

CASE NO.:
Appeal (civil) 6233 of 2004

PETITIONER:
Pritam Singh

RESPONDENT:
Union of India & Ors.

DATE OF JUDGMENT: 22/09/2004

BENCH:
K.G. Balakrishnan & Dr. AR. Lakshmanan

JUDGMENT:
J U D G M E N T

(Arising out of S.L.P. (Civil) No. 24665 OF 2003)

Dr. AR. Lakshmanan, J.

Leave granted.

The above appeal was filed against the impugned judgment and order dated 24.07.2003 passed by the High Court of Punjab & Haryana at Chandigarh in Civil Writ Petition No. 10285/CAT/2003 wherein the High Court has dismissed the writ petition filed by the appellant-herein and confirmed the orders of the Central Administrative Tribunal imposing the punishment of compulsory retirement.

The short facts are as follows:

The appellant was appointed in the Northern Railways in Ministerial Service on 14.07.1965 and was due to retire on 31.05.2002. The appellant, while working as Head Clerk in the Northern Railways was issued a Merit Certificate, wherein his work and conduct had been highly commended. The appellant was also selected for being promoted as Office Superintendent Grade-II. However, he was not given posting of the supervisory post. A junior to the appellant was favoured with the said posting and the appellant had protested against the favoured treatment and in the process he incurred the displeasure of his superior officers, particularly, respondent No.2. One of the employees sought for the "absentee" statement of tool room shop from the appellant. The said "absentee" statement was given by the appellant to the said employee. This "absentee" statement was used by the employee in his petition filed against the Railways challenging the disciplinary action against him. This act on the part of the appellant was viewed as a mis-conduct and leakage of the official information. Charge-sheet was issued to the appellant alleging act of mis-conduct against him. The charge-sheet reads thus:

"Article 1

That the said Shri Pritam Singh while functioning as OS-II in time office on 31.08.1995 at 9.00 hrs. took the record of absence statement of tool room pertaining to 20.12.1993 from Shri O.P. Saini and leaked it out with the result the photocopy of absentee statement was attached by Shri Sewa Singh, Harjit Singh and Subeg Singh with their rejoinder to O.A. No.859/PB/95 filed in CAT/CDG to be used against UOI leaking of absentee statement is a serious misconduct and speaks of doubtful integrity of Shri Pritam Singh. Thus, he violated the Rule 31(i), (ii) and (iii) of Rly. Services Conduct Rules, 1966."

Sd/-
(HARSH KUMAR)
Dy. CME/ASR
N.Rly, Mech. Workshop,
ASR. 14.11.1995."

An enquiry was held against the appellant and a report was submitted holding the appellant guilty of leaking official documents. The appellant, by his memo submitted to his higher officer, admitted the finding of guilt in respect of the charges made against him on 16.03.1996. The said letter reads as follows:-

"DB CME/ASR

R/Sir,

Sub: Findings of the enquiries officer against SF-5

Ref: Your letter No.727-E/4531/DAR/ dated 02.03.1986

Since I have received the findings of the enquiry officer by proving me guilty of the charges. I have nothing to represent against this as such, I admit the charges. The statement given by me during enquiry for denying the charges was not correct. I feel sorry for the same.

I am at the verge of retirement and request your goodself to consider my case sympathetically. I assure your goodself to remain disciplined in future.

Thanking you,

Yours faithfully,

Dated : 16.03.1996

Sd/-
(PRITAM SINGH)
Supdt. II
DSC Shop Asstt."

On the basis of the enquiry report and the statement of the appellant, respondent No.3 passed an order of compulsory retirement of the appellant. The appellant, by his appeal against the order of the respondent No.3 filed before respondent No.2, gave a detailed account of the revengeful measures practised by the respondent No.3 against him. It was also pointed out as to how five charge-sheets were issued one after the another in the course of 15 days against the appellant by using one O.P. Saini, the colleague of the appellant against him. The appeal was rejected by respondent No.2. The revision filed by the appellant was also rejected. The appellant, thereafter, approached the CAT, Chandigarh and filed O.A. No. 1148/PB/2002 which was rejected by the Tribunal holding that the punishment alone cannot be interfered with. The appellant, thereafter, filed the writ petition in the High Court which was also rejected by the Division Bench. Aggrieved against the same, the above special leave petition was filed.

We have heard Mr. K.R. Nagaraja, learned counsel appearing for the appellant and Mr. Rajiv Dutta, learned senior counsel appearing for the Railways.

We have been taken through the pleadings, the documents marked as annexures etc. Mr. K.R. Nagaraja, learned counsel appearing for the appellant, after narrating the facts submitted that the punishment imposed on the appellant is unreasonable, irrational and disproportionate to the guilt found against the appellant. It was submitted that the charge against the appellant is that he supplied "absentee" statement to one of the employees who in turn utilised the same in the case filed by him against the Railways and that "absentee" statement supplied by the appellant was neither a confidential document nor a privileged document. The employee concerned has the right of information and when he asked for the same, the same could not have been denied to him and that the supply of the "absentee" statement was not prohibited either by law or by any administrative circulars. It was further submitted that the appellant had a long service career of 31 years and his service was highly commended with merit certificate issued to him. Concluding his argument, the learned counsel submitted that the entire act of respondent No.3 in slapping one after another five charge-sheets in the course of 15 days was an act of revengeful and malafide and that the appellant admitted the charge by filing a memo of confession hoping against hope that he would be leniently dealt with. Mr. Nagaraja submitted that in view of the above factors, the extreme punishment of compulsory retirement is vitiated by unreasonableness, irrationality and disproportionality.

Per contra Mr. Rajiv Dutta, learned senior counsel appearing for the Railways submitted that the document in question can be supplied to any employee, specially one who is locked in litigation with the Railway Administration, only on his written request and with the approval of the competent authority. The appellant in the instant case has failed to do so. The appellant is only the custodian of the document and not the approving authority to supply such document to any employee. As such, the appellant has not followed the proper procedure for supplying the document and is

guilty of unauthorisedly communicating the said document to another employee of the Railways who is litigating against the Railways.

It was further argued that in the enquiry, the appellant was proved to be guilty of the charges and that the appellant also accepted his guilt and expressed his regret vide letter dated 16.03.1996. Learned counsel also denied that the appellant has served for 31 long years without any blemish in his service record and that he was awarded three punishments, namely, (1) stoppage of two sets of privilege passes and three sets of privilege ticket; (2) stoppage of two sets of privilege passes on 20.01.1998 (after retirement); and (3) withholding of increment temporarily for two years on 01.04.1994 which punishment was later reduced to censure. Concluding his argument, the learned senior counsel for the Railways submitted that the order of punishment imposed on the appellant is in accordance with the gravity of the offence committed by the appellant and that the appellant has been found to be guilty in earlier cases also and awarded punishments. Since the appellant has admitted the charges and requested for a sympathetic consideration, he was awarded punishment of compulsory retirement. He would further urge that the Railway Administration has a right to maintain discipline in the services and in that context the punishment imposed on the appellant is appropriate keeping in view the magnitude and gravity of the misconduct.

In this background of facts, the following question of law arises for consideration by this Court:-

Whether the punishment of compulsory retirement imposed upon the Petitioner is highly disproportionate to the admitted guilt of supplying absentee statement to one of the employees particularly when the Petitioner, in his long devoted blemishless service of 31 years, was never served with any adverse entries/remarks and all of a sudden in the course of a fortnight, on the verge of his retirement, was slapped with one after another series of charge-sheets on account of the wrath and displeasure of Respondent No.3 only?

We have given our thoughtful consideration to the facts and circumstances of the case with reference to the records placed before us. It is true that the appellant has supplied a document containing information regarding the absentee details of a co-worker which is neither confidential or privileged information nor the appellant was under any official communication prohibiting him to supply the same. It was a right of the employee concerned to obtain the information from the office. Therefore, the appellant bonafide believed that he had not committed any offence. Learned counsel appearing for the Railways, in his reply, referred to some penalties imposed on the appellant on earlier occasion. The punishment imposed, in those cases, are in the nature of stoppage of privilege passes and censure. According to the appellant, no other penalty or punishment admittedly was not communicated to the appellant.

The appellant himself has admitted that he had issued the absentee details to a co-worker in good faith and bonafide. Just because an employee is facing litigation, he does not lose his right to get the information to which he has a right, so long as the same is not barred. Moreover, furnishing of such information has not done or caused any damage to the office except causing some inconvenient situation to the Railways in contesting the case of an employee and the Railway Administration was confronted with the said absentee statement which prompted the Railways to initiate action against the appellant. The stoppage of two sets of privilege passes on 20.01.1998 is for the period after the retirement of the appellant on 01.04.1996.

In our opinion, the High Court has committed an error in not interfering with the punishment of compulsory retirement even though the appellant submitted that the misconduct alleged against him was not at all an offence or even a serious mistake. The act of misconduct alleged against him was that he supplied a list of absentee details to one of the employees, who was fighting a case before the Tribunal against the Railways. This list contained the ticket numbers of the workers of a shop, who were absent on that date. This was neither a confidential document nor a privileged document. It contained details to which the employee concerned had a right of information. The appellant being a Superintendent Grade-II and in-charge of the information acted bona fide in good faith while supplying the information. In our opinion, this kind of an act was neither a misconduct nor a serious mistake. When the charges were found proved against the appellant, the appellant admitted that he had

supplied the absentee details.

The only question, therefore, that survived was whether the punishment of compulsory retirement against the appellant who had served 31 years of service is vitiated as being disproportionate to the alleged mis-conduct. The Tribunal and the High court have refused to interfere on the ground that the power of judicial review does not permit interference with the quantum of punishment unless the punishment imposed is shockingly disproportionate.

We are of the opinion that the instant case is a glaring example of abuse of discretionary power of the Disciplinary Authority as the punishment of compulsory retirement imposed on the appellant, who has put in 31 years of long service only because he has supplied the details of absenteeism to one of the employees, which was neither confidential nor a privileged document. In any event, the appellant bonafide believed that he was right in furnishing the details which the employee had right to ask for. In our opinion, this is a fit case where the High Court and the Tribunal should have held that the punishment imposed is vitiated on account of the disproportionality.

This Court in the case of Union of India and Anr. vs. G. Ganayutham, (1997) 7 SCC 463 while examining the scope of judicial review held that "reasonableness" "rationality" and "proportionality" are the grounds on the basis of which judicial review of the administrative order can be undertaken. Considering the facts extracted herein before, we find that the exercise of power by the Respondent falls in the category of arbitrary exercise of power.

A perusal of the compulsory retirement order would reveal that it was not stated that the action was initiated in public interest.

This Court also has held in the case of M.S. Bindra vs. Union of India & Ors., (1998) 7 SCC 310 that judicial scrutiny of any order imposing premature compulsory retirement is permissible if the order is either arbitrary or malafide or if it is based on no evidence.

This Court in the case of State of Gujarat and Anr. vs. Suryakant Chunilal Shah (1999) 1 SCC 529 held that in a case of compulsory retirement public interest is the primary consideration.

In the instant case, no material on record was placed before the disciplinary authority, appellate authority, revisional authority, Tribunal and before the High Court to reasonably form an opinion that compulsory retirement was in public interest. The case on hand is also not a case of doubtful integrity. The impugned action of compulsorily retiring the appellant from service can be termed as arbitrary in the sense that no reasonable person could have come to the conclusion that the appellant had outlived his utility as a member of railway service and had become a deadwood which had to be chopped off.

For the foregoing reasons, we allow the appeal and set aside the order of compulsory retirement passed by the High Court affirming the order of the Tribunal. The appellant is not now in service. He would have normally retired on 31.05.2002 from service on superannuation had he continued in service. Now that we have set aside the order of compulsory retirement, the appellant will be deemed to be on duty from the date of compulsory retirement till the date of superannuation, namely, 31.05.2002. The appellant is entitled to all consequential, monetary and other retiral benefits, which shall be calculated and paid to the appellant within three months from today. No costs.