

(2000) 11 DEL CK 0077

In the Delhi High Court

Case No : L.P.A. No. 311 of 2000 and C.M. No. 1014 of 2000

Union of India (UOI) and Another

APPELLANT

Vs

S.S. Ahluwalia

RESPONDENT

Date of Decision : 03-11-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 55 DRJ 673

Hon'ble Judges : Dr. M.K. Sharma, J;A.D. Singh, J

Bench : Division Bench

Advocate : U. Hazarika, for the Appellant;

Final Decision : Allowed

Judgement

Anil Dev Singh, J.—This is a Letters Patent Appeal against the judgment of the learned Single Judge dated April 3, 2000 whereby the appellants herein were directed inter alias to reinstate the respondent who was allowed to retire voluntarily from service. The facts giving rise to the appeal are as follows:

The respondent served the Army as a Commissioned Officer for a period of about seven years from 1966 till July 15, 1973 when he was selected as Deputy Superintendent of Police in G.R.P.F. On August 3, 1983, the respondent was promoted as Assistant Commandant in the C.R.P.F. Subsequently, in August 1990 he earned a further promotion as Second in Command. After serving for a period of about twenty years in the C.R.P.F. the respondent on March 15, 1993 sought voluntary retirement by giving a three months' notice under Rule 43(d) of the Central Reserve Police Force Rules, 1955, to the competent authority. However, before the expiry of the period of three months, a charge memo was issued by the Deputy Director (Establishment) on May 13, 1993 for imposition of a minor penalty on the respondent. Thereafter, on July 13, 1993 the request of the respondent for voluntary retirement was rejected by the competent authority and at the same time it was directed that major penalty proceedings be initiated against him as the charges in the opinion of the competent-authority were of a

serious nature. Thereafter, the respondent on August 10, 1993 sent a representation to the Home Minister requesting him to re-examine his request for voluntary retirement. This evoked no response from the Home Minister.

On February 4, 1994, a memo was issued by the office of the Director General, C.R.P.F., to the respondent calling upon him to submit within ten days of the receipt thereof a written statement of his defense to the articles of charge. He was also informed that enquiry will be held in respect of those charges as are not admitted.

On February 23, 1994, the competent authority contrary to the original stand accepted the request of the respondent and allowed him to proceed on voluntary retirement with a specific stipulation that his voluntary retirement would be without prejudice to the major penalty proceedings initiated against him. Thereupon, on March 2, 1994, the respondent handed over the charge and proceeded on voluntary retirement. Subsequently being not satisfied with the order directing initiation of major penalty proceedings against him, the respondent on September 12, 1994 filed a representation to the concerned authority inter alias stating that since in the eye of law he had retired w.e.f. July 1, 1993, orders dated February 23, 1994 accepting his voluntary retirement with a rider to continue major penalty proceedings was illegal, unjust and arbitrary.

On February 13, 1995 the Assistant Director (Establishment) informed the respondent that departmental enquiry was conducted against him by Shri M.S.Yadav, Commandant, C.R.P.F., which culminated in the submission of a report by him. The respondent was also informed that disciplinary authority will take a suitable decision after considering the report. The respondent was asked to make a representation in writing to the disciplinary authority in case he so desired. The communication sent by the Assistant Director (Establishment) was accompanied by a copy of the report of the Inquiry Officer. Pursuant to the aforesaid communication of the Assistant Director, the respondent sent a representation to the disciplinary authority on March 15, 1995.

On April 17, 1995, the respondent by means of a communication addressed to the Home Secretary sought commutation of pension, payment of gratuity, leave encashment, etc. In response thereto, the office of the Director General, PAO. C.R.P.F., on May 12, 1995, informed the respondent that as regular pension had not been authorised in his favor the commutation of pension could be authorised only on restoration of regular pension. By the same communication the request for payment of gratuity was refused in view of the pendency of departmental proceedings.

2. In the meantime, while the disciplinary proceedings were still pending against the respondent he filed a civil writ petition being CWP No. 637/96 on February 12, 1996 inter alias challenging the aforesaid order dated July 13, 1993, memorandum dated February 4, 1994 and letter dated May 12, 1995, and for a direction of treat him as having voluntarily retired w.e.f. July 1, 1993. The

respondent also filed another writ petition being C.W.P. No. 638/96 in which he, inter alia, prayed for payment of his dues including leave encashment, etc.

3. While the aforesaid writ petitions were pending, the disciplinary proceeding against the respondent was finalised and an order dated March 17, 1997 was passed by the competent authority imposing a penalty ,of ten percent cut in the pension of the respondent for one year. This order of the competent authority is subject-matter of yet another writ petition being C.W.P. No. 1269/97 which is still pending.

4. On May 17, 1999 the respondent filed an application seeking permission to amend the civil writ petition No. 637/96 with a view to challenge the order of the Competent Authority dated 23rd February, 1994 accepting his request for voluntary retire meal and raise certain other prayers. This application of the respondent was allowed on May 25, 1999. As a consequence old that order the respondent filed the amended petition on August 31,1999 with the following prayer:-

"1) quash the so called voluntary retirement and declare that the petitioner continues in service his retirement date even in the present post, is 12.12.2001 and in the event of this Hon"ble Court holding that it is valid then this Hon"ble Court may be pleased to quash/set aside the impugned order issued vide Annexure P-6 23.2.1994.

2) If the above mentioned prayers cannot be accepted then in the alternative and respondents be directed to complete the departmental enquiry proceedings and pass the final order and thereafter release the retirement benefits to the petitioner immediately within one month and the said retirement benefits may be granted Along with interest @ 24% per annum.

3) pass such other order as may be passed in the interest of justice."

5. On January 31, 2000 the learned Single Judge while granting lase opportunity to the appellants herein to file a counter to the amended writ petition, directed the matter to be listed on April 18, 2000. On March 13, 2000 the respondent filed an application being C.M. No. 2064/2000 for early hearing of the writ petition. This application was listed before the learned Single Judge on March 22,2000, when the learned Single Judge without issuing notice to the appellants directed the listing of the writ petition for final disposal on April 3, 2000. The order reads as follows:-

"22.3.2000 Present Petitioner in person.

C.W.637/96 and C.M. 2064/2000

C.M. is an application on behalf of the petitioner for final disposal.

Post the matter for final disposal on April 3, 2000.

22/3/2000 (Judge)."

6. As directed, the matter came up before the learned Single Judge on April 3, 2000 when the respondent was present in person but the appellants were absent and no counsel appeared on their behalf. The learned Single Judge allowed the writ petition and directed the appellants to reinstate the petitioner in service with all consequential benefits including salary and promotions. The appellants were also directed to issue appropriate orders in compliance therewith on or before May 31, 2000. The appellants being aggrieved of the order of the learned Single Judge, have filed the instant appeal. We have heard learned counsel for the appellant as well as the respondent who appeared in person before us. It appears to us that the learned Single Judge was not right in disposing of the writ petition on April 3, 2000. As already noted, on January 31, 2000 when both sides were represented before the learned Single Judge, the writ petition was directed to be listed on April 18, 2000. But on March 22, 2000, as pointed out above, the learned Single Judge in C.M. No. 2064/2000, which was an application filed by respondent for early hearing, without issuing notice of the application to the appellants, directed the Civil Writ Petition No. 637/96 to be posted for hearing on April 3, 2000. This being the position we are of the opinion that the appellants were not given proper and adequate opportunity to address arguments in the matter on April 3, 2000. The appellants should have been given a notice regarding the order reopening the matter from April 18, 2000 to April 3, 2000.

7. We also find the Civil Writ Petition No. 2169/97 challenging the order of the Competent Authority dated March 17, 1997 is still pending. In that writ petition, the petitioner has claimed the following reliefs:-

(i) Release of pension sanctioned by the President of India stopped w.e.f. 1.4.97 be restored immediately ;

(ii) quashing of the impugned order dated 17.3.1997 regarding penalty order of 10 percent cut in pension of the petitioner for one year; (iii) exemplary costs of over Rs. 1,00,000/- may kindly be imposed against the respondents for framing the false charges against the petitioner without any basis of documents in support and not giving any reply to the legal issues raised by the petitioner and in his representation and compelling the petitioner to knock the doors of temple of justice for mental, physical harassment and financial loss to Ex.Military Officer (Captain) and voluntarily retired Second in Command who had served the country for 28 years and sought voluntary retirement at the age of 49 years.

(iv) any other suitable writ/order or directions this Hon"ble Court deems fit in the facts and circumstances of the present case may also be issued in favor of the petitioner and against the respondent .(v) cost may also be awarded to the petitioner."

8. Since the respondent challenged the order of the competent authority dated MARCH, 17, 1997, which was the culmination of the disciplinary proceeding initiated against him, obviously the legality thereof and the charges framed against him would be a part and parcel of the aforesaid Civil Writ Petition No.

2169/97. That writ petition has yet to be decided, but the learned Single Judge in the impugned judgment has observed that initiation of major penalty proceedings and his order dated March 17, 1997 cannot be sustained in law. The learned Single Judge has dealt with the merits of Civil Writ Petition No. 2169/97 even though it was not listed on April 3, 2000 and is still pending, and was influenced by the merits of the said case while arriving at a decision in the present case which is unjust and improper. We, Therefore, cannot uphold the order of the learned Single Judge.

9. For the foregoing reasons the appeal is allowed and the order of the learned Single Judge dated April 3, 2000 is set aside. The matter is remitted to the learned Single Judge for a fresh disposal of the writ petition in accordance with law. We request the learned Single Judge to take up the three Civil Writ Petition Nos. 637/96, 638/96 and (sic) together and dispose of the same expeditiously p> 10. Let the (sic) appear before the learned Single Judge on November 14, 2000. Dasti.