

Shri L.R.Bhatt
The Superintendent
of Post Offices,
Junagadh Division,
Junagadh.

: Petitioner

Versus

1. Union of India
(through)
The Post Master General,
Gujarat Circle, Ashram Road,
Ahmedabad

2. The Superintendent of
Post Offices, Junagadh
Division, Junagadh.

: Respondents.

Coram : Hon'ble Mr. P.H. Trivedi

: Vice Chairman

Hon'ble Mr. P.M. Joshi

: Judicial Member

ORAL ORDER

30/6/1989

Per: Hon'ble Mr. P.H. Trivedi

: Vice Chairman

Heard Mr.D.M.Thakkar and Mr.Jagdish Yadav for Mr.J.D.Ajmera,
the learned counsel for the applicant and the respondents
respectively.

2. The petitioner impugnes order dated 10/10/1986 compulsorily retiring him in the public interest in exercise of the powers conferred by Rule 48 of Central Civil Service (Pension) Rules, 1972 on his completion of 30 years of service. The relevant order is reproduced below:

"Whereas the Superintendent of Post Offices, Junagadh Division, Junagadh is of the opinion that it is in the public interest to do so.

Now therefore, in exercise of the powers conferred by Rule 48 of the Central Civil Service (Pension) Rules, 1972, the Supdt. of Post Offices Junagadh Division Junagadh hereby retires Shri L.R.Bhatt Sub-Post Master Prabhas-Patan P.O. with immediate effect, he having already completed 30 years of services qualifying for pension on 21.5.1985. Shri L.R.Bhatt, S.P.M. Prabhas-Patan P.O. shall be paid a sum equivalent to the amount of his pay plus allowances for a period of three months calculated at the same rate at which he was drawing them immediately before his retirement.

Sd/-

(S.J.Parmar)

Supdt. of Post Offices,
Junagadh Division,
Junagadh."

3. The petitioner's contention is that the appointing authority for himself in the post of Clerk to which he was appointed on 18/4/1955 is the Post Master General. The petitioner has not annexed the relevant order of this date. However, the respondents in their reply have relied upon the order dated 15/4/1988 which during the hearing was stated to be typing error and should read as 15/4/1955 by which the petitioner is appointed in the following terms:-

"Shri L.R.Bhatt, approved candidate under training at Bisavadar, to act as temporary Clerk, Porbandar vice Shri Y.A.Kadri".

4. The petitioner had relied upon the letter dated 7/8/1950 annexed at Annexure 'B' for his contention that the Post Master General Board had appointed him. Thereafter the petitioner was promoted to the post of Superintendent by the order dated 13/6/1980 at page 18 in which it is stated that "the Post Master General, Ahmedabad is pleased to order that the following officials of T/S clerical cadre may be promoted to the LSG cadre and allotted to the division noted against each for posting in the LSG cadre" where the petitioner appears at Sr.No.12. The respondents have produced the circular dated 13.12.85 in the Annexure in which it is stated that for the lower selection grade ministerial staff the appointing authority is in terms Director of Postal Services, Director of Posts and Telegraphs. Since the impugned action has been taken under Rule 48, there is no contention that ^{it} is a penalty and therefore Column No.2 of the Part III governs the case. Learned advocate for the respondent has urged in para-3 of the Circular dated 13/12/85 reproduced below that as the cadre of lower selection grade was made a divisional cadre it follows that the appointing authority cannot be from that date the Post Master General but the Superintendent of Post Office.

" It has now been decided by the Postal Services Board to make lower selection grade a divisional cadre. The officials in the LSG will be borne on the gradation list of the division/unit. The supervisory posts in the division/unit will be held by officials on the basis of seniority in the grade in that particular unit".

5. The main challenge of the petitioner arising from his contention is that the appointing authority being the Post Master General, the orders under Rule 48 cannot be passed by the authority below him namely the Superintendent of Post Office. On perusal of Rule 48^d shows that the power of retiring the petitioner is vested in the competent authority under Sub-Clause B of Clause I and the relevant notice that is required to be given is also empowered to the competent authority. There is therefore no warrant on perusal of Rule 48 with the Circular dated 13/12/1985 that any subordinate authority namely Superintendent is vested with his powers.

6. The second contention of the petitioner is that there is no application of mind in arriving at the conclusion that the retirement of the petitioner is in public interest as no particulars have been furnished regarding the Committee which considered his case although an averment to that effect has been found in the reply. By a further reply dated 6.2.1989, the respondents have furnished the relevant particulars and stated that a Committee meeting held on 27.2.1986 considered the cases of premature retirement of Government servants who have completed 30 years of service ending on 30/6/1985 and also reviewed the case of premature retirement of Government servants who attained the age of 55 years ending on 30.6.1985. This deficiency now cannot therefore be said to be held against the respondent.

7. The third contention of the petitioner is that he was allowed to cross the hurdle at the stage of completion of 30 years on 21.5.1985 and after a

considerable period of about 18 months or so the impugned order dated 10/10/1986 has been passed. The respondent should have taken the opportunity of invoking Rule 48 on completion of 30 years and they did not do so. On a perusal of Rule 48 it is found that the power of retiring a Government servant is available to the Government "at any time after a Government servant have completed 30 years of service". Accordingly, it is not possible to uphold the contention of the petitioner that this power is not available to the Government or the authority for acting under Rule 48 as contrary in any manner.

8. The next contention of the petitioner is that it is necessary to subject to the judicial review whether the circumstances existed to justify the retirement of the petitioner in public interest. We are unable to enter upon the exercise of deciding whether any authority other than that competent to do so or so empowered should have decided ^{and} as such authority has decided ^{on} ~~or~~ whether the material on which such decision was taken was adequate for such a decision. It is only necessary to ascertain whether the competent authority came to the conclusion on application of mind and whether opportunity was given to consider the material to come to the relevant conclusion. We are satisfied that this requirement is met and it is not possible or necessary to subject the conclusion so drawn to any further judicial review.

9. Another contention of the petitioner is that it is mandatory in terms of Rule 48 to make the payment for the period in lieu of notice of three months to the petitioner. The relevant provision reproduced above does not warrant a construction that such payment in mandatory terms is necessary simultaneously with the order of giving of the required notice. On perusal of the impugned

order we find that there is a clear statement that the petitioner shall be paid a sum equivalent to the amount of his pay plus allowances for a period of three months calculated at the same rate at which he was drawing them immediately before his retirement. During the hearing learned advocate for the respondent relied upon Memo No.C-10/Adv./86 dated 10/10/86 that actually the said payment has been effected. This contention therefore cannot be allowed to stand in the way.

10. In the above background the only plea of the petitioner which has to be upheld is that the impugned order has not been passed by the competent authority. The impugned order dated 10/10/86 is hereby quashed and set aside and the petitioner is declared to be in service continuously from the said date and he should be reinstated with backwages within a period of three months from the date of this order. With this observation, the case is disposed of. Parties to bear their own costs.

P.H. Trivedi

(P.H.Trivedi)
Vice Chairman

P.M. Joshi

(P.M.Joshi)
Judicial Member

a.a.bhatt