
(2002) 09 SC CK 0039

In the Supreme Court Of India

Case No : Civil Appeal No. 6792 of 1994

Union of India (UOI)

APPELLANT

Vs

Ram Lochan Ram

RESPONDENT

Date of Decision : 12-09-2002

Acts Referred:

Fundamental Rules — Rule 56

Citation : (2002) 6 ALT 57 : (2003) 1 AWC 77 Supp : (2002) 95 FLR 928 :
(2002) 22 GLH 602 : (2002) 8 JT 295 : (2003) 1 UPLBEC 251

Hon'ble Judges : K. G. Balakrishnan, J;G. B. Pattanaik, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The Union of India is in appeal against the judgement of central administrative tribunal, Allahabad bench (hereinafter referred to as "the tribunal") in OA No. 560/ 89. An order of compulsory retirement of the respondent in exercise of power conferred under Rule 56 (j) of the fundamental rules was assailed before the tribunal by the respondent, who on the date of compulsory retirement on 31.10.1988 was continuing as a grade-1 income tax officer.

2. Be it stated that he had initially been appointed way back in 1959 as an inspector and was promoted to income tax officer grade-II in 1973. He was granted officiating promotion as income tax officer grade-I in the year 1980 and got regular promotion as income tax officer grade-I in 1984 and was continuing as such till the date of his compulsory retirement. The tribunal by the impugned judgment quashed the order of compulsory retirement inter alia on the ground that the employer did not follow the instructions issued by the government of India on 5.6.1978 inasmuch as an option to the employee to revert back to his post of income tax officer grade-II was required to be given. The order of compulsory retirement was set aside and the tribunal directed that the procedure indicated in the government circular dated 5.6.1978, be followed.

3. Against the aforesaid order, special leave applications had been filed and leave

was granted by this Court on 17.10.1994, but the order of the tribunal has not been stayed. The learned counsel is not in a position to tell us as to whether pursuant to the order of the tribunal the respondent was allowed to continue in service till he attained his superannuation. The counsel for the respondent having been elevated as a judge of Allahabad High Court, there has been no further appearance on behalf of the respondent and therefore, we have discharged the duty of scrutinizing the materials more minutely to find out whether the impugned judgment of the tribunal can at all be sustained.

4. It is too well settled by a catena of decisions of this Court that an order of compulsory retirement is not a punishment and it is essentially a power conferred upon the employer to chop off the dead wood in public interest. Rule 56(j) of the fundamental rules unequivocally indicates that if the appropriate authority is of the opinion that it is in the public interest so to do, would have the absolute right to retire any government servant by giving a notice of not less than 3 months in writing or three months' pay and allowances in lieu of such notice. Since government orders of compulsory retirement were often being assailed before the courts or tribunals and, on account of technical lacunae, the orders were being interfered with, the government has come forward with a set of administrative instructions in the form of a guideline which is dated 5.1.1978. It is this circular which is the basis of the conclusion of the tribunal in interfering with the order of compulsory retirement.

5. Paragraph 3 of the circular more particularly paragraph (a) thereof unequivocally indicates that a government servant whose integrity is doubtful will be retired. The tribunal however relies upon the subsequent paragraphs where the question of an option to be given to the employee concerned to revert back to his parent post has been indicated. To us it appears that if an employee's integrity is doubtful, question of giving him an option to revert back to his parent post is wholly misconceived. The subsequent paragraph contained in para 6 on which the tribunal relies upon, deals with the cases of other government employees who are found to be ineffective and then if the government decides to exercise power under Rule 56 (j) to compulsorily retire them, an option is required to be given. In the case in hand the screening committee who considered the entries in the confidential character roll of the employees as well as all other materials, came to the conclusion that the retention of the respondent would not be in the public interest in view of the fact that he was an officer of doubtful integrity. It is true, the screening committee was also of the opinion that the respondent was an ineffective employee but that was in addition to the conclusion that he being an officer of doubtful integrity. The review committee which consisted of 5 members agreed with the conclusion of the screening committee and recommended the retirement of the employee and, ultimately the union government passed the impugned order of compulsory retirement. This being the position, in our opinion, the impugned order of the tribunal cannot be sustained and it must be held that the tribunal committed a gross error of law in relying upon a part of the circular which was never intended

for the employees whose integrity has been found to be doubtful by the screening committee and approved by the review committee.

6. In the aforesaid circumstances, we set aside the impugned order of the tribunal: We however make it clear that if the employee-respondent, has been continuing in service pursuant to the order of the tribunal, the said order not having been stayed by this Court, his entire period of service till the date of his superannuation has to be counted for deciding the retiral benefits of the respondent.

7. The appeal accordingly stands allowed with the aforesaid observations.