

(1970) 03 DEL CK 0001

In the Delhi High Court

Case No : Civil Writ Appeal No. 1193 of 1969

T.P. Verma

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-03-1970

Acts Referred:

Citation : (1970) 6 DLT 242

Hon'ble Judges : T.V.R. Tatachari, J

Bench : Single Bench

Advocate : B.R. Sabharwal, O.P. Malhotra and A.B. Saharia, for the Appellant;

Judgement

T.V.R. Tatachari, J.

(1) This writ Petition has been filed by Shri T.P. Verma, Mechanic, All India Radio, praying for the issuance. of an appropriate writ, order or direction calling turn necessary records and quashing an order, dated 30th August, 1909, whereby he was informed that he. on attaining the , years on the 1st December, 1969, shall retire from service with effect from the forenoon of 2nd December, 196", or from the date of expiry of three months computed from the date of the service of the said order on him whichever was later,, and declaring the petitioner to be still in service, and for granting consequential reliefs. The said order purports to have been passed by the Station Director, All India Radio in exercise of, the powers conferred by clause (j) of Rule 5, of the Fundamental Rules

(2) The respondents in the writ petition are (1) Union of India thorough the Secretary of Information and Broadcasting, (2) the Director General, All India Radio, (3) the Station Director, All India Radio and (4) Shri Banerjee, Station Engineer, All India Radio.

(3) The petitioner joined the service of the respondents as a Mechanic in May, 1944, and was posted as such in Broadcasting House,. Parliament Street, New Delhi, in the grade of Rs. 110-265, until the year 1967. He was confirmed against a permanent vacancy of Mechanic in the year 1949. It is not necessary to

set out all the averments in the writ petition. It is sufficient to state that the petitioner was transferred some time in 1967 to the Mali Radio Unit of the Broadcasting House at Delhi, and on 30th of August, 1969, Respondent No. 3 sent the impugned notice (order) purporting to be under clause (j) of Rule 56 of the Fundamental Rules retiring the petitioner from service at the age of 55 years with effect from the forenoon of 2nd December, 1969. The petitioner preferred an appeal to the Director General, All India Radio, on 9th September, 1969, against the said order of retirement, but he did not receive any reply. He thereupon filled the present writ petition on 26th November, 1969, praying for the reliefs mentioned above.

(4) The impugned order was challenged on various grounds, one of them being that no opportunity was given to the petitioner to show cause against the impugned order, Shri O. P. Malhotra, learned counsel for the respondent admitted that no such opportunity was given to the petitioner. He, however, submitted that no opportunity was given to the petitioner before passing the impugned order as according to the respondents they had an absolute right to retire the petitioner under clause (j) of Rule 56 by giving three months notice and the question of giving any opportunity did not arise. The question is not covered by the judgment of a Division Bench of this Court in *Col. J. N. Sinha v. Union of India through the Secretary, Ministry of Education and Youth Services, New Delhi* in which a similar order passed under Rule 56 (j) was quashed on the ground that it was violative of the principles of natural justice, in that it was passed without giving a reasonable opportunity to the concerned officer to show cause against the same. It was held in that case the petitioner therein had a right to continue in the office until he attained the age of 58 years, that by the impugned order under Fundamental Rule 56(j) retiring him compulsorily from an earlier date, he was deprived of the said right, and that the impugned order had thus civil consequences. In the present case also, it is common ground that but for the impugned order of compulsory retirement, the petitioner was entitled to continue in office till he attained the age of 58 years. The impugned order has thus civil consequences, and the petitioner should have, Therefore, been given reasonable opportunity to show cause why such an order should not be passed against him. It is true that Rule 56(j) speaks of an absolute right to retire the Government Servant after he has attained the age of 55 years by giving him notice of the months in writing. The question, however, is not that the Government had no such right. The question is as regards the manner in which the said right has to be exercised. If an order passed in exercise of the said right has civil consequences, principles of natural justice require that the Government servant who is affected by such an order has to be given a reasonable opportunity to show cause why the said right should be exercised and why such an order should not be passed in his case. This is the view taken in *Col. J N. Sinha's case (supra)* by the Division Bench of this Court. In the present case a no such opportunity was given to the petitioner, the impugned order is liable to be quashed as being violative of the principles of natural justice.

(5) Shri Malhotra referred to decisions of the Punjab and Haryana High Court, viz Pritam Singh Brar v. The State of Punjab & Others and Punjab State v. Shri Mohan Singh Malhi, No contention based on violation of principles of natural justice such as was considered in Col Sinha's case appears to have been put forward and considered in the said decisions. In any case, silting singly I am bound by the decision of the Division Bench of this Court and I have to follow the said decision. In this view, it is not necessary to go into any of the other contentions raised in the writ petition

(6) For the above reasons, I allow this writ petition and quash the impugned order (Annexure 'I'), dated 30th August, 1969, by which the petitioner was ordered to be retired with effect from 2nd December, 1969, or from the date of expiry of three months from the date of the service of the said order upon him, whichever was later. In the circumstances, I make no order as to costs.

(7) No order is necessary in Civil Miscellaneous Petition No. 311-W of 1970.

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