

(2011) 03 KL CK 0352

In the High Court Of Kerala

Case No : Writ Petition (C) No. 27942 of 2007

Union of India and Others

APPELLANT

Vs

P. Rajagopalan

RESPONDENT

Date of Decision : 24-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 7

Citation : (2011) 3 KLJ 127

Hon'ble Judges : M.C. Hari Rani, J;A.K. Basheer, J

Bench : Division Bench

Advocate : M.C. Cherian, for the Appellant; T.C. Govinda Swamy and D. Heera, for the Respondent

Judgement

A.K. Basheer, J.—The short but interesting question that arises for consideration in this writ petition filed under Article 226 of the

Constitution of India is whether it is mandatory to grant compulsory retirement pension under rule 64 of the Railway Services(Pension) Rules 1993

(for short the "Rules") on the date of his compulsory retirement itself. The above question has cropped up for consideration in the following facts

and circumstances.

2. The respondent in this writ petition was allegedly caught red handed by the Central Bureau of Investigation while accepting a bribe of 2,000/-

from a trader at Erode on July 25, 2002. At that time, he was working as Chief Commercial Inspector in the Railway Administration. It is on

record that the CBI Court found respondent No. 1 guilty of the charge levelled against him and he was accordingly convicted and sentenced u/s 7

and 13 (1)(d), 13(2) of the Prevention of Corruption Act, 1988. We are informed

that the appeal preferred by the respondent is pending consideration before the High Court of Madras.

3. After his conviction, the respondent was compulsorily retired from service as is revealed from Annexure A2 order dated November 21, 2005.

It is the admitted position that the said order has become final, since it was never challenged by the respondent before any statutory authority.

4. On December 9, 2005 the Railway Administration issued Annexure A1 order, apparently invoking its power under Rule 64 of the Rules, sanctioning compulsory retirement pension and gratuity equal to two-third of the pension and gratuity, which under normal circumstances he would have been entitled to get.

5. The said order was challenged by the respondent before the Central Administration Tribunal in O.A. No. 889/05 contenting interalia that reduction of pension and gratuity by one-third was totally arbitrary, discriminatory and contrary to law and principles of natural justice.

6. The above contention was accepted by the Tribunal and it was declared that the applicant would be entitled to get full pension and gratuity with all consequential benefits including arrears with interest calculated at the rate applicable to GPF deposits as on July 1, 2007. The said order is under challenge in this Writ Petition filed by the Railway Administration.

7. Assailing the above order it is contended by the learned counsel for the petitioners that the Tribunal has committed serious illegality in assuming that an order under Rule 64 has to be passed simultaneous with the order of compulsory retirement. It is pointed out by the learned counsel that compulsory retirement pension as provided under rule 64 was granted to the respondent within a span of fortnight after issuing the order of compulsory retirement. Since rule 64 does not mandate that grant of compulsory retirement pension should be simultaneous with the order of compulsory retirement, the Tribunal was not at all justified in holding so. He further points out that the decisions relied on by the Tribunal are distinguishable in the facts and circumstances of this case.

Rule 64 of the Rules reads thus:

64. Compulsory retirement pension.--(1) A Railway servant compulsorily retired from service as a penalty may be granted, by the authority

competent to impose such penalty, pension or gratuity, or both at a rate not less than two-third and not more than full compensation pension or gratuity, or both admissible to him on the date of his compulsory retirement.

(2) Whenever, in the case of a railway servant the President passes an order (whether original, appellate or in the exercise of power of review)

awarding a pension less than the full compensation pension admissible under these rules, the Union Public Service Commission shall be consulted

before such order is passed.

Explanation.--In this sub-rule, the expression ""pension"" includes gratuity.

(3) A pension granted or awarded under sub-rule(1) or, as the case may be, under sub-rule (2), shall not be less than three hundred seventy five

rupees per mensem.

(emphasis supplied)

8. A perusal of the provisions contained in the above rule will unambiguously show that there is no stipulation or mandate that grant of compulsory

retirement pension should be simultaneous with the order of compulsory retirement.

9. It is seen from the order of the Tribunal that it has relied on a judgment rendered by a Division Bench of this Court in Writ Petition No.

24260/06 by which the order passed by the Tribunal in OA No. 814/2004 had been upheld. It appears that in the said Original Application which

was the subject matter of the writ petition referred to above, the authority concerned had failed to grant compulsory retirement pension for more

than seven years though several requests were made by the retired employee in this regard. Therefore he had approached the Tribunal for

appropriate reliefs and consequently the Tribunal directed the authorities to pay the pension and gratuity with interest. It is true that the Division

Bench while confirming the order passed by the Tribunal has observed that Rule 64 postulates that ""reduction of pension should be imposed on the

date of compulsory retirement"" itself. But as has been noticed already Rule 64 does not contain such a mandate or stipulation. What is postulated

in the rule is only that the pension or gratuity, or both, admissible to the employee on the date of his compulsory retirement shall be granted to him.

There is no mandate whatsoever in the rule that it should be granted to him on the same date. Sub rule (2) will further show that such a procedure

will not be practicable. In that view of the matter the observation made by the Division Bench in Writ Petition No. 24260/06 dated 1.3.07 has to be treated only per incuriam.

10. The other decision relied on by the Tribunal is its order in OA No. 156/2005. In fact in this case the Tribunal had followed the earlier decision in OA No. 814/04 that was confirmed by this Court in the writ petition referred to above.

11. The factual matrix in the case on hand is totally different. While in the earlier two cases (OA No. 156/05 and O.A. No. 814/04) the competent authority had refused to issue any order under Rule 64 for a considerably long period, the position is different in this case. The authority had passed the order within a fortnight. More importantly, as has been noticed already Rule 64 does not postulate that grant of compulsory retirement pension should be simultaneous with issue of order of compulsory retirement. Therefore Exhibit P4 order passed by Tribunal is liable to be quashed.

12. Sri. Govind Swami learned counsel for the respondent has vehemently contended before us that the impugned order passed by the authority under Rule 64 is vitiated and illegal for yet another reason. What is being highlighted by him is that the authority had not afforded any opportunity to the respondent to be heard before issuing the impugned order. According to the learned counsel reduction of pension up to an extent of one-third being a discretionary power vested with the authority, the affected party should have been heard before exercising such power.

13. Learned counsel invites our attention to paragraph 312 of the Manual of Railway Pension Rules and also the Government of India decision, issued in respect of Rule 40 of the CCS Pension Rules. It is contended by the learned counsel that the clause contained in paragraph 312 and the Government decision would clearly indicate that the competent authority should afford adequate opportunity of hearing to the employee before imposing on him the penalty of reduction in pension and gratuity.

14. Para 312 of the Manual of Railway Pension Rules 1950 only provides that the competent authority should express its intention in unequivocal language while reducing the pension and gratuity. While laying heavy emphasis on the Government of India decision under rule 40 in the CCS

Pension Rules, learned counsel submits that the competent authority which is vested with the discretionary power to reduce the pension up to one-third has to necessarily exercise that discretion only after hearing the employee concerned on whom the penalty is proposed to be imposed, for the obvious reason that such a penalty will have far reaching consequences and adverse implications on him. Though neither Rule 40 of the CCS Pension Rules nor Rule 64 of the Railway Services (Pension) Rules 1993 does postulate a pre-decision hearing, we are of the view that in the peculiar facts and circumstances of this case the respondent can be granted an opportunity to ventilate his grievances, particularly since we are informed that he had an unblemished track record in the department. We hasten to add that we are persuaded to take the above view only in the peculiar facts and circumstances of this case. Therefore Exhibit P4 order is quashed and set aside. However, we direct the petitioners to consider the representation if any that may be submitted by the respondent, and pass appropriate orders there on in accordance with law. Necessarily the respondent shall be afforded an opportunity to be heard before any orders are passed. Respondent may if so advised, file a representation in this regard within one month from the date of receipt of a copy this judgment. The authority concerned shall take a decision in the matter as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of the representation.