
(2006) 01 DEL CK 0153
In the Delhi High Court
Case No : LPA No. 409 of 2002

Union of India (UOI) and Others

APPELLANT

Vs

S.S. Ahluwalia

RESPONDENT

Date of Decision : 11-01-2006

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14, 16
Central Reserve Police Force Rules, 1955 — Rule 43

Citation : (2006) 129 DLT 73 : (2006) 87 DRJ 171

Hon'ble Judges : V.K. Jain, J; Rekha Sharma, J

Bench : Division Bench

Advocate : Anil Nag, for the Appellant; Party in person, for the Respondent

Final Decision : Dismissed

Judgement

Vijender Jain, J.—This appeal has been filed impugning the order dated 20.12.2001 passed by the learned Single Judge of this Court in WP(C) Nos. 637/96, 2169/97 and 638/96.

2. The respondent Shri S.S.Ahluwalia served the Army as well as Central Reserve Police Force for 25 years, 2 months and 7 days. On 15.3.93 he applied for voluntary retirement and in this regard gave notice under Rule 43(d) of CRPF Rules, 1955. His request for voluntary retirement was not acceded to and consequently the same was rejected by the appellant on 13.7.93. The respondent made representations dated 30.7.1993 and 10.8.1993 for reconsideration of his request for voluntary retirement. His request for reconsideration did find favor with the appellant on 23.2.94 but it was not without pre-condition, in as much as, he was informed that proceedings for major penalty would be initiated against him notwithstanding acceptance of his request for voluntary retirement. At this stage it will be relevant to notice that initially vide Presidential Memorandum dated 13.5.93 Memo of Charge was issued against the respondent for imposition of minor penalty under Rule 16 of the CCS (CCA) Rules 1965. Later on it was decided to drop the proceeding under

Rule 16 of the said Rules, and instead on the same charges proceedings for major penalty under Rule 14 of the CCS (CCA) Rules were initiated.

3. A learned Single Judge of this Court Shri K.Ramamoorthy on the basis of the facts as noticed above observed that request of the respondent for voluntary retirement was accepted much after the expiry of the notice period given by him which expired on 1.7.93 and even when the request was accepted it was without prejudice to the major penalty proceedings. This caused immense prejudice to the respondent who was initially issued a charge-sheet for minor penalty but when his request for voluntary retirement was ultimately acceded to in 1994 the same charges were converted into major penalty charges which culminated in order dated 17.3.97 whereby, cut in his pension was imposed. The learned Single Judge discussed all the charges in detail which we need not repeat in this order and found them to be trivial in nature. The order dated 17.3.97 was held to be based on no evidence acceptable in law and it was observed that the order passed was based on conjectures and surmises. It was further held that the allegations leveled against the respondent especially, when he had submitted his voluntary retirement application on 15.3.93 smacked of total arbitrariness on the part of the appellant. It was ultimately held by the learned Single Judge that the action of the appellant in not accepting the request of the respondent for voluntary retirement on the expiry of notice period and subsequently accepting the same with the rider that major penalty proceedings would be initiated against him completely ruined his life. Consequently the respondent was directed to be reinstated in service with all consequential benefits including salary and promotion.

4. The appellant preferred Letters Patent Appeal against the aforesaid order of the learned Single Judge. It appears that the learned Single Judge Shri K.Ramamoorthy rendered the judgment in the absence of counter affidavit from the Union of India and had also by his judgment disposed of writ petition No.2169/1997 which was not even listed on that day. The Letters Patent Appeal was Therefore allowed and was remanded back for fresh decision in accordance with law. The matter on remand was heard by another Learned Single Judge. The said learned Single Judge vide his judgment dated 20.12.2001 after considering the facts and submissions independently arrived at the same conclusion which was arrived at by Hon''ble Justice K.Ramamoorthy. It was held that Justice K.Ramamoorthy correctly observed that a bare reading of the memo issued to the respondent would show that all the charges against him were trivial in nature and that the memo issued to him was without any justification. It was further observed that the case of the respondent was one of extreme harassment. As a result the respondent was directed to be reinstated in service as was done by Hon''ble Justice K.Ramamoorthy.

5. We have heard Shri Nag learned counsel appearing for the appellant and Shri S.S.Ahluwalia respondent in person.

6. Mr. Nag learned counsel appearing for the appellant has not been able to point

out to us any difference between the charges which were communicated to the respondent when minor penalty proceedings were initiated against him and the charges which were communicated to him for major penalty proceedings. It is primarily this identical charge-sheet on the basis of which minor penalty was initiated and later on the same charges major penalty proceedings were sought to be conducted that led to Justice K.Ramamoorthy and then another learned Single Judge to hold that the action of the appellant smacked of arbitrariness. What is of significance is that when the respondent had applied for voluntary retirement on 15.3.93 he had unblemished record of service of a quarter century with Indian Army and the para military organization. Had his request for voluntary retirement been accepted at that time there was every likelihood of his finding a suitable job commensurate to his status and experience. He was denied that opportunity because of the appellant having dragged its feet in taking a decision on his request for voluntary retirement and when finally it did take decision it was done with a rider to initiate major penalty proceedings. This closed all door of his chances of getting a suitable post after voluntary retirement. These were the circumstances which impelled the two learned Judges of this Court to order reinstatement of the respondent into service.

7. Mr. Nag, learned counsel appearing for the appellant tried to canvass before us by referring to the order dated 28.1.1994, para 5 of which is relevant and the same is reproduced below :

And whereas, the disciplinary authority at the same time while considering the voluntary retirement notice of Shri S S Ahluwalia, Second-in-Command observed that the charges against the officer are of serious nature and as such disciplinary authority has decided to drop the departmental proceedings under Rule 16 of the CCS (CCA) Rules, 1965 ordered vide Presidential Memorandum No. F.4/17/92-Estt. (CRPF) (Pers.II) dated 13.5.1993 against Shri S S Ahluwalia, Second-in-Command, CRPF, RAF and to start a fresh enquiry under the provisions of Rule 14 of CCS (CCA) rules, 1965 against the said Shri S S Ahluwalia, Second-in-Command, 106 bn, CRPF, RAP. Now, Therefore, the disciplinary authority hereby :

` Drop the departmental proceedings ordered vide presidential memorandum No. f.4/17/92-estt. (CRPF) (Pars.II) dated 13.5.1993 against Shri S S Ahluwalia, Second-in- Command, 196 bn. CRPF. RFA.

And

8. Direct that a fresh enquiry should be held under the provisions of rule 14 of the CCS (CCA) Rules, 1965 against Shri S S Ahluwalia, Second-in-Command, 106 bn. CRPF, raf. The disciplinary authority orders accordingly."

9. On the basis of the aforesaid order, it was contended that the disciplinary authority had infact applied its mind and that there was an order for dropping of departmental proceedings and directing a fresh enquiry for major penalty. We do not agree with the contention so raised. In the absence of any record, showing that the disciplinary authority applied its mind for dropping of minor penalty

proceedings and converting of same charges into major penalty proceeding, the order quoted above is of no assistance to the appellant. Nothing has been brought on record as to why the minor penalty proceedings were converted into major penalty proceedings and that too on the same charges. We are in agreement with the finding of the learned Single Judge that had the appellant disposed of the matter of voluntary retirement of the respondent in 1993 and had he been permitted to retire in that year itself he stood fair chance of getting a re-employment.

10. When the writ petition in favor of the respondent was decided by the learned Single Judge he had only few months left from superannuation and it was because of his left over tenure that his re-instatement in service was ordered. The respondent has since superannuated and he Therefore cannot be reinstated in terms of the order of the learned Single Judge. We however order that the respondent will be entitled to all the benefits which he would have been entitled had he not superannuated. The appellants are directed to give all the benefits to the respondent in terms of the order of the learned Single Judge, within a period of eight weeks.

11. There is no merit in this appeal. The same is dismissed.