(1981) 10 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 468 of 1976

S.S. Marwah APPELLANT

Vs

The Union of India (UOI) and Others RESPONDENT

Date of Decision : 21-10-1981

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 5, 9
Constitution of India, 1950 — Article 226, 227, 233

Citation : (1982) 2 ILR (P&H) 234

Hon'ble Judges : S.S. Sandhawalia, C.J;S.C. Mital, J

Bench : Division Bench

Advocate : J.L. Gupta, for the Appellant; H.S. Brar, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sandhawalia, C.J.—Whether Rule 7 of the Fundamental Rules is attracted in the case of an order of compulsory retirement u/s 56(j) of the said Rules is one of the meaningful questions arising in this appeal under Clause 10 of the Letters Patent directed against the judgment of the learned Single Judge dismissing the writ petition preferred by the Appellant.

2. It calls for notice at the outset that the Appellant in his writ petition had challenged the order of compulsory retirement dated the 4th of October, 1975, passed by the Collector, Central Excise and Customs, Chandigarh, on a variety of grounds. The Motion Bench, however, admitted the writ petition only on the limited question noticed above. However, at the final hearing, as a matter of abundant caution, the learned Single Judge allowed argument on other points as well in view of certain observations in Vattipalle Eswariah Vs. Vattipalle Rameswarayya and Others, . We are sceptical whether the ratio of the Madras judgment on the specific point of the admission of appeals under Order 41 Rule 11 would be equally applicable in the case of writ petitions under Articles 226 and 227 of the Constitution of India. However, as the matter has not been debated before us we do not propose to express any final opinion thereon.

3. Inevitably the argument here would turn on the language of Rule 7 aforementioned and it is, therefore, apt to read it at the outset:

Rule 7. No powers may be exercised or delegated under these rules except after consultation with the Ministry of Finance. It shall be open to that Ministry to prescribe, by general or special order, cases in which its consent may be presumed to have been given. This takes effect from 6th February, 1971.

Before the learned Single Judge it was strenuously urged that because there was no consultation with the Ministry of Finance before passing the order of compulsory retirement the aforesaid rule was infracted and consequently the impugned order of compulsory retirement was vitiated. In categorically rejecting this contention the learned Single Judge rightly noticed that the aforesaid Rule 7 was intended to safeguard the interest of the State against financial Commitments which may be made without due realisation of financial implications and consequent monetary losses precipitated by improper and hasty action. Therefore, he rightly found it difficult to see how the compulsory retirement of a public servant under Rule 56(j) could have any financial implications so as to attract Fundamental Rule 7 and the resultant consultation with the Ministry of Finance. It was further noticed that the rule entrusted the Ministry of Finance with the task of weighing the financial advantages and disadvantages of actions to be taken by other Departments and to advise them but was not even remotely intended to confer any right on any individual citizen. After closely analysing Haridwar Singh Vs. Bagun Sumbrui and Others, , upon which reliance had been placed on behalf of the writ Petitioner the learned Single Judge distinguished the same and found that it had not the least application in the present case. Similarly it was found that there was not the least analogy with the cases of consultation with the High Court in the context of appointment of District Judges as laid down in Article 233 of the Constitution, because the position of the Finance Department under the Fundamental Rules bore no comparison with that of the High Court under the Constitution.

4. Faced with the uphill task of assailing the Very lucid and impeccable reasoning of the learned Single Judge on the aforesaid point, Mr. J.L. Gupta, the learned Counsel for the Appellant was rather half-hearted in pressing his challenge. Indeed no meaningful argument worth the name could be advanced against the said finding. We deem it wasteful to examine the matter afresh as we find ourselves entirely in agreement with this reasoning in the judgment under appeal which we affirm. It is held that Rule 7 has mo application in the context of a compulsory retirement under Rule 56(j) of the Fundamental Rules.

5. Learned counsel for the Appellant had then attempted to assail the clear and categoric finding of the learned Single Judge that the impugned order of compulsory retirement had been passed by the appropriate authority. It was sought to be contended that the appointing authority of the Appellant was indeed the Board and not the Collector, Central Excise and Customs and therefore, the order of compulsory retirement passed by the latter was invalid. Basic reliance

for this submission was on annexure P/2 to contend that it indicated that the Petitioner was appointed to officiate as Superintendent of Central Excise by the Board itself.

6. We are unable to find the least infirmity in the reasoning or the finding of the learned Single Judge on this point. It is significant that the firm stand on behalf of the Respondent-Union of India, both in the pleadings and the stage of argument, at the writ stage was and also before us, is that the appointing authority of the Appellant was the Collector, Central Excise and Customs and no other. This is amply and indeed conclusively borne out by the statutory rules on the point. Reference in this connection may be made to The Central Civil Services (Classification) Control and Appeals Rules, 1965. Reading Rules 5 and 9 thereof with the relevant entries in the Schedule would leave no manner of doubt that the appointing authority of the Appellant would be the Collector, Central Excise and Customs and not the Board. Serial No. 12 of the Schedule Part-II Central Civil Services, Group-B in express terms prescribes that the appointing authority of Superintendents, Group-B, is the Collector of Central Excise and Customs. Also it appears that the position was identical under the earlier Rules of 1957 as indicated by annexure D/1 of the Return.

7. Apart from the above, annexure P/2, on which reliance was placed on behalf of the Appellant itself indicates that the Collector alone could issue the appointment orders of the Superintendents. Para No. 3 of annexure P/2, in terms stated that the formal orders of appointment of the Appellant as also others would be issued by the Collectors concerned. It is not in dispute that in pursuance thereto the Collector of Central Excise,--vide annexure D/2 had appointed the Appellant to officiate until further orders as Superintendent of Central Excise, Class-II. Consequently, there is no escape from the conclusion that the appointing authority of the Appellant was the Collector of Central Excise and Customs and therefore, the impugned order of compulsory retirement had been passed by the appropriate authority.

8. In fairness to Mr. H.S. Brar, the learned Counsel for the Respondent-Union of India, we must notice his firm reliance as well on Union of India v. M.E. Reddy and Anr. 1979 (2) S.L.R. 792 , Baldev Raj Chadha Vs. Union of India (UOI) and Others, and Union of India (UOI) and Another Vs. Shri S.A. Razak, . Undoubtedly the observations in these judgments further buttress the stand of the Respondents.

9. No other contention was raised.

10. Affirming the judgment of the learned Single Judge, we dismiss this appeal with costs.

S.C. Mital, J.

11. I agree.

