

C. D. Aila Wadi

Vs

Union of India and Others

Writ Petition No. 59 of 1983

(Ranganath Misra, M.M. Punchhi, S.C. Agarwal JJ)

01.03.1990

JUDGMENT

RANGANATH MISRA, J. -

1. In this application under Article 32 of the Constitution, petitioner assails the order dated September 5, 1975, of his compulsory retirement from service with effect from December 5, 1975, made under Rule 56(j)(i) of the Fundamental Rules. The impugned order ran thus :

"Whereas the Director of Audit, Defence Services, New Delhi (appropriate authority) is of the opinion that it is in the public interest to do so.

Now, therefore, in exercise of the powers conferred by clause (j)(i) of Rule 56 of the Fundamental Rules, the Director of Defense Services (appropriate authority) hereby gives notice to Shri C. D. Ailawadi, Audit Officer, Defence Services that he, having already attained the age of 50 years on November 22, 1969, shall retire from service with affect from the forenoon of December 4, 1975, or from the date of expiry of three months computed from the date of the service of this notice on him, whichever is later."

2. The petitioner has pleaded that he was efficient and had risen from the rank of a Clerk to the post of Audit Officer in which he was confirmed with effect from December 3, 1968. According to him, he had clear and unblemished record of service. He had held independent charge of the senior post of Deputy Director of Audit and had been paid an additional amount of Rs. 100 per month for the period. He also alleged that his character roll entries were excellent. According to him, it was the obligation of the appropriate authority to review the petitioner's case six months before he attained the age of 50 or completed 30 years of service. Since no such review had been made or on the basis of review petitioner having not been retired, he was entitled to continue up to the age of 58, which is the normal age of retirement. According to him, all cases of premature compulsory retirement made during the emergency were reviewed in terms of the government circular of August 10, 1978, but the representations made by the petitioner for the benefit of review in terms of the said circular were not heeded to and the petitioner was, therefore, obliged to file the present petition.

3. In the return to the rule nisi by the Director of Audit, Defence Services, it has been contended that the order of retirement was made in public interest after review of the petition's case. It has been stated in the said affidavit :

"In the case of Shri Ailawadi the Committee after review of his complete record of

service observed that his earlier services were of a very marginal nature and he earned some adverse reports later. The Committee, therefore, considering the quality of his work on the whole, concluded that Shri Ailawadi was not fit to be retained in the public interest. The appropriate authority felt that his reports for the last few years were poor, colourless and indicative of steady deterioration attributed to family problems and to his state of health. The appropriate authority also took into account his latest report for the year 1974-75 which assessed him as 'barely competent to hold an officer's post.'

4. The character roll entries have also been placed before the court at the time of hearing of this writ petition. We have checked the same and in particular those for five years prior to the date of the impugned order. In 1969-70, his ability was considered to be average. His thought and expression were said to be vague and rambling. Deterioration of his physical health was taken note of and the general assessment was that he was an average officer. In the following year the reviewing authority after treating him to be an average officer endorsed the following direction :

"I am inclined to think that the entire report may be communicated to him and he must be told so to exert himself that he earns a more commendable report next year."

This appears to have been shown to him and his signature had been taken on August 3, 1971.

5. During the years 1972-73, 1973-74 and 1974-75, he was branded as an average officer. In the last year it was indicated that his intelligence was of low order and though he was physically fit, he was not mentally alert. It was also indicated that he was barely competent to hold an officer's post. In the report for a part of 1974-75 he was branded as poor and against the column of 'general assessment', it was shown that 'he was not sure of himself'. We have extracted entries from the character roll to meet the petitioner's contention that he had an excellent record of service.

6. Mr. D. K. Garg, appearing for the petitioner has supplemented the arguments by a written note which has also been looked into.

7. Petitioner does not challenge the validity of the rule; nor does he allege that the order of compulsory retirement is the outcome of mala fides.

8. An aggrieved civil servant can challenge an order of compulsory retirement on any of the following grounds as settled by several decisions of this Court : (i) that the requisite opinion has not been formed; or (ii) that the decision is based on collateral grounds; or (iii) that it is an arbitrary decision. In *Union of India v. Col. J. N. Sinha* ((1970) 2 SCC 458 : (1971) 1 SCR 791) this Court held that if the civil servant is able to establish that the order of compulsory retirement suffered from any of the above infirmities, the court has jurisdiction to quash the same. It is not disputed that compulsory retirement under Rule 56(j) is not a punishment as it does not taken away any of the past benefits. Chopping off the dead wood is one of the important considerations for invoking Rule 56(j) of the Fundamental Rules. In the instant case, on the basis of the service record, the Committee formed the requisite opinion that the petitioner had ceased to be useful and, therefore, should be retired prematurely. We do not think petitioner has been able to place any satisfactory material for the contention that the decision was on collateral grounds. Once the opinion is reached on the basis of materials on record, the order cannot be treated to be arbitrary. The service record of more than five years which we have perused shows that the higher officers under whom the petitioner had worked were different and different sets of reviewing officers had also made the

entries. Therefore, the reports must be taken to have reflected an appropriate and objective assessment of the performance of the petitioner.

9. The writ petition must accordingly fail and is, therefore, dismissed. There shall be no order as to costs.

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