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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.161/91.

Date of Judgement : 13.4.94

1. S.Narsing Rao (died per LRs 2 to 5)
2. S.Pramila Bai
3. S.Manju Bai
4. S.Dharmender
5. S.Anita

.. Applicants

Vs.

1. Union of India, Rep. by
Chief Vigilance Officer,
Central Boards of Excise & Customs,
Revenue Department,
New Delhi.
2. The Collector,
Central Excise,
Hyderabad.
3. The Chief Vigilance Officer,
Central Boards of Excise & Customs,
New Delhi.

.. Respondents

Counsel for the Applicants :: Shri K.Venkataramana Reddy

Counsel for the Respondents :: Shri N.V.Ramana, Addl.CGSC

C O R A M

Hon'ble Shri A.B.Gorthi : Member(A)

Hon'ble Shri T.Chandrasekhar Reddy : Member(J)

J u d g e m e n t

{ As per Hon'ble Shri A.B.Gorthi : Member(A) }

The validity of the penalty of compulsory retirement imposed upon the applicant is under challenge in this application.

2. The applicant while working as Inspector of Central Excise, Sircilla Sector was served with a charge memo alleging that he, improperly and without due verification recommended grant of L-4 license in respect of 2,467 unauthorised power looms. After a departmental disciplinary inquiry, he was found guilty of the charge and was ordered to be compulsorily retired. The penalty was confirmed by the appellate authority.

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3. The first contention of the applicant is that he was not guilty of the charge. He was not the "proper officer" to accept L-4 applications and he merely scrutinised the applications to see if they were in order before he endorsed the remarks "Verified and found correct". It was not for him to investigate if the applications pertained to power looms which were installed on or before 31.3.1981. There was no loss to the State due to the grant of licences therefore The applicant could not have been held guilty of any misconduct. In any case, the penalty of compulsory retirement is excessive for a solitary lapse in the discharge of duties.

4. The respondents in their reply affidavit stated that on 30.9.82, the applicant received 1,236 L-4 application forms together with bank challans in respect of 2,467 day power looms and on that day itself he recommended all the applications by endorsing his remarks "Verified and found correct". The respondents contend that it was the duty of the applicant to check and ensure that the applications pertained to power looms installed on or before 31.3.1981. Had the applicant done so, the State would not have lost Rs.14,80,200/- being the compounded levy for six quarters from 31.3.1981 to 30.9.1982.

4. Heard learned counsel for both the parties.

5. At the outset, we do not find any justification for holding that the finding of the Enquiry Officer is either based on no evidence or perverse. The disciplinary proceedings are sufficiently in order and do not call for our interference.

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6. Shri K.Venkataramana Reddy, learned counsel for the applicant assailed the validity of the penalty mainly on the ground that "compulsory retirement" can be ordered only for continued inefficiency and not for a single lapse. The applicant rendered unblemished service throughout and was due to retire on superannuation within 2 years from the date of penalty. The competent authority should have carefully and objectively scrutinised the entire record of service of the applicant before coming to the conclusion that the applicant should be compulsorily retired. In support of his contention, he placed reliance on the judgement of the Supreme Court in Ram Ekbal Sharma Vs. State of Bihar & Another, 1990 SCC (L&S) 491. In that case, the appellant was compulsorily retired under Bihar Service Code, 1979, Rule 74(b)(ii), which reads as under:-

74(b)(ii). The appointing authority concerned may, after giving a government servant at least three months' previous notice in writing, or an amount equal to three months' pay and allowances in lieu of such notice, require him in public interest to retire from service on the date on which such a government servant completes thirty years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice.

7. The above rule empowers the appointing authority to compulsorily retire the government servant. This rule can be invoked after the government servant completed thirty years of qualifying service or attained the age of fifty years and if it is considered that it would be in public interest if such government servant is compulsorily retired. Neither there is a requirement of serving the government servant with a charge memo nor a regular departmental disciplinary enquiry is called for, to initiate action under Rule 74(b)(ii) of Bihar Service Code. This rule is similar, in substance, to Fundamental Rule 56(j).

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The purpose of these Rules is to enable the Government to weed out the worthless without taking recourse to disciplinary action. The parameters within which these Rules can be invoked are well demarcated and ^{are} altogether different from those specified for the infliction of the penalty of compulsory retirement, which attracts Article 311 of the Constitution.

8. The applicant's counsel drew our attention to the judgement in the case of Baikuntha Nath Das & Another Vs. Chief District Medical Officer, Baripada & Another, AIR 1992 SC 1020, wherein it was stressed that while taking a decision to retire a government servant under F.R.56(j), more important~~ly~~ should be attached to the confidential records of the later years. As there was nothing adverse in the confidential reports of the applicant, it was urged that the penalty of compulsory retirement was not justified. Obviously, learned counsel for the applicant was mixing up the compulsory retirement under F.R.56(j) with the penalty of compulsory retirement under the C.C.S.(C.C.A.) Rules. In the case of Baikuntha Nath Das itself, the Hon'ble Supreme Court clarified ^{that} an order of compulsory punishment under F.R.56(j) is not a punishment, implies no stigma and is passed on the subjective satisfaction of the Government. In the case of the applicant, he was dealt with under the provisions of the C.C.S.(C.C.A.) Rules and was awarded the penalty of compulsory retirement. So long as there is no violation of any of the provisions of the C.C.S.(C.C.A.) Rules, the validity of the penalty cannot be assailed unless it is shown to be unjust or unconscionable.

9. A careful examination of the enquiry proceedings would show that the charge against the applicant ^{was} ~~is~~ sufficiently established by the evidence on record, and the penalty imposed

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in the circumstances of the case, cannot be said to be unreasonable. In the result, we find no merit in the O. and it is, therefore, dismissed.

10. No order as to costs.

T. Chandrasekhar Reddy
(T.Chandrasekhar Reddy)
Member (J) .

A.B.Gorthi
(A.B.Gorthi)
Member (A) .

Dated: 13 April, 1994.

br.

Amal Kumar
Deputy Registrar (Judl.)

Copy to:-

1. Chief Vigilance Officer, Central Board of Excise & Customs, Revenue Department, Union of India, New Delhi.
2. The Collector, Central Excise, Hyderabad.
3. The Chief Vigilance Officer, Central Board of Excise & Customs, New Delhi.
4. One copy to Sri. K.Venkatramana Reddy, advocate, CAT, Hyd.
5. One copy to Sri. N.V.Ramana, Addl. CGSC, CAT, Hyd.
6. One copy to Library, CAT, Hyd.
7. One spare copy.

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