

S. Maheswar Rao

Vs

State of Orissa and Another

Civil Appeal No. 3051 of 1989

(K. N. Saikia, M. H. Kania JJ)

10.08.1989

JUDGMENT

SINGH, J. –

1. Leave granted.

2. This appeal is directed against the judgment and order of the Orissa Administrative Tribunal, Bhubaneswar dated December 21, 1987 dismissing the appellant's suit challenging his premature retirement from service under the State Government order dated November 11, 1983.

3. The appellant joined service under the Orissa State Government as Junior Engineer (Electrical) in 1955. He was promoted to the post of Executive Engineer (Electrical) in 1963. In 1978 he was promoted to the post of Superintending Engineer (Electrical) on merit and selection. While he was working as Superintending Engineer (Electrical) he completed 50 years of age. A review Committee constituted by the State Government scrutinised the appellant's case for considering his retention in service beyond the age of 50 years as contemplated by the first proviso to rule 71(a) of the Orissa Service Code. The Review Committee considered the appellant's service record on October 11, 1983 and made recommendation to the government that his retention in service was not in public interest. Pursuant to the recommendation of the Review Committee the State Government issued orders on November 10, 1983 prematurely retiring the appellant from service. He challenged the validity of the order by means of a civil suit before the subordinate Judge, Bhubaneswar, but the suit was later on transferred to the Administrative Tribunal, Bhubaneswar under Section 29 of the Administrative Tribunals Act. The Tribunal dismissed the suit and upheld the validity of the order of premature retirement. hence this appeal.

4. Learned counsel for the appellant urged that the Review Committee made recommendation for the appellant's premature retirement on the basis of adverse remarks awarded to him for the years 1980-81, 1981-82 and 1982-83 although representations against those remarks made by the appellant had not been considered and disposed of by the State government. This plea was canvassed before the Tribunal also. We find merit in this submission. The Review Committee on the basis of adverse remarks awarded to the appellant for the years 1980-81, 1981-82 and 1982-83 formed its opinion that the appellant's retention in service was not in public interest as there was marked deterioration in his performance for the three consecutive years. Before the Tribunal the appellant assailed the validity of the Review Committee's recommendation placing reliance on the decision of this Court in *Brij Mohan Singh Chopra v. State of Punjab* ((1987) 2 SCC 188 : (1987) 3 ATC 496 : (1987) 2 SCR 583). The Tribunal held that adverse remarks for the year 1980-81 could not be taken into consideration by the Review Committee as representation against those adverse

entries was pending with the State Government. But, as regards the adverse entries for the years 1981-82 and 1982-83 are concerned the Tribunal held that though period for making representation against those entries had not expired and the appellant was entitled to make representation within six months from the date of communication of the entries, the Review Committee was not expected to defer the consideration of appellant's case on the possibility of appellant making representation which eventually may or may not materialise. Proceeding further the Tribunal held that the entries for the years 1981-82 and 1982-83 were not liable to be ignored and on the basis of those entries the order of premature retirement was sustainable in law as there has been deterioration in the appellant's performance during the aforesaid years.

5. In our opinion the Tribunal committed serious error. Admittedly the adverse entries for the years 1981-82 and 1982-83 were communicated to the appellant on July 29, 1983 and under the relevant rules the appellant was entitled to make representation against those entries within six months from the date of communication. The Review Committee met on October 11, 1983 and by that time six months' period had not expired and before that date the appellant had not made any representation but that did not disentitle him from making representation. The appellant made representation against those adverse entries on October 10, 1983 retiring him prematurely. The course adopted by the Review Committee and the State Government resulted in denial of opportunity to the appellant from making representation against the adverse entries awarded to him. Since the period for making representation against the adverse entries had not expired the appellant had right to make representation even a day before the expiry of six months' period therefore till the date of expiry of the period prescribed for making representation, adverse entries for the years 1981-82 and 1982-83 could not be taken into consideration for this premature retirement. The Review Committee should have deferred the consideration of the appellant's case till his representation against the aforesaid adverse entries was disposed of or in the alternative the State Government itself should have considered and disposed of the representation before issuing the order of premature retirement. Neither the Review Committee nor the State Government followed any such course and instead they placed reliance on the aforesaid adverse entries against which appellant's representation was pending. In this view the principles laid down by this Court in Brij Mohan Singh Chopra case ((1987) 2 SCC 188 : (1987) 3 ATC 496 : (1987) 2 SCR 583) were fully applicable and the Tribunal committed error in refusing to interfere with the order of the State Government. In our opinion, that order of the State Government retiring the appellant prematurely is vitiated and the appellant is entitled to relief.

6. Before we part with the case we would like to refer to a disturbing feature of the case. Shri. Gian Chand, Chairman of the Tribunal who decided the appellant's case was also the Chairman of the committee by virtue of being the Chief Secretary of the Orissa Government which reviewed the appellant's case and made recommendation for his premature retirement. Shri Gian Chand had already expressed his opinion against the appellant although administratively, none the less he was disqualified to hear and decide the appellant's case. The Tribunal performs judicial function and it is required to act judicially in accordance with the principles of natural justice. It is well settled principles that no person should be a judge in his own cause. on the application of this principle Shri Gian Chand was disqualified to hear and decide the appellant's case. We do not consider it necessary to pursue the matter further, as the appellant had not raised any objection against the participation of Shri Gian Chand in the proceedings before the Tribunal.

7. In view of the above discussion, we allow the appeal with costs and set aside the order of the Tribunal dated December 21, 1987 as well as the order of the State Government dated November 10, 1983. The appellant is entitled to reinstatement with all consequential benefits of service in

accordance with rules.

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