

(1999) 12 KL CK 0019
In the High Court Of Kerala
Case No : W.A. No. 1377 of 1994

Union of India (UOI) and Another

APPELLANT

Vs

Jai Bhagwan Sharma

RESPONDENT

Date of Decision : 18-12-1999

Acts Referred:

All India Services (Death-Cum-Retirement Benefits) Rules, 1958 — Rule 16(3)
Constitution of India, 1950 — Article 310, 311(2)

Citation : (1999) 12 KL CK 0019

Hon'ble Judges : Arijit Pasayat, C.J.;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : N. Nagaresh, Addl. Central Govt. Standing, for the Appellant; P. Nandakumar, for the Respondent

Final Decision : Allowed

Judgement

Arijit Pasayat, C.J.—In this appeal filed u/s 5 of the Kerala High Court Act, 1959 (in short, the Act), order of learned Single Judge holding, inter alia, that order directing compulsory retirement of Respondent (hereinafter referred to as "employee") was a camouflage for punishment relating to misconduct, is under challenge.

2. Background facts are as follows: Employee was working as Sub Inspector of Central Industrial Security Force (in short, C.I.S.F.) at Palghat. Group Commandant of C.I.S.F., in purported exercise of power under Clause (j) of Rule 56 of Fundamental Rules (hereinafter referred to as "Rules"), directed, by order dated 28th September 1993, retirement of employee from service in public interest. Said action was purportedly taken on the basis of a report submitted by review committee, which had considered employee's continuance in service not desirable on the basis of imposed punishments. Employee challenged the order in O.P. No. 13773 of 1993 on the ground that his compulsory retirement was directed with the object of punishing him for the past misconduct. It was submitted that retirement as directed was really dismissal or removal from

service, in disguise of an order of compulsory retirement by making it innocuous, and the Court can lift the veil to find out whether it is in reality a punishment.

3. Learned Single Judge accepted the stand that order of retirement casts aspersions and attaches stigma. It was observed that employee was not retired because he had become worthless dead wood to service, but because in the past he had been punished for various acts of misconduct. He held that employer while making impugned order concealed their real intention to get rid of Appellant whose presence they found was undesirable and made the order which sounds innocuous and apparently within Rule 56(j) of Rules. Real intention of employer was to remove him from service because due to his acts of misconduct, he was considered undesirable. Accordingly, impugned order of compulsory retirement was vacated.

4. Stand of Appellant (hereinafter referred to as "employer") is to the effect that employee had lacked responsibility towards the organisation and review committee did not find him suitable for continuance in service beyond the age of 55 years. Scope of judicial review in matters of compulsory retirement, it is submitted, was completely lost sight of by learned Single Judge. His order is based on surmises and conjectures. Learned Counsel for employee, on the other hand, submitted that there was no material to show that employee's integrity was doubtful or that he was found to be ineffective. With reference to rules relating to premature retirement, as contained in Chapter IX, it is submitted that rules relating to premature retirement should not be used to retire a Government servant arbitrarily.

5. Scope and ambit of power of employer to direct premature retirement have been judicially examined by apex Court in many cases. Beacon light is thrown on the criteria, procedure and guidelines for premature retirement, as contained in Chapter 19 of Swamy's compilation relating to Disciplinary Proceedings, which reads as follows:

In order to ensure that powers vested in the appropriate authority are exercised fairly and impartially and not arbitrarily, it has been decided to lay down the procedures and guidelines for reviewing the cases of Government employees covered under the various aforesaid rules as mentioned below-

(1) The case of Government servant covered under F.R. 56(j) or Rule 48 of the C.C.S. (Pension) Rules, 1972 or C.S.R. 459(h) should be reviewed six months before they attain the age of 50/55 years or complete 30 years service/30 years of qualifying service, whichever occurs earlier.

(2) * * *

(3) The criteria to be followed by the committee in making their recommendations would be as follows:

(a) Government employees whose integrity is doubtful, will be retired.

(b) Government employees, who are found to be ineffective will also be retired. The basic consideration in identifying such employee should be the fitness/competence of the employee to continue in the post which he is holding.

(c) While the entire service record of an officer should be considered at the time of review, no employee should ordinarily be retired on grounds of ineffectiveness if his service during the preceding 5 years, or where he has been promoted to a higher post during that 5 years' period of his service in the highest post has been found satisfactory.

(d) No employee should ordinarily be retired on ground of ineffectiveness, if, in any event, he would be retiring on superannuation within a period of one year from the date of consideration of his case.

(4) * * *

(5) The rules relating to premature retirement should not be used-

(a) to retire a Government servant on grounds of specific acts of misconduct, as a short-cut to initiating formal disciplinary proceeding; or

(b) for reduction of surplus staff or as a measure of effecting general economy without following the rules and instructions relating to retrenchment.

* * *

6. What is "public interest" was explained in the classic decision of apex Court in Union of India (UOI) Vs. Col. J.N. Sinha and Another, It was pointed out that the object of premature retirement of a Government servant was to weed out the inefficient, corrupt, dishonest employees from Government service. Public interest in relation to public administration means that only honest and efficient persons are to be retained in service while services of the dishonest or the corrupt or who are almost dead wood, are to be dispensed with. The Court observed:

Compulsory retirement involves no civil consequences. The aforementioned Rule 56(j) is not intended for taking any penal action against the Government servants. That rule merely embodies one of the facets of the pleasure doctrine embodied in Article 310 of the Constitution. Various considerations may weigh with the appropriate authority while exercising the power conferred under the Rule. In some cases, the Government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have a more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organisations and more so in Government organisations, there is a good deal of dead wood. It is in public interest to chop off the same. Fundamental Rule 56(j) holds the balance between the rights of the individual Government servant

and the interests of the public. While a minimum service is guaranteed to the Government servant, the Government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest.

It is true that a compulsory retirement is bound to have some adverse effect on the Government servant who is compulsorily retired but then as the Rule provides that such retirement can be made only after the officer attains the prescribed age. Further a compulsorily retired Government servant does not lose any of the benefits earned by him till the date of his retirement. Three months' notice is provided so as to enable him to find out other suitable employment.

In our opinion, the High Court erred in thinking that the compulsory retirement involves civil consequences.

7. In *Ram Shankar Misra Vs. State of U.P.*, it was pointed out that the expression "public interest" in the context of premature retirement has a well-settled meaning. It refers to cases where the interests of public administration require the retirement of a Government servant who with the passage of years has prematurely ceased to possess the standard of efficiency, competency and utility called for by Government service to which he belongs. In *Kailash Chandra Agarwal Vs. State of Madhya Pradesh and Another*, it was pointed out that the order of compulsory retirement, if taken in public interest, could not be treated as a major punishment and that Article 311(2) of the Constitution could not be invoked, as the employee concerned was no longer fit in public interest to continue in service and, therefore, he was compulsorily retired. In *Union of India (UOI) Vs. M.E. Reddy and Another*, it was pointed out that the object of compulsory retirement was to weed out the dead wood in order to maintain a high standard of efficiency and initiative in service. Rule 16(3) of the All India (Death-cum-Retirement) Rules, 1958, empowered the Government to compulsorily retire officers of doubtful integrity. The safety valve of public interest was the most powerful and the strongest safeguard against any abuse of colourable exercise of power under that rule.

8. A three-Judge Bench of apex Court in *Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another*, laid down the following five principles:

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

(ii) The order has to be passed by the Government on forming the opinion that it is in the public interest to retire a Government servant compulsorily. The order is passed on the subjective satisfaction of the Government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as

an appellate Court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary-in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

(iv) The Government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter-of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a Government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be punished by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.

This decision was reiterated by Anr. three Judge Bench of apex Court in Posts and Telegraphs Board and others Vs. C.S.N. Murthy, in which it was laid down as under:

An order of compulsory retirement is not an order of punishment. F.R. 56(j) authorises the Government to review the working of its employees at the end of their period of service referred to therein and to require the servant to retire from service, if, in its opinion, public interest calls for such an order. Whether the conduct of the employee is such as to justify such a conclusion is primarily for the departmental authorities to decide. The nature of the delinquency and whether it is of such a degree as to require the compulsory retirement of the employee are primarily for the Government to decide upon. The Courts will not interfere with the exercise of this power, if arrived at bona fide and on the basis of material available on the record.

In K. Kandaswamy Vs. Union of India, apex Court observed that:

9. While exercising the power under Rule 56(j) of the Fundamental Rules, the appropriate authority has to weigh several circumstances in arriving at the conclusion that the employee requires to be compulsorily retired in public interest. The Government is given power to energise its machinery by weeding out dead wood, inefficient, corrupt and people of doubtful integrity by compulsorily retiring them from service. When the appropriate authority forms bona fide opinion that compulsory retirement of the Government employee is in the public interest, Court would not interfere with the order.

However, the apex Court added that the opinion must be based on the material on record otherwise it would amount to arbitrary or colourable exercise of power. It was also held that the decision to compulsorily retire an employee can,

therefore, be challenged on the ground that requisite opinion was based on no evidence or had not been formed or the decision was based on collateral grounds or that it was an arbitrary decision.

9. Judicial scrutiny of any order imposing premature compulsory retirement is permissible if the order is either contrary or mala fide or if it is based on no evidence. While viewing the case from the angle of judicial scrutiny, that is, want of material or evidence, it has to be noted that want of material to reach the conclusion is almost equivalent to the fact situation that from available materials no reasonable man would reach such a conclusion.

10. In the case at hand, materials which weighed with review committee for recommending premature retirement are as follows:

These punishments have been awarded for indiscipline. Employer shall have to consider the entire record of service before taking a decision in the matter of compulsory retirement. Taking into account the adverse entries and adverse communications referred to above, it cannot be said that there is no material which justified order of premature retirement. In fact, at the point of time when the matter was taken up, there was no proceeding. Stand of employee that order of premature retirement was passed as a substitute to order which could be passed in a departmental proceeding is without any basis. Learned Single Judge was not justified in his conclusion that order of premature retirement was a disguise for punishing for past conduct. There was no aspersion or stigma attached even by implication. The service records were scanned through and conclusions were arrived at by review committee. For considering whether an employee is to be compulsorily retired, past records have to be necessarily looked into to see what was his conduct in the past. If that is not done, consideration would be vitiated. Merely because that has been done, it can lead to a conclusion that he was being "punished" for past misconduct by directing compulsory retirement. On the other hand, it is a factor relevant to consider whether his continuance is desirable. Learned Single Judge erred in law in interfering with the order of premature retirement. His order is set aside.

Writ Appeal is allowed.