
(2003) 02 AHC CK 0097
In the Allahabad High Court
Case No : C.M.W.P. No. 22246 of 2002

R.B.S. Chauhan

APPELLANT

Vs

Reserve Bank of India and Others

RESPONDENT

Date of Decision : 10-02-2003

Acts Referred:

Reserve Bank of India (Staff) Regulations, 1948 — Regulation 26(1)

Citation : (2003) 2 AWC 1007 : (2003) 97 FLR 359 : (2003) 2 LLJ 634 : (2003) 3 UPLBEC 2543

Hon'ble Judges : Prakash Krishna, J;M. Katju, J

Bench : Division Bench

Advocate : V.B. Singh and Vijay Sinha, for the Appellant; S.N. Varma, Sharad Varma and Yashwant Varma, for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition has been filed for a writ of certtorari to quash the impugned order dated 7.5.2002 Annexure-7 to the writ petition by which the petitioner has been compulsorily retired.

2. Heard learned counsel for the parties.

3. The petitioner was selected in the service of Reserve Bank of India vide appointment letter, copy of which is Annexure-2 to the writ petition, and he was granted promotions vide Annexures-3, 4 and 5 to the writ petition. It is stated in paragraph 10 of the petition that the petitioner"s retirement age is 60 years but he has been compulsorily retired at the age of 55-1/2 years. The relevant extract of the relevant rules providing for compulsory retirement is Annexure-8 to the writ petition.

4. The Regulation 26 of the R.B.I. (Staff) Regulations, 1948 states ;

"26. Superannuation and Retirement.--(1) An employee shall retire at 60 years of age but no extension shall be given to any employee beyond 60 years of age :

Provided that an employee who attains the age of superannuation on any day other than the first during a calendar month, shall retire on the last day of that month :

Provided further that in the case of an employee in Class IV who has reached the age of 55 years the Bank may, in its discretion, retire him after giving two month's notice in writing if in the opinion of the competent authority his efficiency is found to have been impaired :

Provided further that the Bank may, in its discretion, retire in public interest an employee, other than an employee in Class IV, at any time after completion of 50 years of age :

Provided further that in the case of an employee in Class III and Class I, who has attained the age of 60 years shall be subject to his being found suitable to be retained in service."

5. It is alleged in paragraph 12 of the petition that there was no material before the Committee of the Central Board or before respondent Nos. 2 and 3 to pass the impugned order of compulsory retirement. It is alleged that the petitioner's record is excellent and there is no adverse entry against him. He has also earned promotions, the latest one being on 7.7.2000. In paragraph 22 of the petition it is alleged that no opportunity of hearing was given to the petitioner before passing the impugned order and hence there was violation of natural justice.

6. The respondent Bank has filed a counter-affidavit. In paragraph 9 of the same, it is stated that a complaint of sexual harassment was received against the petitioner from a lady Class I Officer serving in the respondent Bank at Kanpur. In respect of this complaint, the Regional Complaint Committee, which conducted an enquiry giving opportunity of hearing to the petitioner and submitted its report, dated 14.2.2002. This report was sent to the Chief General Manager, Bombay on 11.3.2002. The Regional Director, R.B.I., Kanpur on 6.4.2002 made a recommendation to the Chief General Manager for the petitioner's compulsory retirement.

7. In paragraph 12 of the counter-affidavit, it is stated that the entire service record of the petitioner as well as the report of the enquiry into the incident of sexual harassment was placed before the Committee of the Central Board. The Committee looked into various matters and then made the recommendation for compulsory retirement of the petitioner. In paragraph 13, it is stated that if action had not been taken against the petitioner, it would have a demoralising effect on the numerous lady employees of the Bank and, therefore, it was in the public interest to pass the impugned order. In paragraph 17 of the counter-affidavit, it is stated that various departmental enquiries were conducted against the petitioner in the past and he was also dismissed from service but subsequently he was reinstated upon the intervention of the Union, and numerous advisory letters were issued to him which failed to have any effect. In paragraphs 20 and 26 of the counter-affidavit, it is stated that the respondent

Bank took into consideration the entire service record of the petitioner as also the incident of sexual harassment which occurred on 30.12.2001 at Agra and it was then decided to pass the order of compulsory retirement of the petitioner.

8. The Regional Director of the Bank at Kanpur has also filed a supplementary counter-affidavit "and we have perused the same. In paragraph 4 of the same, it is mentioned that the petitioner was working as Assistant Treasurer in the cash department of the R.B.I., Kanpur. One Smt. Anita Mehta was working as Manager in the said Department on a post higher than that of the petitioner. Both these officers were deputed to visit Agra and Mathura for inspection of Currency Chest from 18.12.2001 to 17.1.2002. It was during this visit to Agra that the alleged sexual harassment of Smt. Anita Mehta by the petitioner took place. In this connection, Smt. Anita Mehta has given a written complaint to the Regional Director, Reserve Bank of India, Kanpur dated 4.1.2002, copy of which is Annexure-S.C.A. 1 to the affidavit. It is stated in that complaint that the petitioner and the complainant had both gone to Agra for an official visit and were staying in the same Hotel but in different rooms. On 30.12.2001 at about 9.00 p.m., the petitioner rang the bell of Smt. Anita Mehta's room and when she opened the door, the petitioner; said that he wanted to talk to her urgently. Thereafter he came in the room of Smt. Anita Mehta and said that he wanted to have dinner. She gave him dinner but after dinner, he refused to go back to his own room and said "I am alone, you are alone, we can enjoy". Smt. Anita was horrified at this disgusting immoral remark and asked him to leave the room. On 31.12.2001. at about 8.45 p.m. he phoned over the intercom "please do not put the receiver down. Have you pardoned me or not. Please pardon me, I know not what happened to me yesterday." Smt. Anita Mehta immediately put the receiver down and on the same day at 4.45 p.m. after inspection of the currency chest, she telephoned the General Manager, Issue Department, Kanpur saying that she was not feeling comfortable and wanted to come back. Thereafter she returned back to Kanpur on 1.1.2002 and informed the General Manager about the incident. She alleged that she is in a mental shock, tension and grief due to the act of the petitioner, which is unpardonable.

9. The matter was referred to the Sexual Harassment Committee of the Bank and the Committee conducted a regular enquiry in which the petitioner attended as stated in paragraph 5 of the supplementary counter-affidavit. Thereafter, the Committee submitted the report. The copy of the entire proceedings of the Sexual Harassment Committee has been annexed as Annexure-S.C.A, 2 to the affidavit and its report is Annexure-S.C.A. 3 to the affidavit. The report was placed before the Regional Director and the matter was referred to the Central Office of the R.B.I., Bombay. Thereafter the impugned order was passed.

10. In our opinion, the conduct of the petitioner is deplorable and cannot be condoned. The Supreme Court in Vishaka and others Vs. State of Rajasthan and Others, and Apparel Export Promotion Council Vs. A.K. Chopra, , has upheld the disciplinary action in cases of sexual harassment.

11. Learned counsel for the petitioner has submitted that no opportunity of hearing was given to the petitioner before passing the impugned order and the said order was punitive. In our opinion, the rules of natural justice are not a straitjacket formula as held in the several decisions of the Supreme Court. In our opinion, adequate opportunity of hearing was given to the petitioner, as is evident from the paragraphs 5, 15, 17, 29, 31 and 41 of the supplementary counter-affidavit in which full details have been given. The petitioner has attended the proceedings of the Committee on 29.1.2002 and 1.2.2002 and the minutes were duly signed by him as stated in paragraph 15 of the supplementary counter-affidavit. There is no reason for disbelieving the complaint of Smt. Anita Mehta and we are of the opinion that her complaint, copy of which is Annexure-S.C.A. 7 to the supplementary counter-affidavit, is factually correct. As stated in paragraph 35 of the supplementary counter-affidavit, the management did not hold a full-fledged disciplinary proceedings as that would have caused further embarrassment to the lady Officer who was already suffering from mental trauma. The enquiry held by the respondents, in our opinion, was adequate. Rules of natural justice are flexible and depend on the facts and circumstances of each case vide *Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another*, . On the facts of the present case, opportunity of hearing was given to the petitioner and in our opinion there was sufficient compliance of the rules of natural justice, considering the fact that it is a case of sexual harassment. In fact, the Bank has acted leniently by only ordering compulsory retirement instead of dismissal which the petitioner deserves.

12. In *Apparel Export Promotion Council v. A.K. Chopra* (supra), the Supreme Court held that in a case of sexual harassment for the offending action to be outrageous, actual assault or touch by the offender is not essential. Objectionable overtures with sexual overtone is enough. The facts of the aforesaid case squarely apply to the present case. The petitioner's remarks were clearly outrageous and had Sexual overtones. Moreover, this is not a fit case to exercise our discretion under Article 226 of the Constitution. The petition is dismissed.