STATE OF U.P. AND ANR.

v.

ABHAI KISHORE MASTA

DECEMBER 1, 1994

[B.P. JEEVAN REDDY AND S.C. SEN, JJ.]

SERVICE LAW—Disciplinary Proceedings—Order of punishment made prior to the date of decision in Union of India v. Ramzan Khan, AIR (1991) SC 471—Non-Supply of enquiry report does not vitiate enquiry—FUNDAMENTAL RULE 56-J—Compulsory Retirement—Order made during the pendency of disciplinary proceedings—Whether necessarily penal—Held, No.

While the respondent was working as an Executive Engineer he was suspended pending enquiry into certain charges. While the enquiry was pending, the respondent was retired compulsorily under Fundamental Rule 56-J. While the writ petition filed against the order of compulsory retirement was pending, final orders were passed in disciplinary proceedings on 18.7.1990, imposing the punishment of reduction in rank, to be given effect to in case the order of compulsory retirement was set aside.

The High Court following an earlier decision of the same High Court in *J.N. Bajpai* v. *State of U.P. and Ors.*, (1990) 8 LCD 149 quashed the order of compulsory retirement on the ground that the order having been passed during the pendency of disciplinary proceedings must be deemed to be penal in nature. The order of punishment of reduction in rank was quashed on the ground of non-supply of enquiry report, *interalia* following the decision of the Supreme Court in *Union of India* v. *Ramzan Khan,* AIR (1991) SC 471.

Allowing the appeal, this Court

HELD : 1.1. The order of the High Court quashing the order of punishment on the ground of non-supply of enquiry report was liable to be set aside on the ground that where the order of punishment was made earlier to the date of the decision in *Union of India* v. *Ramzan Khan,* AIR (1991) SC 471, and non-supply of enquiry report did not vitiate the enquiry, as held in *Managing Director ECIL Hyd.* v. *D. Karunakar,* JT [1995] 6 SC 1. [226 G, 227 A]

1.2. So far as the order of compulsory retirement under fundamental Rule 56-J was concerned, the principle enunciated by the Allahabad High Court in *J.N. Bajpai* v. *State of U.P and Ors.*, (1990) 8 LCD 149, and followed in the judgment under appeal was unsustainable in law. Neither as a matter of law nor as an invariable rule any and every order of compulsory retirement made under Fundamental Rule 56-J (or other provision corresponding thereto) during the pendency of disciplinary proceedings can be held to be necessarily penal. It may be or it may not be, depending upon the verification of the relevant record or the material on which the order was based. [227 C]

1.3. In many cases, it may happen that the authority competent to retire compulsorily under Rule 56-J and authority competent to impose the punishment in the disciplinary enquiry are different. It may also be that the charges communicated or the pendency of the disciplinary enquiry is only one of the several circumstances taken into consideration. In such cases it cannot be said that merely because the order of compulsory retirement is made after the charges are communicated or during the pendency of disciplinary enquiry, it is penal in nature. Merely because the order of compulsory retirement is couched in innocuous language without making imputations against the government servant, the court need not conclude that it is not penal in nature. In appropriate cases the Court can lift the veil to find out whether, in truth, the order is penal in nature. [227 G, H, 228 A]

J.N. Bajpai v. _State of U.P. and Ors._, [1990] 8 LCD 149 (A11): Overruled.

State of U.P. v. _Madan Mohan Nagar_, [1969] 2 SCR 333 (Constitution Bench); _Ram Ekbal Sharma_ v. _State of Bihar and Anr._, [1990] 2 SCR 679; _Baikuntha Nath Das and Anr._ v. _Chief District Medical Officer and Anr._, [1992] 1 SCR 836; _Union of India_ v. _J.N. Sinha_, [1971] 1 SCR 791, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8497/94.

From the Judgment and Order dated 9-4-93 of the High Court of Allahabad in W.P. No. 1518/90.

Gaurab Banerjee and R. B. Mishra for the Appellant.

M.P. Jha, Anil K. Chopra and D. K. Garg for the Respondent.

The Judgment of the Court was delivered by

A **B.P. JEEVAN REDDY, J.** Leave granted. Heard counsel for both the parties.

The appeal is directed against the judgment of a Division Bench of the Allahabad High Court (Lucknow Bench) allowing the writ petition filed by the respondent.

B

While the respondent was working as an Executive Engineer at Etawah he was suspended pending enquiry on 13.10.1983 into certain charges. He challenged the said order by way of writ petition in the Allahabad High Court which was dismissed. Though the enquiry commenced, it was not concluded by the year 1988 when the respondent filed another Writ Petition C (No. 4116 of 1988) challenging the continuation of the order of suspension pending enquiry. The High Court suspended the order of suspension pending enquiry on August 8, 1988.

While the said enquiry was pending, the respondent was retired compulsorily under Fundamental Rule 56-J by an order of the Government D dated 28th December, 1989. The respondent then filed Writ Petition 1518 of 1990 questioning the same. While this writ petition was pending before the High Court, final orders were passed in the aforementioned disciplinary proceedings on 18th July, 1990, imposing the punishment of reduction in rank, to be given effect to the case, the order of compulsory retirement is E set aside. Thereupon the respondent amended his Writ Petition (1518 of 1990) to question the order of punishment as well. The main ground urged in support of the attack against the order of punishment was the failure of the disciplinary authority to furnish a copy of the enquiry report to him before imposing the punishment.

F The High Court allowed the writ petition and quashed the order of compulsory retirement made under Fundamental Rule 56-J on the ground that the order having been passed during the pendency of disciplinary proceedings must be deemed to be penal in nature. This was so held following an earlier decision of the said Court in *J.N. Bajpai* v. *State of U.P. and Ors.*, [1990] (8) LCD 149. So far as the order of punishment is G concerned it was quashed on the ground of non-supply of enquiry report, purporting to follow the decision of this Court in *Union of India* v. *Ramzan Khan,* AIR (1991) SC 471. The High Court observed that it shall be open to the disciplinary authority to furnish a copy of the enquiry report to the respondent and proceed with the enquiry from that stage onwards. The H decision of the *Tribunal* on both the grounds is questioned in this Appeal.

We shall first take up the quashing of the order of punishment made in the disciplinary enquiry. The decision in *Mohd. Ramzan Khan* has been explained by a Constitution Bench of this Court in *Managing Director, ECIL, Hyderabad* v. *B. Karunakar*, JT [1995] (6) Judgment Today SC 1. It has been held that where the order of punishment is made earlier to the date of the decision in *Ramzan Khan* non-supply of enquiry report does not vitiate the enquiry. Following the said decision, the order of the High Court quashing the punishment on the said ground is set aside.

So far as the order of compulsory retirement under Fundamental Rule 56-J is concerned, we are of the opinion that the principle enunciated by the High Court in *J.N. Bajpai* and followed in the Judgment under appeal is unsustainable in law. It cannot be said as a matter of law nor can it be stated as an invariable rule, that any and every order of compulsory retirement made under Fundamental Rule 56-J (or other provision corresponding thereto) during the pendency of disciplinary proceedings is necessarily penal. It may be or it may not be. It is a matter to be decided on a verification of the relevant record or the material on which the order is based.

In the *State of Uttar Pradesh* v. *Madan Mohan Nagar*, [1969] (2) SCR 333 it has been held by a Constitution Bench that the test to be applied in such matters is "does the order of compulsory retirement cast an aspersion or attach a stigma to the officer when it purports to retire him compulsorily?" It was observed that if the charge or imputation against the officer is made the condition of the exercise of the power it must be held to be by way of punishment— otherwise not. In other words if it is found that the authority has adopted an easier course of retiring the employee under Rule 56-J instead of proceeding with and concluding the enquiry or where it is found that the main reason for compulsorily retiring the employee is the pendency of the disciplinary proceeding or the levelling of the charges, as the case may be, it would be a case for holding it to be penal. But there may also be a case where the order of compulsory retirement is not really or mainly based upon the charges or the pendency or disciplinary enquiry. As a matter of fact, in many cases, it may happen that the authority competent to retire compulsorily under Rule 56-J and authority competent to impose the punishment in the disciplinary enquiry are different. It may also be that the charges communicated or the pendency of the disciplinary enquiry is only one of the several circumstances taken into consideration. In such cases it cannot be said that merely because the order of compulsory retirement is made after the charges are communicated or during the pendency of disciplinary enquiry, it is penal in nature.

A It is true that merely because the order of compulsory retirement is couched in innocuous language without making imputations against the government servant, the Court need not conclude that it is not penal in nature. In appropriate cases the Court can lift the veil to find out whether, in truth, the order is penal in nature vide *Ram Ekbal Sharma* v. *State of Bihar and Anr.*, [1990] (2) SCR 679.

B

We may mention that even in the case of termination of a temporary employee this Court has adopted the very same tests as are indicated hereinabove.

We may also mention that the grounds on which an order of C compulsory retirement can be interfered with has been set out by this Court in *Baikuntha Nath Das and Anr.* v. *Chief District Medical Officer, Baripada and Anr.*, [1992] (1) SCR 836 affirming the principles enunciated in *Union of India* v. *J.N. Sinha,* [1971] (1) SCR 791.

We are, therefore, of the opinion that the High Court was in error in D holding that merely because the order of compulsory retirement was passed during the pendency of a disciplinary enquiry, it must be necessarily deemed to be penal in nature, is unsustainable in law. The Judgment of the High Court is accordingly set aside and the matter is remitted to the High Court to determine, in the light of the observations made herein, whether the order of compulsory retirement is, in truth, penal in nature? There shall E be no order as to costs.

A.G. Appeal allowed.