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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

CIRCUIT SITTING AT NAGPUR

O.A. No.

T.A. No. (N)197/87

198

DATE OF DECISION 6-4-1990

Laxmanprasad Shivdayal Dube Petitioner

Mr.G.P.Hardas Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Ms.Neelam R.Sarin Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.S.Chaudhuri, Member(A)



The Hon'ble Mr. J.P.Sharma, Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Yes

} No

(04)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR

Tr.Appln.No.(N)197/87

Laxmanprasad Shivdayal Dube,
Plot No.1, Income Tax Layout,
Rana Pratap Nagar,
Nagpur - 22.

.. Petitioner
(Applicant)

vs.

1. Union of India
through
The Secretary,
Ministry of Finance,
Revenue Division,
North Block,
New Delhi.
2. Chairman,
Central Board of Direct Taxes,
North Block,
New Delhi.
3. Commissioner of Income Tax,
Vidharbha,
Jaika Buildings,
Civil Lines,
Nagpur.

.. Respondents

Coram: Hon'ble Shri P.S.Chaudhuri, Member(A)
Hon'ble Shri J.P.Sharma, Member(J)

Appearances:

1. Mr.G.P.Hardas
Advocate for the
Applicant.
2. Ms.Neelam R.Sarin
Advocate for the
Respondents.

JUDGMENT

(Per Shri P.S.Chaudhuri, Member(A)) Date: 6-4-1990

Writ Petition No.2566/80 under Article
226 of the Constitution was filed in the Nagpur Bench
of the High Court of Judicature at Bombay on 23.10.1980.
By order dated 12.9.1986 it was transferred to this
Tribunal under Section 29 of the Administrative
Tribunals Act, 1985. Thereafter it was taken on the Board
of this Bench of this Tribunal as Tr.A/197/87.

The petitioner(applicant) in this writ petition is an

employee of the Income Tax Department who is challenging the order dated 1-7-1978 by which the intervening period between the date of his premature retirement from the Forenoon of 4.12.1975 to the date of his reinstatement on 6.7.1978 ~~has~~ is regularised by granting him leave of the kind due and admissible.

2. The applicant's date of birth is 10.11.1924. He joined the Income Tax Department as a Lower Division Clerk on 22.11.1943. At the time of his compulsory retirement he was working as Supervisor Gr.I in the scale of Rs.700-900 in the office of the 3rd respondent. It is the case of the applicant that he had a very good record of service and was given all promotions whenever ^{those} ~~it is~~ became due and, at times, was promoted even by superseding others due to his merit. He was, however, given a warning on 23.10.1975 for alleged responsibility for the loss of a letter. An order dated 3-12-1975 was served on the applicant directing that he "shall retire from service with effect from the F/N of the 4th December, 1975." By a further order dated 26.12.75 this order was amended. The amendment pertains to the rule under which the applicant is compulsorily retired. The applicant submitted a representation dated 1-1-1976 to the Chairman, Central Board of Direct Taxes, New Delhi against this order of compulsory retirement. By memorandum dated 27.10.1976 this representation was rejected.

(11)

The applicant then submitted a representation dtd.11.7.1977 to the Minister of Finance, New Delhi. By order dated 1.7.78 the applicant was reinstated in service. This order reads as follows:-

"Whereas Shri L.P.Dubey, Supervisor, Gr.II Level-I, Office of the Tax Recovery Officer-I, Nagpur was prematurely retired vide this office order No.V.D.2(1)/75 dated 3rd December, 1975.

And whereas on the representation dated 11th July, 1977 of Shri L.P.Dubey against the said order of premature retirement, the Central Board of Direct Taxes, New Delhi, as per conclusion reached by the appropriate Committee with the approval of the Finance Secretary have decided that Shri L.P.Dubey, Supervisor, should be reinstated in service.

Now, therefore, the Commissioner of Income Tax, Vidharbha and Marathwada, Nagpur in supersession of this office order No.V.D.2(1)/75 dated 3rd December, 1975 hereby orders that Shri L.P.Dubey, Supervisor, shall be reinstated in service with effect from the date he reports himself for duty as per posting order that is being separately issued.

The intervening period between the date of premature retirement of Shri L.P. Dubey, Supervisor, and the date of his reinstatement shall be regularised by granting him leave of the kind due and admissible."

In pursuance of this order the applicant was reinstated on 6-7-1978. He then submitted a representation dtd. 7-8-1979 to the 3rd respondent requesting that the intervening period be treated as period spent on duty.

By a letter dtd. 4-4-1979 the applicant was informed that it was open to him to put ^{up} a petition to the President against the impugned order. Thereafter the applicant

submitted a petition dtd. 15-5-1979 to the President.

By letter dated 2-7-1980 the applicant was informed that:

"I am directed to refer to your letter No.4(C)(S)/7/70 dated the 31st May,1979 forwarding a petition from Shri L.P. Dubey addressed to the President, on the subject cited above and to say that after careful consideration it has been decided to reject it.

Shri Dubey may please be informed accordingly."

Being aggrieved at this the petitioner(applicant) filed Writ Petition No.2566/80.

3. The respondents have opposed the petition/application by filing their written statement dtd. 15-1-1990. We have heard Mr.G.P.Hardas, learned advocate for the applicant and Ms.Neelam R.Sarin, learned advocate for the respondents.

4. The applicant's first contention is that the mention of "Clause(1) of Rule 56 of the Fundamental Rules" in the order dtd. 3-12-1975 is incorrect because there is no such clause. But this issue is not at all relevant in view of the amendment dtd. 26.12.1975 by which the compulsory retirement was effected under Rule 48 of the Central Civil Services(Pension)Rules, 1972.

5. The applicant's next contention was that even the amended order was not valid because he had not completed "thirty years of service qualifying for pension"

on 21-11-1973 because although he had joined service on 22-11-1943, the period from 12-7-1960 to 25-11-1960 when he had been under suspension because of participation in the strike of the Central Government employees in July, 1960 was not to be treated as period spent on duty as per the orders that had been passed in this behalf. We are of the view that this contention too is not valid because the order of compulsory retirement was subsequently set aside by the order dated 1-7-1978. Further, in the present Writ Petition the applicant has not challenged the order of compulsory retirement; all that he has done is to challenge the operation of the order dtd. 1-7-1978 that deals with the treatment of the intervening period. It is possible that he may have taken this course of action because the order of compulsory retirement no longer survives after the appellate order dtd. 1-7-1978. In this view of the matter the various oral submissions made by Mr. Hardas to the effect that the compulsory retirement was malafide, that the initial notice was invalid, that correction cannot validate an invalid notice, that the applicant had not completed 30 years of qualifying service and that the applicant's record all along had been very good also do not survive.

6. Mr. Hardas then cited the case of Ramchandra v. Union of India and others-(1989) 10 ATC 620. In that case it was held that the applicant was entitled to get all his back salary and allowances from the date he had to retire compulsorily to the date of his reinstatement.

But on going through ~~that~~ case we find that is completely distinguishable from the present case. In Ramchandra's case the impugned order of compulsory retirement was passed under an incorrect rule. It was only long after the applicant's retirement that the correct rule was incorporated in the earlier order by way of corrigendum and it was held that this would not legalise the earlier order. In the present case the question is not one of legalising the earlier order of compulsory retirement. That order of compulsory retirement has been set aside. All that we are now concerned with is the treatment of the intervening period.

7. It was Ms.Sarin's submission that the applicant had not been retired as a disciplinary measure. It was her submission that he had been compulsorily retired without any stigma under the powers available to the Government under the Central Civil Services(Pension) Rules,1972. It is her further submission that, thereafter, the applicant had been reinstated ~~by~~ the Government on the basis of his representation. It was her submission that specific instructions regarding how the intervening period was to be treated had been laid down in office memorandum dated 10-8-1978. Para 2 thereof reads as follows:

"2. It has been represented to this Department that wherever an employee, on consideration of his representation, is reinstated, the intervening period should be treated as duty and he should be paid full salary on the ground that it could be safely concluded that but for the emergency, the Government servant would not have been prematurely retired at all. The matter

-: 7 :-

has been considered carefully in consultation with the Ministry of Finance and it has been decided that where a Government servant has been prematurely retired on account of political or personal victimisation, there would be some justification in treating the period as duty with full pay. As such, where the review/representation Committee records a definitive finding that the premature retirement of the Government servant was on account of political or personal victimisation, the intervening period should be treated as duty with full pay and allowances. In other cases, it would not be appropriate to treat the period during which the employee had not worked, as duty and allow him duty pay for the same. In such cases the period may, as hitherto, be treated as leave due and admissible or dies non as the authority ordering reinstatement decides."

We do not see how the memorandum dtd. 10-8-1978 can help the respondents in the matter of the impugned order when that order is dated 1-7-1978. Since the applicant's representation against the impugned order was, however, only decided on 2-7-1980, the instructions dated 10-8-1978 will, of course, be applicable for deciding the applicant's appeal only. Ms. Sarin then cited office memorandum dtd. 5-1-1978 reproduced at page 337 of "Swamy's Pension Compilation", 11th Edition, Paras 4 and 7 of this memorandum are reproduced below:

"(4) If, in any case, it is decided to reinstate a prematurely retired Government employee in a service after considering his representation in accordance with these instructions, the period intervening between the date of premature retirement and the

date of reinstatement may be regulated by the authority ordering reinstatement as duty or as leave or dies non, as the case may be, taking into account the merits of each case.

(7) As and when representations are received from affected employees against the orders of premature retirement relating to the period of emergency, or on receipt of a fresh representation in such cases, even if an earlier representation against the premature retirement had already been considered by the appropriate committee and rejected, they should be examined by the appropriate 'Representation' committees which shall take special care to see that-

(a) over-rigorous standards were not applied at the time of original review in the matter of judging ineffectiveness of the employee on account of a mistaken sense of overzealousness; and


(b) premature retirement was not resorted to as a means of political or personal victimisation."

It was Ms. Sarin's contention that the Review/Representation Committee ~~na~~ which decided that the applicant should be reinstated in service had not recorded a definite finding that the premature retirement of the Government servant was on account of either over-rigorous standards or that it had been resorted to as a means of political or personal victimisation. It was her submission that same position held as far as the rejection of the applicant's appeal was concerned. It was her conclusion that, therefore, the intervening period had been correctly, treated as leave due.

8. We have quoted the order of reinstatement dtd. 1-7-1978 earlier. It is quite clear from this that the committee which dealt with the applicant's reinstatement had recorded no definite finding that either over-rigorous standards had been applied at the time of original review in the matter of judging ineffectiveness of the employee on account of a mistaken sense of overzealousness or that premature retirement had been resorted to as a means of political or personal victimisation. It was therefore open to the authority ordering reinstatement to treat the intervening period as leave of the kind due and admissible. In view of the clear orders in this regard we are unable to see any reason why the intervening period should be treated as spent on duty.

9. In the result, the application is dismissed. In the circumstances of the case there will be no order as to costs.


(J.P.SHARMA)
Member(J)


(P.S.CHAUDHURI)
Member(A)