
(1968) 02 AHC CK 0009
In the Allahabad High Court

Sanghvi (P.S.)

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-02-1968

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 311

Citation : (1969) 2 LLJ 474

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Satish Chandra, J.—In this petition under Article 226 of the Constitution, it is prayed that the order of compulsory retirement passed against the petitioner on 27 August 1966 be quashed.

2. The petitioner was appointed as the Assistant Aerodrome Officer by the Government of India on 28 March 1942. He was confirmed with effect from 4 November 1947. He was promoted to the post of Aerodrome Officer and was confirmed on that post in June 1957. In February 1960, he was posted at Agartalla (Tripura). There, he received several adverse entries from the Director-General of Civil Aviation. The petitioner made representations against them, but the same were rejected. The petitioner made certain allegations against the Director-General that he was harassing the petitioner and maligning his career. In 1964, an enquiry was conducted against the petitioner on account of certain allegations against him. Thereafter, a charge sheet was served on him on or about 28 August 1965 under Rule 15 of the Central Civil Service (Classification, Control and Appeal) Rules, 1957. On 5 August 1966, the petitioner gave his explanation to the charges. During the pendency of these proceedings, the impugned order was passed on 27 August 1966. The order stated:

Under the provisions of Fundamental Rule 56(j) the President hereby gives notice to P.S. Sanghvi, a permanent senior Aerodrome Officer in the Civil Aviation

Department that he shall stand retired from service with effect from the date of expiry of three months from the date of service of this notice on him.

The petitioner made a representation against this order, but the same was rejected on 18 November 1966. A prayer for review was also refused on 27 December 1966.

3. Learned Counsel for the petitioner challenged the validity of the Fundamental Rule 56(j), This provision lays down:

Notwithstanding anything contained in these rules, the appropriate authority shall, if it is of the opinion that it is in the public interest to do so, have the absolute right to retire any Government servant after he has attained the age of fifty-five years by giving him notice of not less than three months in writing.

It was urged that this rule violated Articles 14 and 16 of the Constitution. Since an order could be passed under this rule on the basis that retention of the service of a Government servant was not in the public interest, it cast stigma on the Government servant and as such it amounted to removal from service within the meaning of Article 311(2) of the Constitution; and since the rule did not require an opportunity to show cause to be given before an order was passed, it was invalid. It was also urged that a proceeding for compulsory retirement under this rule would attract the principles of natural justice. The Government servant would be entitled to an opportunity of explanation. All these points have been considered by me in the case of Chhail Behari Verma v. State of Uttar Pradesh Civil Miscellaneous Writ No. 543 of 1967 dated 12 February 1968 in connexion with the validity of note 1 to Article 465-A of the Uttar Pradesh Civil Service Regulations. Under that provision also, a Government servant could be retired where it was in the public interest to dispense with his services. For the reasons mentioned in that judgment, all the above mentioned submissions cannot be accepted.

4. It was then urged it was clear that the impugned order was passed by way of punishment. An enquiry into charges of misconduct was pending against the petitioner. Since the respondents thought that they could not prove the charges, they took recourse to the device of compulsory retirement. The intention was to punish the petitioner in the guise of an order of compulsory retirement. In Jagdish Mitter Vs. The Union of India (UOI), the Supreme Court observed at p. 423:

...it is necessary to remember cases in which the services of a temporary servant have been terminated directly as a result of the formal departmental enquiry, and cases in which termination may not be the direct result of the enquiry; and this complication arises because it is now settled by decisions of this Court that the motive operating in the mind of the authority in terminating the services of a temporary servant does not alter the character of the termination and is not material in determining the said character...

5. It was also observed at pp. 423-424:

...Take a case where the authority initiates a formal departmental enquiry against a temporary Government servant but whilst the enquiry is pending, it takes the view that it may not be necessary or expedient to terminate the services of the temporary servant by issuing an order of dismissal against him. In order to avoid imposing any stigma which an order of...discharge simpliciter is served on the servant...it must be held that the termination of services of the temporary servant which in form and in substance is no more than his discharge effected under terms of contract or the relevant rule, cannot, in law, be regarded as his dismissal, because the appointing authority was actuated by the motive that the said servant did not deserve to be continued for some alleged misconduct. That is why in dealing with temporary servants against whom formal departmental enquiries may have been commenced but were not pursued to the end, the principle that the motive operating in the mind of the authority is immaterial, has to be borne in mind.

6. Gajendragadkar, J., went on to say at p. 424:

But since considerations of motive operating in the mind of the authority have to be eliminated in determining the character of the termination of services of a temporary servant, it must be emphasized that the form in which the order terminating his services is expressed will not be decisive. If a formal departmental enquiry has been held in which findings have been recorded against the temporary servant and as a result of the said findings, his services are terminated, the fact that the order by which his services are terminated, ostensibly purports to be a mere order of discharge would not disguise the fact that in substance and in law the discharge in question amounts to the dismissal of the temporary servant....

7. Thus, the fact that a departmental enquiry on the basis of certain charges of misconduct was initiated and was pending will not make the termination a removal from service. In the present case, it has not been established that any findings were recorded and the impugned order of compulsory retirement was passed as a result thereof. The impugned order, therefore, cannot be characterized as an order of dismissal or removal from service.

8. The principle enunciated in Jagdish Mitter Vs. The Union of India (UOI), is equally applicable to cases of compulsory retirement. In The State of Uttar Pradesh Vs. Madan Mohan Nagar, the Supreme Court held that the tests laid down in Jagdish Mitter Vs. The Union of India (UOI), equally apply to the cases of compulsory retirement [p. 422]. Under the circumstances, the impugned order cannot be held to have been passed by way of punishment. It was an order of compulsory retirement simpliciter passed in exercise of the powers conferred by the relevant rules.

9. The order was also impugned on the ground that it was passed mala fide. The allegations in this respect are vague. They have been controverted in the counter-

affidavit. At the hearing, the learned Counsel did not seriously press this ground. It is, therefore, unnecessary to deal with it in detail.

10. It was also urged that in view of the clarification issued by the Government of India on 18 February 1956, the impugned order does involve an imputation amounting to a stigma. Under that clarification, it was stated:

The retirement under Para. 2(2) of this appendix can be effected "when such retirement is necessary in the public interest." The grounds of public interest may well be that the officer has ceased to be efficient or is suffering from a physical infirmity....

11. This clarification does not mean that the ground of public interest will Invariably be inefficiency or physical infirmity. Moreover, the same clarification further stated:

Action taken under this paragraph does not amount to removal or dismissal within the meaning of Article 311(2) of the Constitution and the penal provisions of the Civil Service Regulations relating to forfeiture of pension on dismissal or removal will not, therefore, be attracted.

It cannot, therefore, be said that this clarification was intended to make an order of compulsory retirement on the ground of the public interest an order casting a stigma on the Government servant.

12. In the result, the petition fails and is accordingly dismissed with costs.