be seen that on the one hand the petitioner does not have the protection of Article 311(2) of the Constitution and on the other hand it is expressly held by the Supreme Court that an order of compulsory retirement is not a punishment, it implies no stigma nor any suggestion of misbehaviour and the principles of natural justice have no place in the context of an order of compulsory retirement.

18. Moreover, in atleast two recent cases the orders of compulsory retirement made an equally stronger indictment of the concerned employees but the Supreme Court declined to interfere on the ground that the orders were stigmatising. In *Parbodh Sagar Vs. Punjab State Electricity Board and Others*, the order of compulsory retirement was passed on grounds which, inter alia stated as follows:

It is observed that during the last ten years, his ACRs for a short period of little more than a year viz 1.4.1987 to 31.12.1987 (Nine month) and 12.10.1989 to 31.3.1990 (five-and-a-half-months) are good and rest are average, or poor. During the period 26.6.1995 to 31.12.1995 when his over all rating is poor with adverse remarks, there is another remark in the honesty column that he is not taking interest in the office work and as such he cannot be said to be honest to his work/duty. The officer has not shown any improvement and instead his confidential record is on the decline.

In addition to above for the serious omission and commissions made by the officer in the performance of his duties, he was issued charge sheet and on its finalization, he was given a punishment of stoppage of two annual increments with cumulative effect vide office order No. 61/DS-I/D-664, dated 21.1.1994. This punishment has been upheld even by the Punjab and Haryana High Court. In another case of misconduct of using derogatory remark against his controlling officer, he was issued a letter of advise on 2.1.1996. Till in another case of absence from duty without sanction of leave, he was issued a show cause notice and was censured vide O/O No. 85/DS-I/D-31, dated 27.11.1996.

19. In another case, *State of U.P. and Another Vs. Lalsa Ram*, , the grounds on which the order of compulsory retirement was passed were as follows:

In the case of *Shri Lalsa Ram*, the officer mentioned against SI. No 62 of Enclosure A, the Screening Committee on considering thoroughly his relevant service records and the entries available in his character roll, found that *Shri Lalsa Ram* was given adverse entry in 1967-68 (from 14.4.1967 to 21.9.1967), in 1967-68 (27.9.1967 to 31.3.1968), 1981-82, 1982-83 and in 1991-92, and a particular adverse entry on 16.12.1982 and censure entry on 18.8.1986. Thus, the service of *Shri Lalsa Ram* constantly deteriorated.

Under the above circumstances the Screening Committee, as a result of its study,

found the following officers unfit to continue in service in public interest and the committee recommended that they should be compulsorily retired:

(1)-(2)*** (3) Shri Lalsa Ram From 1994....

20. In these facts and circumstances, I am satisfied that the impugned order compulsorily retiring the petitioner from service compulsorily cannot be assailed on the ground that it levelled charges against him and was, therefore, violative of Article 311(2) of the Constitution,

Thus, find no merit in this writ petition. It is accordingly dismissed but with no order as to costs.