

Union of India and Another

Vs

Sri S. S. Razak

Civil Appeal No. 1933 (N) of 1970

(R. S. Pathak, O. Chinnappa Reddy JJ)

18.11.1980

JUDGMENT

CHINNAPPA REDDY, J. –

The respondent was working as Station Master at Jadupudi Railway Station, when, he received a notice dated April 10/11, 1969, from the Divisional operating superintendent, Sough Eastern Railway, Khurda Road, purporting to retire him from service with effect from the forenoon of August 18, 1969, under rule 2046 of the Indian Railway Establishment Code, on attaining the age of superannuation. The respondent submitted a representation claiming that he was entitled to continue in service till he attained the age of fifty-eight years and that he could not be retired from service on attaining the age of fifty-five years only. As his representation evoked no response, the respondent filed a writ petition in the High Court of Orissa to have the order retiring him from service quashed. The high Court of Orissa allowed the writ petition on the ground that the order retiring the respondent from service was passed by the Commercial Traffic Manager who was the original appointing authority. The High Court referred to Article 311(10) of the Constitution and cases decided thereunder, There cannot be the slightest doubt that the High Court was entirely wrong in proceeding as if article 311 had any application. This was not a case of superannuation. The only question was whether the age of superannuation in the case of the respondent was fifty-five years or fifty-eight years. The question whether the authority who issued the order retiring the respondent from service was subordinate to the authority who appointed the respondent did not at all arise for consideration. Having said this much we do not feel called upon to interfere in this appeal under Article 136 as the respondent attained the age of fifty-eight years also long ago and must have duly retired. We therefore, dismiss the appeal but in the circumstances without any order as to costs.

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