

CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO: 45 OF 1988

Date of decision: 8th. May, 1991

Brundaban Barik

....

Applicant

-Versus-

Union of India and others

....

Respondents

For the applicant

: M/s. Deepak Misra,
R.N.Naik,
A.Deo,
S.S.Hota,
Advocates.

For the Respondents
No.1.

: M/s. B.Pal, O.N.Ghosh,
Senior Standing Counsel
(Railway Administration)

C O R A M:

THE HONOURABLE MR. B.R.PATEL, VICE CHAIRMAN
A ND

THE HONOURABLE MR. N.SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be permitted to see the judgment ? Yes.
2. To be referred to the reporters or not? Yes.
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

JUDGMENT

B.R. PATEL, VICE-CHAIRMAN: The applicant while working as Chief Parcel Clerk of South Eastern Railway at Jharsuguda was put under disciplinary proceedings on charges a copy of which is at Annexure-1. While the disciplinary proceedings was in progress, the Respondents passed an order dated 11.1.1988 seeking to compulsorily retire him from service vide Annexure-4. He has contended that service of the order at Annexure-4 on him while the disciplinary proceeding was in progress was illegal and further that the order at Annexure-4 attaches stigma to him and a decision like that **violates** the principles of natural justice as no opportunity has been given to the applicant. He has moved this Tribunal for appropriate orders quashing the decision at Annexure-4 and the disciplinary proceeding against him as the same has been vitiated 'on account of prejudice' on the part of the authorities to punish the applicant.

2. The Respondents in their counter affidavit have maintained that no decision like the one dated 11.1.1988 (Annexure-4) to the application has been communicated or served on him. The order that has been served on the applicant is dated 29.2.88 which was served on him on 23.6.1988 by paying him three months pay and allowances in lieu of the notice.

The applicant has signed the acknowledgement. A copy of the order served on the applicant and the letter's acknowledgement are at Annexure-R/1 to the counter. In view of this, the Respondents have contended that the application has become infructuous as the orders served on him(Annexure-R/1) has not been challenged in the application. The order a copy of which is at Annexure-R/1 does not attach any stigma as complained against by the applicant. The enquiry which was in progress could not be completed due to the fact that the applicant had been compulsorily retired from service under orders at Annexure-R/1.

3. We have heard Mr. Deepak Misra, and Mr. R.N.Naik, the learned Counsel for the applicant and Mr. B.Pal the learned Senior Standing Counsel (Railway Administration) for the Respondents and perused the relevant papers. The counsel for the applicant has urged that the service of the order of compulsory retirement on the applicant and retiring him compulsorily without giving him an opportunity to be heard violates the principles of natural justice. Mr. Pal's contention is that as the order compulsorily retiring him(Annexure-R/1) has not been impugned the applicant cannot claim any relief against this order. The question of giving any opportunity to the applicant, according to Mr. Pal does not arise in such a case where the

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performance of the officer concerned is assessed by a review committee duly constituted under the Rules. In the present case, the case of the applicant has been reviewed under Rule 2046 of the Railway Establishment Code Vol-2, and the competent authority have taken a decision to retire the applicant from service on completion of thirty years of qualifying service. According to Mr. Pal such a decision is neither a penalty nor a stigma. Mr. Pal has further averred that law is well settled that such compulsory retirement when no stigma is cast after giving full pensionary benefits and three months wages in lieu of notice is not a penalty and as such it is not necessary to afford any opportunity to the applicant to put in any representation. In this connection he has drawn out attention to the judgment of Hon'ble Supreme Court in the case of Moti Ram Vs. N.E. Frontier Railway reported in 1964 SC 600. In para 26 of the judgment the Hon'ble Supreme Court have held that "a person who substantively holds a permanent post has a right to continue in service, subject, of course, to the rule of superannuation and the rule as to compulsory retirement. xx xx . In other words, termination of the services of a permanent servant otherwise than on

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the ground of superannuation or compulsory retirement, must, per se amount to his removal would contravene Article 311(2) and must be held to be invalid". He has also cited the judgment of Hon'ble Supreme Court in the case of State of U.P. Vs. Madan Mohan Nagar reported in AIR 1967 SC 1260. This deals with the order of compulsory retirement passed against the Respondent, Shri Madan Mohan Nagar. In this judgment reference has been made to an earlier judgment in the case of Jagdish Mitter Vs. Union of India reported in AIR 1964 SC 449. In that case the Hon'ble Supreme Court observed that "When an authority wants to terminate the services of a temporary servant, it can pass a simple order of discharge without casting any aspersion against the temporary servant or attaching any stigma to the temporary servant or attaching any stigma to his character". As soon as it is shown that the order purports to cast an aspersion on the temporary servant, it would be idle to suggest that the order is a simple order of discharge." In paragraph-8 of the judgment the Supreme Court have observed that "It seems to us that the same test must apply in the case of compulsory retirement, namely: does the order of compulsory retirement cast an aspersion or attach a stigma to the officer when it purports to retire him compulsorily?". In the present case there is no doubt

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that the order does cast a stigma on the respondent". The appeal preferred by the State of U.P. against the order of the High Court was dismissed on the ground that the order of compulsory retirement attached stigma to the officer. On perusal of the order at Annexure-R/1, compulsorily retiring the applicant from service on completion of thirty years of service we have ~~found~~ that the order does not attach any stigma to the applicant and it cannot be treated to be a penalty for which opportunity has to be afforded to the applicant under Article 311(2) of the Constitution.

4. The Counsel for the applicant has further contended that the order of compulsory retirement passed while the disciplinary proceeding for imposing a major penalty was in progress, is bad in law. Mr. Pal on the other hand has contended that there is no bar that an employee cannot be compulsorily retired if any disciplinary proceeding was pending. In this connection he placed before us a copy of the Railway Board's Confidential letter No.E(P&A)I-79/RT/37 dated 1.2.1980, addressed to the General Manager, South Eastern Railway with copy to others(Annexure-X) to the written note of argument filed by Mr. Pal. This letter has clearly mentioned that there is no bar in the rules to conduct the

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review at the age of 50-55 years or when the Railway Servant completes 30 years service/qualifying service as the case may be even if disciplinary action is pending against him. The only restriction in the rules is that the appropriate authority can withhold permission to a Railway servant under suspension for premature retirement. Even if the disciplinary action is pending against him, the Railway servant can be prematurely retired provided it can be certified that the premature retirement is in the public interest. The premature retirement should not be on the grounds of specific act of misconduct as a short cut to initiate formal disciplinary proceedings. We have noticed that the order at Annexure-R/1 does not speak of any misconduct. Mr. Pal has, in this connection cited the judgment of the Karnataka High Court in the case of R.N.Rao, Vs. State of Karnataka reported in 1984(3) SLR 807. ~~In~~ Para-6 of the judgment categorically states that "Compulsory retirement after the employee has put in the qualified number of years of service with full pension is neither a punishment nor a stigma so as to attract the provisions of Article 311(2) of the Constitution. We are persuaded by this judgment that in the present case the order of compulsory retirement served on the applicant vide Annexure-R/1 does not attract the provision of Article 311(2) of the Constitution and as such it is not necessary to afford any opportunity to the applicant before such an order

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could be passed. As has been indicated above, the order of compulsory retirement (Annexure-R/1) has not been impugned and no relief can possibly be given to the applicant against this order. He has asked for relief against the alleged order at Annexure_4 to the application. The Railway Administration have denied to have issued any such orders to the applicant. We accept the plea of the Railway Administration in view of the acknowledgement given by the applicant vide Annexure-R/1.

5. As the order of compulsory retirement has been served on the applicant by following the prescribed rules and procedures it was no longer necessary to proceed with the disciplinary proceedings which has become infructuous. In view of ~~it~~^{This}, the question of quashing the disciplinary proceeding does not arise.

6. For the reasons mentioned above, the application fails, however, there will be no order as to costs.