

(2000) 11 AHC CK 0084
In the Allahabad High Court
Case No : C.M.W.P. No. 46213 of 2000

Union of India and others

APPELLANT

Vs

Dr. R.C. Mishra and another

RESPONDENT

Date of Decision : 01-11-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 1 AWC 110 : (2000) 87 FLR 728 : (2001) 1 UPLBEC 18

Hon'ble Judges : S.R. Singh, J;D.R. Chaudhary, J

Bench : Division Bench

Advocate : A.K. Gaur, for the Appellant; Somesh Khare, for the Respondent

Final Decision : Dismissed

Judgement

S. R. Singh, J.—This petition under Article 226 of the Constitution of India seeks quashing of the judgment and order dated 31.5.2000 passed by the Central Administrative Tribunal, Allahabad Bench, Allahabad, whereby the compulsory retirement of the respondent Dr. R.C. Mishra has been set aside by the Tribunal with all consequential benefits.

2. The respondent Dr. R. C. Mishra who was the applicant before the Tribunal entered the railway service as Assistant Surgeon Grade-I on Danapur Division of Eastern Railway. Subsequently he was promoted to the post of Assistant Divisional Medical Officer w.e.f. 1.1.1973 and by order dated 29.8.1988 he came to be retired by the Government of India, Ministry of Railways in purported exercise of power under Rule 2046 (h) of the Indian Railway Establishment Manual Volume-II. The said order of compulsory retirement was the subject-matter of impugned judgment before this Hon''ble Court.

3. We have had heard Sri A. K. Gaur for the petitioner and Sri Somesh Khare who appeared for the Caveator respondent Dr. R. C. Mishra. It has been submitted by Sri A. K. Gaur that the relevant service rule confers "absolute right" in the appointing authority to retire a railway servant by giving him/her a

notice of not less than three months or three months pay and allowances in lieu of such notice if such railway servant has completed the prescribed length of service and the appointing authority is of the opinion that "it is in the public interest" to retire such railway servant. The grant of power, it has been submitted by Sri Gaur, is subjectively formulated and, therefore, formation of the requisite opinion that "it is in public interest" to retire a railway servant is not open to judicial scrutiny. The Tribunal, it has been submitted by Sri Gaur was not justified in setting aside the order of compulsory retirement of the respondent Dr. R. C. Mishra.

4. We have bestowed our anxious consideration to the submissions made by learned counsel appearing for the petitioner and carefully perused the impugned judgment of the Tribunal.

5. Though the order of compulsory retirement purports to have been passed under Rule 2046 (h) of the Indian Railway Establishment Manual Volume-II, the relevant provision under which a railway servant may be compulsorily retired is contained in Rule 1802 (a) of the Indian Railway Establishment Manual Volume-II. However, mere wrong mentioning of the source of power will not vitiate the order if it is otherwise valid.

6. Rule 1802 (a) provides that "the appointing authority, if it is of the opinion that it is in the public interest to do so, have the absolute right to retire any railway servant by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice" provided that such railway servant has attained the prescribed age. The grant of power under Rule 1802 (a) of the Indian Railway Establishment Manual Volume-II is no doubt subjectively formulated but the appointing authority is nevertheless required to form the requisite opinion that it is in the public interest to retire the servant on objective consideration of valid material. Subjective satisfaction as to the existence of the prerequisite condition that it is in the public interest to retire the concerned individual must be based on valid material on record and no valid material is ignored. Non-application of mind to relevant factors governing exercise of power would vitiate the satisfaction and consequently, the order as well. The crucial question that arises for consideration is whether the requisite opinion formed by the appointing authority was vitiated by error of law. In other words, whether there was any substantial error in the decision-making process.

7. The Tribunal has held that the respondent was not communicated adverse remarks but was only made to note the remarks when Part I of the C.R. was completed and after the remarks were finalised, no communication of adverse remarks was ever made to him and yet the remarks were treated as indicative of unsatisfactory performance. The recommendation of the review committee treating the performance of the respondent as unsatisfactory has been found by the Tribunal as "contrary to the facts on record". The Tribunal has further recorded a finding, on perusal of the original service records, that the recommendation of the review committee and the decision of the Railway Board

has been "highly arbitrary" and "inconsistent with the service record of the applicant". The Tribunal, in our opinion, has rightly held that unfitness for promotion does not necessarily mean that the officer was unfit for being retained in his present position.

8. In *Brij Mohan Singh Chopra Vs. State of Punjab*, , it has been held that "public interest" in relation to public administration envisages retention of honest and efficient employees in the service and dispensing the service of those who are inefficient, dead wood or corrupt and dishonest. The purpose of premature retirement is to subserve public interest if the officer is inefficient, corrupt or dead wood. It has been laid down by the Supreme Court in the case aforesaid that adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned to that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. The same consideration, it has been held, must apply to a case where the adverse entries are taken into account in retiring an employee from service for it would be unjust and unfair to retire prematurely a Government employee on the basis of adverse entries which are either not communicated to him or if communicated, representations made against those entries are not considered and disposed of. In the instant case, certain remarks made in the character roll of the respondent albeit not treated as adverse, yet these remarks were made the foundation for prematurely retiring him. These were the serious errors in the decision-making process and, therefore, the Tribunal was justified in setting aside the order of compulsory retirement.

9. In the circumstances, we find no infirmity or illegality in the judgment and order under challenge. The petition is devoid of merit and is dismissed in limine.