

(1989) 11 SC CK 0045

In the Supreme Court Of India

Case No : Civil Appeal No. 4591 of 1989 (Arising out of S.L.P. (Civil) No. 9041 of 1989) .

Union of India (UOI) and Another

APPELLANT

Vs

Inderjit Rajput

RESPONDENT

Date of Decision : 09-11-1989

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (1989) 4 JT 419 : (1989) 2 SCALE 1098 : (1990) SCC 796 Supp : (1990) 1 SCC 796 Supp : (1990) 1 SLJ 79 : (1990) 1 UJ 166

Hon'ble Judges : L. M. Sharma, J;J. S. Verma, J

Bench : Division Bench

Final Decision : ALLOWED

Judgement

1 After notice to the other side, both sides have been heard on merits. Accordingly, the matter is being decided on merits.

2. Special leave granted.

3 The respondent, Inderjit Rajput, was working as a Customs Inspector when he was compulsorily retired by an order dated 29.7.1986 and his representation against the same was also rejected. The respondent challenged his compulsory retirement before the Central Administrative Tribunal. By the impugned order dated 29.3.1989 the Central Administrative Tribunal accepted the respondent's contention and has quashed the order of compulsory retirement. The appellants have challenged this order of the Tribunal herein.

4 The respondent assailed the order of his compulsory retirement on three grounds The first ground was that the respondent had not completed 30 years qualifying service to enable his compulsory retirement under the relevant rules. The second ground was the mala fides alleged against two of the departmental superiors; and the last ground was that the order of compulsory retirement amounted to punishment without affording the respondent a reasonable

opportunity to show cause against the same, resulting in violation of Article 311(2) of the Constitution of India. The first two grounds were rejected by the Tribunal and rightly so for the reasons given by the Tribunal. The same stand concluded. However, the last ground was accepted by the Tribunal and that alone is the basis for quashing the order of compulsory retirement.

5 The learned Counsel for the appellants contended that the order of compulsory retirement under the rules was fully justified and the respondent's service record as well as the facts accepted by the Tribunal show that there was no ground available to the Tribunal to set it aside. The respondent filed a counter and also a supplementary affidavit to support the Tribunal's order. The learned Counsel for the respondent urged that the Tribunal's order is fully justified on the basis of the service record of the respondent including the entries in the character rolls for the period immediately preceding the order of compulsory retirement dated 29.7.1986. Having given our anxious consideration to the matter and the arguments of both sides, we are satisfied that the Tribunal's order cannot be sustained inasmuch as the facts accepted by the Tribunal itself indicate that no ground for interference with the action of compulsory retirement is available.

6 It is settled that compulsory retirement in public interest according to the rules is justified if the relevant material relating to integrity, suitability and efficiency of the government servant discloses that his continuance in employment after completion of the qualifying service is not conducive. The service record of the respondent discloses, as mentioned in the Tribunal's order, itself that there was an adverse entry for the year 1980 relating to the period 1.1.1980 to 29.8.1980 after which the respondent had been placed under suspension assessing the respondent's work as "Poor, not fit for promotion". This entry was communicated to the respondent and his representation against the same was rejected. This adverse entry has been accepted by the Tribunal as relevant adverse material for the purpose of the order of compulsory retirement. The respondent was placed under suspension in 1980 and this suspension continued till 1984. On 9.7.1981, the punishment of withholding three annual increments without cumulative effect was imposed on the respondent and this punishment was confirmed in appeal as well as in revision. This too has been treated as relevant adverse material by the Tribunal. In 1978, the respondent lodged a criminal complaint for having been assaulted while making certain seizures but in the trial of that criminal case the respondent did not even enter the witness box to support the complaint due to which the accused was acquitted on 24.4.1982; and the Court passed strictures against the respondent for his failure to appear as a witness in support of his complaint describing him as untrustworthy. The respondent did not give any explanation even to the departmental authorities for such a conduct in spite of opportunities being given to him for this purpose. This too, has been treated by the Tribunal as adverse material against the respondent. A chargesheet dated 6.12.1976 was served on the respondent alleging that the respondent had used insolent and abusive language against a lady Assistant Collector, Central Excises and also made false allegations in his complaint against his superior officers

using intemperate and abusive language. This enquiry was almost complete when it was decided to drop the same in view of the order of compulsory retirement of the respondent. It is not necessary to mention some other allegations which were either not pursued or which could not be proved against the respondent. The adverse material indicated earlier appears from the Tribunal's order itself. No doubt after the revocation of respondent's suspension in 1984, for the period 1.1.1985 to 31.12.1985 the character roll entry of the respondent was good. It is this entry which has been given considerable weight by the Tribunal and which is also strongly relied on by the learned Counsel for the respondent to support the Tribunal's order quashing the respondent's compulsory retirement.

7. In our opinion, it is the overall picture emerging from the respondent's service record and particularly for the period immediately preceding the order of compulsory retirement on the basis of which the validity of the order of compulsory retirement has to be adjudged and the solitary good entry for the year 1985 after the end of his suspension period cannot be decisive in the above background. The above facts mentioned in the Tribunal's order on the basis of the service record clearly show that in addition to the solitary good entry for the year 1985 the adverse record for the entire period commencing atleast with the adverse entry in 1980 was relevant material to support the order of compulsory retirement. In between there was also a punishment of withholding three increments in 1981 as well as strictures passed by a court against the respondent in 1982 for his conduct which he did not attempt to explain even to the departmental authorities in spite of opportunities been given for the purpose. In addition, there was his intemperate and unbecoming conduct with his superior officers giving rise to an enquiry which was dropped only when the decision to retire him compulsorily had been taken. The net result is that the good entry for the year 1985 is far outweighed by the adverse material during the relevant period in the respondent's service record. On an overall view of the matter, the Tribunal was not, therefore, justified in quashing the order of compulsory retirement of the respondent.

8. The real question for decision by the Tribunal was : Whether, the bona fide decision of the competent authority to compulsorily retire the respondent on the basis of its opinion formed on this material was liable to be set aside by it? It is in this perspective that the Tribunal had to consider and decide the matter. Obviously, the Tribunal fell in the error of overlooking the correct perspective.

9. Consequently, the appeal is allowed. The impugned order of the Tribunal is set aside with the result that the order of compulsory retirement of the respondent stands restored.

10. In the facts and circumstances of the case, there shall be no order as to costs.