

(1998) 04 CAL CK 0023
In the Calcutta High Court
Case No : F.M.A.T. No"s. 881 and 1669 of 1996

Union of India (UOI) and Others

APPELLANT

Vs

Adhir Ranjan Pal

RESPONDENT

Date of Decision : 20-04-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 3 LLJ 897

Hon'ble Judges : Tarun Chatterjee, J;D.K. Jain, J

Bench : Division Bench

Advocate : Rathin Das and Ramesh Chandra Ghosh, for the Appellant;Achin Kumar Majumdar, for the Respondent

Final Decision : Dismissed

Judgement

Tarun Chatterjee, J.—The aforesaid two appeals have been preferred against the judgment and order of a learned Judge of this Court passed in a writ petition which was registered as C.O. No. 8649 (W) 1995.

2. By the judgment under appeal the learned Judge has set aside an order of compulsory retirement of the writ petitioner made by the Senior Security Commissioner on May 9, 1995 which was Annexure B to the writ petition. However, the learned Judge directed that the period since the date of making the order of compulsory retirement till the date of passing the judgment under appeal shall be treated as extraordinary leave without pay. Against the adverse findings made by the learned Judge against the writ petitioner, in the judgment under appeal, the writ petitioner has also preferred an appeal being F.M.A.T. 881 of 1996. As the two appeals have been preferred against the self-same decision of the learned Judge, they were heard analogously.

3. Having heard the learned counsel for the parties and on going through the materials on record and after considering the judgment under appeal in detail, we are of the view that there is no merit in the aforesaid two appeals.

4. The writ petitioner at the relevant point of time was posted at R.P.F. Workshop at Kharagpur as Grade-I Inspector with effect from April 1, 1983 and was still continuing in the said post at the time when the order of compulsory retirement was served on him. In the writ petition, the writ petitioner alleged that while posted at R.P.F. Workshop at Kharagpur in the district of Midnapore, he was transferred to one Division from another Division along with other Inspectors and Sub-Inspectors for which he had to move a writ application in this Court on August 7, 1989 challenging the inter-divisional transfer. The said writ petition was disposed of on April 1, 1991, by an order of injunction restraining the Railway Authorities from giving any effect to the communication intimating the order of transfer of the writ petitioner. In spite of the said order passed by this Court, according to the writ petitioner, he was not allowed to resume his duties at his original place of posting at Kharagpur Workshop in the District of Midnapore, but on the contrary he was again transferred from Kharagpur Division to Nagpur Division just after the judgment was delivered on the aforesaid writ petition. The writ petitioner had moved another writ application in this Court against the aforesaid order of inter-divisional transfer for the second time and obtained an interim order staying the operation of the order of inter-divisional transfer. The said writ petition is, however, till now pending for final disposal. According to the writ petitioner, the Railway Authorities having been frustrated in its move against the writ petitioner by such orders of this Court had put him under the supervisory control of a Junior Inspector, Grade-II by an order dated August 30, 1991 issued by the Divisional Security Commissioner, RPF, South Eastern Railway. As the promotion of the writ petitioner was withheld for a long time, the writ petitioner again moved a writ application in this Court for a direction upon the railway authorities to give him promotion to the rank of "Assistant Security Commissioner" and the said writ petition is till now pending decision before this Court. The writ petitioner had to move another writ application in this Court against the order of deduction of his pay from his regular salary passed on the ground that he was paid over-payments during the period from June 23, 1989 to March 30, 1991 when the writ petitioner was on leave as per order of this Court. This writ application is also pending for final disposal. After passing various orders, the particulars of which have been mentioned herein above, the impugned order of compulsory retirement was passed against the writ petitioner which was challenged by him by moving a writ application which was registered as C.O.No. 8649 (W) of 1995.

5. As noted hereinabove, by the order impugned in this appeal, the learned Judge has set aside the order of compulsory retirement. Feeling aggrieved by this order of the learned Judge allowing the writ application, an appeal being Appeal No. F.M.A.T. 1669 of 1996 has been preferred at the instance of the Railway Authorities whereas the appeal being F.M.A.T. 881/1996 has been preferred by the writ petitioner against the adverse findings made by the learned Judge in respect of certain points that were raised by the writ petitioner before him.

6. We have heard Mr. R. N. Das, learned senior counsel for the Railway Authorities and Mr. Majumdar for the writ petitioner-respondent. We have carefully examined the judgment under appeal and the materials on record. Before we proceed to take up the only submission made on behalf of the railway authorities before us, we must note here and now that excepting the submission as advanced by Mr. Das, no other argument was advanced by Mr. Das in support of the appeal filed by the railway authorities. Such being the stand taken on behalf of the railway authorities we need not go into other questions raised by the railway authorities before the learned Judge of this Court.

7. The only question that has been raised by Mr. Das, appearing on behalf of the railway authorities is that the findings arrived at by the Reviewing Committee after examining the service records of the writ petitioner cannot be challenged under Article 226 of the Constitution as High Court cannot examine for itself the service record of the employee and substitute in its own judgment by setting aside the findings of the reviewing Committee. Reliance was placed in the case of Chief General Manager, State Bank of India, Bhubaneswar and others Vs. Suresh Chandra Behera, In the said decision of the Supreme Court, the Supreme Court followed its earlier decision in the case of Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, . In Paragraph-5 of the decision in the case of Chief General Manager, State Bank of India, Bhubaneswar v. Suresh Chandra Behera, reported (supra), the Supreme Court has observed as follows :

"It has re-affirmed that the Court would not examine the matter as an Appellate Court. It would interfere only if it is satisfied that the order is mala fide or is based on no evidence or 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."

8. Therefore, from the above, it is clearly evident that it cannot be said that in no case the writ Court cannot have any jurisdiction to interfere with the findings of the Reviewing Committee. On the other hand, the Supreme Court has laid down a principle that if the writ Court is satisfied that the order of the reviewing committee is not, bona fide or in the other words is mala fide or is based on no evidence or is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material, the Court in that case can interfere with the findings of the reviewing committee. In the said decision, the Supreme Court also observed that looking to the findings arrived at by the reviewing committee after a detailed examination of the service record of the respondent, the order of compulsory retirement could not be faulted on any ground. Keeping this principle in mind, let us, therefore, consider whether the order of compulsory retirement can be found to have been faulted on any of the grounds as indicated by the Supreme Court in its aforesaid two decisions. The relevant records relating to the service of the writ petitioner were produced before the learned Trial Judge and the said records have also been produced before us. We have ourselves carefully

examined the service records of the writ petitioner which were produced before us and we are in full agreement with the learned Trial Judge that records would clearly bear the remarks that the writ petitioner maintained a standard of efficiency and there is a clear noting that there was nothing adverse to comment against him excepting bare entries made in the year 1989 and 1991. From a careful examination of the entire service records including the remarks after the years 1989 and 1991 we find that the railway authorities themselves were satisfied with the performances of the writ petitioner and in fact had endorsed a view in the service record of the respondent that the writ petitioner improved and performed very good. From a careful examination of the service record of the writ petitioner, we are also in agreement with the learned Trial Judge that although there were no further materials on record, yet the Chairman of the reviewing committee formed an opinion on the service record of the writ petitioner as produced by Mr. Das before us that he was not fit to be retained in service. Mr. Das, appearing on behalf of the railway authorities could not satisfy us that the learned Judge was in any way wrong in holding that such opinion of the Chairman of the Review Committee was arrived at without any basis whatsoever on the materials on record and, therefore, applying the principles laid down in the aforesaid decision of the Supreme Court, particularly in the case of Chief General Manager, State Bank of India, Bhubaneswar and Ors. v. S. C. Behera, (supra), which was relied on by Mr. Das appearing on behalf of the railway authorities, there is no hesitation in our mind that the findings of the reviewing committee appear to have been made without any basis whatsoever on the materials on record. Therefore, applying the principles laid down in the aforesaid decision of the Supreme Court, we must hold that the learned Trial Judge in the exercise of its writ jurisdiction, has rightly entertained the writ application and set aside the order of compulsory retirement rightly on the ground that the finding of the reviewing committee was based on no material. Since the formation of the opinion by the reviewing committee was based on no material whatsoever and as there was no material by which such an opinion could be formed, in our view, it was open to the writ Court to set aside the order of compulsory retirement which was passed only on the basis of the findings of the reviewing committee.

9. There is another aspect of this matter, in our view, the order of compulsory retirement was not a bona fide exercise of power by the concerned railway authorities. As noted hereinabove, for redressal of different grievances of the writ petitioner against the railway authorities the writ petitioner had to move several writ petitions in this Court by which this Court had set aside various orders of transfer passed against the writ petitioner. From the records of this case, it is apparent that the railway authorities, had taken all steps for taking penal measure against the writ petitioner but all their efforts went in vain and only thereafter they sought to remove the writ petitioner from service by serving the order of compulsory retirement on him. Therefore, we are also of the view that the order of compulsory retirement was not a bona fide exercise of power on the

part of the railway authorities.

10. For the reasons aforesaid, we do not find any reason to interfere with the order passed by the-learned Trial Judge setting aside the order of compulsory retirement issued to the writ petitioner. We are also unable to hold that the learned Trial Judge was wrong in the exercise of his discretion in the matter of payment for the period since the date of making the impugned order of compulsory retirement till the delivery of the judgment by holding that such period may be treated "as extraordinary leave without pay. This discretion was made by the learned Trial Judge on consideration of the materials on record and in the exercise of his discretion which cannot be said either to be a perverse or an arbitrary one.

11. For the reasons aforesaid, both the appeals are dismissed.

12. There will be no order as to costs.

13. If xerox certified copies of this judgment is applied for by the learned advocates for the Parties, the same must be supplied by the concerned department to the respective advocates as early as possible, preferably within a fortnight from date of making an application for obtaining such xerox certified copy of the judgment.

D. K. Jain, J.

14. I agree.