J.R. Jaln Vs. Union of India and ors.

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Court : Delhi

Decided On : May-01-1972

Reported in : ILR1972Delhi620

Judge : V.D. Misra, J.

Acts : Fundamental Rules - Rule 56

Appeal No. : Civil Writ Appeal No. 481 of 1970

Appellant : J.R. Jain

Respondent : Union of India and ors.

Advocate for Pet/Ap. : G.D. Gupta and; O.N. Mohindroo, Advs

Judgement :

V.D. Misra, J.

(1) By this petition under Article 226 of the Constitution of India the petitioner challenges the order compulsorily retiring him under Fundamental Rule 56 (j)(i) passed by the Engineer-in-Chief, Central Public Works Department, on 30-1-1970 (Annexure V).

(2) The petitioner entered service of the Central Public Works Department on 13-1-1943 as Section Officer (Civil) and was duly confirmed with effect from 25-5-

1951. He was promoted to the post of Assistant Engineer with effect from 17-5-1955. He became due for crossing efficiency bar in 1965 at the stage of Rs. 590.00 in the scale of Rs. 350-900. The matter of his being allowed to cross efficiency bar was held over for two years, since certain disciplinary proceedings were pending against him at that time. By an order dated 6-7-1966 the Chief Engineer imposed a penalty of withholding two increments having the effect of postponing his future increments on a charge of gross negligence and carelessness in the discharge of his duties which had resulted in pecuniary loss to the Government. However, by an order dated 28-9-1967 the petitioner was allowed to cross the efficiency bar with effect from 1-4-1967 though in view of punishment the increment raising his pay beyond efficiency bar was actually given effect from 1-4-1969 instead of 1-4-1967.

(3) In November, 1965, the petitioner was transferred to Allahabad Central Division and started working under Shri v. P. Gupta, the then Executive Engineer respondent No. 3. After a period of about a year and a half the relations between the petitioner and the said Shri Gupta became strained. It is alleged that Shri Gupta threatened the petitioner with spoiling his confidential report. The petitioner wrote a letter dated 16-10-1967 to Shri Gupta (Copy Annexure 1) alleging that the latter was prejudiced and had threatened as well to spoil his confidential report. By a D.O. letter dated 13-8-1968 the petitioner was communicated adverse remarks in his confidential report for the period 1-4-1967 to 31-3-1968 by the Chief Engineer (Northern Zone). The petitioner was described in this report, inter alia, that he did not exhibit any technical skill, and was 'cunning, evasive and not very helpful', and many other works had to be transferred out of his control due to his negative approach. The Reviewing Officer generally endorsed these remarks. The petitioner represented against these remarks staling, inter alia, that they were the resuit of a bias, bana fide and prejudice on the part of Shri Gupta. These were, however, rejected and the petitioner was informed by the Chief Engineer's letter dated 3-10-1969.

(4) Threafter, the petitioner received the notice in question (Annexure V) intimating that he shall retire from service on the expiry of three months computed from the date of service of this notice.

(5) Shri Kailash Prakash, Director of Administration, Central Public Works Department, filed an affidavit on behalf of respondents 1 and 2 in opposition to the writ petition. Respondent No. 3, Shri Gupta, also filed his affidavit. The allegations of bona fide, bias or pre judice are denied by Shri Gupta. The facts otherwise are broadly admitted. It is stated that the petitioner has been retired in 'public interest', and the Court has no jurisdiction to go into the matter.

(6) In Union of India v. Col. J. N. Sinha & Anr., 1970 S.L.R. 748, it was held that compulsory retirement of a Government servant under Fundamental Rule 56 (j) does not cast a stigma or involves civil consequences and so the employee is not entitled to any opportunity to show cause against the order. It was further observed that though the right conferred on the appropriate authority is an absolute one, the 'power can be exercised subject to the conditions mentioned in the rule, one of which is that the concerned authority must of the opinion that it is in the public interest to do so. If that authority bona fide forms that opinion, the correctness of the opinion cannot be challenged before Courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision.' When Col. J. N. Sinha's case was decided by a Division Bench of this Court on remand (Col. J. N. Sinha v. Union of India and Anr., 1971 S.L.R. 470 the above-mentioned observations of the Supreme Court were interpreted thus:

'THEsaid observation clearly point out that the formation of the requisite opinion by the appropriate authority is one of the conditions for the exercise of the power conferred by the Rule, and that the decision to retire a Government servant under the Rule should not be arbitrary, which means that it should be based on some ground or material which is germane to the question whether it is in the public interest to retire the said Government servant. If the decision is based on no such ground or material or is based on a ground or material which is not germane to the issue, it would be an arbitrary decision. Since the Rule provides for the formation of the requisite opinion by the appropriate authority and not by a Court, the sufficiency of the ground or material is not justiciable. But, some ground or material germane to the issue must exist, and it is open to a court to examine whether such ground or material exists or not.'

(7) This Division Bench after following the Supreme Court decision in R. L. Butail v. Union of India, 1970 S.L.R. 926 held 'it is open to the concerned Government servant to contend that the decision was an arbitrary one and when such a contention is raised, the Court has to examine the materials placed before it and decide whether the decision to retire the Government servant compulsorily was arbitrary or not.' I am thus right, rather a duty, to examine the marterial which is produced before me by the respondents to find out whether the order in question is arbitrary or not.

(8) During the course of arguments as well as in the return filed by the respondents, it was submitted that the adverse remarks conveyed to the petitioner as well as the punishment withholding two increments with cumulative effect and the penalty of censure are the materials on which the decision was taken to retire the petitioner compulsorily. I may straight away deal with the penalty of censure. This was given to the petitioner on 29-4-1970 practically four months after the impugned notice (Annexure V) was given. At this stage it may be noted that the petitioner had filed the present writ before the expiry of the impugned notice and the operation of this notice was stayed. The result was that he continued in service, and it is in these circumstances that the penalty of censure was imposed on 29-4-1970. This penalty could not possibly have been before the appropriate authority concerned in January, 1970 when the impugned notice was given. This has thereforee, not to be taken into consideration.

(9) As regards the adverse remarks conveyed to the petitioner as well as the punishment of withholding two increments with cumulative effect, the contention of Mr. G. D. Gupta, learned counsel for the petitioner is that by allowing the petitioner to cross the efficiency bar, his previous adverse reports stood wiped out and could not be taken into consideration. He relies on the State of Punjab v. Dewan Chuni Lal, 1970 S.L.R. 375(4), and an unreported Division Bench judgment of the Madras High Court in P. Shankar Rao v. The Government of India and another Writ Petition No. 2922 of 1969 decided on 30-10-1970(5). In Dewan Chuni Lal(4) case the employee was shown inefficient and dishonest in the confidential character roll of the years 1941 and 1942. He was, however, allowed to cross the efficiency bar in the year 1944. Thereafter, in 1949 he was charge-sheeted on the

basis of extracts from his confidential character roll from the years 1941 to 1948. Their Lordships of the Supreme Court held thus:

'INour view reports earlier than 1942 should not have been considered at all inasmuch as he was allowed to cross the efficiency bar in that year. It is unthinkable that if the authorities took any serious view of the charge of dishonesty and inefficiency contained in the confidential reports of 1941 and 1942 they could have overlooked the same and recommended the case of the officer as one fit for crossing the efficiency bar in 1944. It will be noted that there was no specific complaint in either of the two years and at best there was only room for suspicion regarding his behavior.'

In Shankar Rao case(5) the petitioner was a member of Madras Civil Service and was later on promoted to the Indian Administrative Service. He was compulsorily retired under Fundamental Rule 56(j). One of the questions which arose in that writ petition was whether it was permissible to take into consideration the antecedents before he was promoted to the Indian Administrative Service . for taking a decision by the appropriate authority to retire. The Division Bench observed thus:

'IT is permissible to add that the antecedents..... could not have influenced the Central Government, because the petitioner (Shankar Rao) was promoted to the Indian Administrative Service .'

Admittedly the order allowing the petitioner to cross the efficiency bar is dated 28-9-1967 and the penalty of withholding of two increments was passed on 6-7-1966. If the authorities were taking serious note of the punishment they would not have allowed the petitioner to cross the efficiency bar later on. By certifying him as fit for crossing the efficiency bar the conclusion was that he was efficient enough to claim the higher pay. These facts could not later on be taken into consideration for the purpose of taking decision under Fundamental Rule 56(j). It is true that in Dewan Chuni Lal(4) case their Lordships of the Supreme Court were concerned with a case where the employee was charge-sheeted on the basis of the adverse remarks given to him before he was allowed to cross the efficiency bar. But that will not make any difference. The observations of their Lordships reproduced

above leave no doubt that the earlier reports could not have been considered at all. Again it is true that in Shanker Rao case the Madras High Court was concerned with a case where the employee had been promoted from a lower service to a higher service. But the reason was not the taking into consideration the antecedents before he was promoted to the higher service since it is based on the very good reason that in spite of those antecedents the person was found to be fit to be promoted and so they could not be said to be relevant in forming the opinion under Fundamental Rule 56(j). In the instant case, thereforee, in my opinion the punishment of withholding two increments could not be taken into consideration by the appropriate authority while forming the requisite opinion.

(10) The only thing now left is the adverse report by Shri Gupta respondent No. 3, against the petitioner. It may be noted at this stage that the first report given by this respondent to the petitioner for the period 1-4-1966 to 31-3-1967 is of 'very good category. His professional ability is shown as 'above par' and is shown to have very comprehensive knowledge of accounts etc. His arrangements for carrying out works are shown 'highly satisfactory-economical'. Under the heading 'general qualifications' he is shown to be 'highly energetic, keenly observant and possesses initiative and drive of the high order.' No defects were noticed and for the purpose of promotion he was shown to be an officer 'much above average'. He was recommended for an increment in the time scale and was considered qualified to hold the charge of a Division. His integrity is shown to be 'of a very high order'. The superior officers also agreed with all these. However, in his report for the period 1-4-1967 to 1-1-1968 his professional ability, according to respondent No. 3, comes to practically nil. His general qualifications come to ordinary, lacking initiative and drive. For the purpose of promotion he is shown as an ordinary officer. He was not found qualified to hold charge of a Division. His integrity also came to be doubted. However, the remarks of the Superintending Engineer on this report are 'Remarks of the Executive Engineer are highly prejudicial. It appears that this is as a result of personal squabbles between them.

(11) This A.E. is, however, of ordinary abilities lacking in adequate initiative and drive. A draft charge-sheet against this A.E. has. been submitted by the E.E. which is being examined separately.' These remarks of the Superintending Engineer

show that respondent No. 3 has not assessed the work of the petitioner objectively but made the assessment with a biased mind. There is another revised report on the record for this very period. These seem to have been given because of the revised form issued by the department concerned. It is in this report that the petitioner has been shown as 'cunning, evasive and not very helpful.'

(12) The petitioner in order to show bona fides of respondent No. 3 has drawn my attention to a statement made by the Superintending Engineer during inquiry proceedings initiated on the basis of the adverse reports by respondent No. 3. The Superintending Engineer straightaway admitted that the relations between the petitioner and respondent No. 3 were strained. The learned counsel for the respondents also during the course of arguments frankly admitted that the relations between respondent No. 3 and the petitioner were strained. It must, however, be noted that respondent No. 3 in his affidavit specifically denied that the relations between them had become strained at any time. In the light of the facts discussed above, I am constrained to say that respondent No. 3 was not only inimical to the petitioner but had made a wrong statement to deny the same. He seems to be out to harm the petitioner. Admittedly the letter written by the petitioner (Annexure 1) was received by respondent No. 3 in which the petitioner had alleged that this respondent was prejudiced and was out to spoil his character roll. This letter was replied to but the copy of the reply produced before me shows that this respondent had not controverter the allegations of prejudice and threat of spoiling the petitioner's character roll. Under these circumstances the adverse remarks given by respondent No. 3 cannot be said to be bona fide. These are vitiated by bona fides and could not be taken into consideration by the appropriate authority while passing the impugned order, (see S. Partap Singh v. State of Punjab, : (1966)ILLJ458SC).

(13) The respondents have not been able to show any other relevant matter which was taken into consideration by the appropriate authority. I must at this stage point out that whereas the respondents placed before me the records relating to the petitioner, these do not appear to be complete. The record given to the Court consists of the character rolls and the various other orders passed relating to the petitioner. These orders consist of conveying the adverse remarks as well as an

order of the Vigilance Unit dated 29-4-1970. There is nothing to show how the matter came up before the appropriate authority and what were the decisions. During the course of arguments the learned counsel for the respondents did hand over to me a gist of confidential reports in respect of the petitioner presumably to show the matter which were taken into consideration by the appropriate authority. He also produced what seems to be a copy of the decision taken by the Secretary, Works, Housing and Urban Development on 5-1-1970, but I directed him to place the full records before the Court to enable me to go through them. He has not done so and, thereforee, I have to base my decision on the records which have been placed before me. I have placed on record the gist of confidential reports and copy of the said decision dated 5-1-1970 referred to above.

(14) The last contention of Mr. Gupta is that Fundamental Rule 56 (j) (i) after amendment does not cover the case of the petitioner. This rule before and after amendment is as under :-

'F.R.56. (j): Notwithstanding anything contained in this rule the appropriate authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giv- ing him notice of not less than three months in writing or three months pay and allowance in lieu of such notice: (i) if he is in Class I or Class Ii service or post the age limit for the purpose of direct recruitment to which is below thirty-five years after he has attained the age of fifty years:'

The amendment only brought a change in clause (i) which, after amendment, reads as under:

'(I)If he is in Class I or Class Ii service or post and had entered Government service before attaining the age of thirty-five years after he has attamed the age of fifty years.'

A Division Bench of this Court in Colonel J. N. Sinha v. Union of India and am., 1971 S.L.R. 470, held that this clause can apply only to persons appointed by direct recruitment by competitive examination in terms of clause (i) of Rule 3 of Survey of ' India Class I (Recruitment) Rules, 1960, and not to persons who were

appointed under other clauses of this rule, i.e., by promotion or transfer etc. The result of the amendment is that the words 'age limit for the purpose of direct recruitment to which he is below thirty-five years' have been replaced by the words 'and had entered Government service before attaining the age of thirty-five years'. The change is material indeed. Whereas before the amendment the persons covered by clause (i) were only those who were directly recruited under the service rules, after the amendment all those persons who happened to be in Class I or Class Ii service at the time the appropriate authority has to take the decision for compulsory retirement and had entered the Government service before attaining the age of thirty-five years, are covered. It does not mean that a Government employee is required to enter Class I or Class Ii service or post before attaining the age of thirty-five years as suggested by Mr. Gupta. The amendment clearly points out that an employee, who has entered Government service, irrespective of the class of service, before attaining the age of thirty-five years, is covered by this clause. This contention has, thereforee, no force and is rejected.

(15) In view of the above discussion, since I do not find any relevant matter germane to the decision in question by the appropriate authority, I must allow this petition. I am conscious of the fact that had there been some relevant material on the record, then it was not for me to decide about its sufficiency to enable the appropriate authority to take the decision in this case. A writ of certiorari will issue quashing the notice No. 45/2/69-ECII, dated 30-1-1970 (Annexure V) retiring the petitioner under Fundamental Rule 56(j)(i) issued by the Engineer-in-Chief to the petitioner. In the circumstances of the case, there will be no order as to costs.