

Dharam Dev Mehta

Vs

Union of India and Others

Civil Appeal No. 174 of 1976

(V. R. Krishna Iyer, R. S. Pathak JJ)

20.12.1979

JUDGMENT

1. This appeal by special leave raises a short question as to whether the appellant, who was retired under Rule 56(j) of the Fundamental Rules was so retired by a competent authority contemplated by the rule. Admittedly he was appointed by the Comptroller and Auditor-General. The only point that arises or, at any rate, we are concerned with, is as to whether the retirement order is in conformity with rule 2(a) of the C.C.S. (C.C.A.) Rules, 1965. The appointing authority, according to Rule 56(j), is the competent authority. Who, then, is the appointing authority in the context of this case? The answer is to be sought under Rule 2(a) which reads thus :

In these rules, unless the context otherwise, requires ...

2(a) 'appointing authority' in relation to a government servant means -

(i) the authority empowered to make appointments to the service of which the government servant is for the time being a member or to the grade of the service in which the government servant is for the time being included, or

(ii) the authority, empowered to make appointments to the post which the government servant for the time being holds, or

(iii) the authority which appointed the government servant to such service, grade or post, as the case may be, or

(iv) where the government servant having been a permanent member of any other service or having substantively held any other permanent post, has been in continuous employment of the government the authority which appointed him to that service or to any grade in that service or to that post,

whichever authority is the highest authority.

2. The most significant part of the rule states, after setting out alternative authorities, that the appointing authority is one out of these four categories who is the highest. This is emphatically brought out by the expression "whichever authority is the highest". There is no doubt that among the four classes of authorities listed under Rule 2(a), the one falling under sub-rule (iii) viz. Comptroller and Auditor-General (in the present case) is the highest. It evidently follows that the order of retirement, to be legal, must be issued by the Comptroller and Auditor-General, but actually the

impugned order of retirement was issued by the Director of Commercial Audit. In fact the order of retirement runs thus :

Whereas the Direction of Commercial Audit is of the opinion that it is in the public interest to do so

Obviously the Director of Commercial Audit is a lesser official. The conclusion is, therefore, inescapable that the compulsory retirement is contrary to law.

3. The High Court, in its extensive judgment, considered the scheme of the rules and, indeed, referred to the point mentioned above, but after highlighting this question as one most emphasised by the appellant, has slurred over the point and proceeded to discussion of other issues. We are concerned with the vital - perhaps the fatal - aspect of the order which has not received due attention at the hands of the High Court. In this view, on account of the contravention of Fundamental Rule 56(j), read with Rule 2(a) of the (C.C.A.), we are constrained to come to the conclusion that the retirement is illegal.

4. The appellant has already become superannuated and, therefore, he will be eligible to his salary (by which we mean to include other allowances automatically admissible and going with salary) for the period between the date of compulsory retirement and the date of actual superannuation at the age of 58.

5. It is unfortunate that this legal flaw has proved fatal. Administrative law is a course necessary for administrative officers at the highest levels so that such flaws may not vitiate orders they pass. Eventually government is put to considerable loss for no fault of it, except that no proper legal training in this branch of the law for the concerned officers had been given by it. With these observations we allow the appeal, but parties will bear their costs.

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