CIVIL MISCELLANEOUS

Before Inder Dev Dua and Daya Krishan Mahajan, JJ.

MILKHA SINGH,—*Petitioner.*

versus

THE UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ No. 325 of 1963.

1964

December, 15th.

Constitution of India (1950)—Article 311(2)—Compulsory retirement of Government servant—Whether amounts to dismissal or removal from service.

Held, that it is not an invariable rule that in no case can a Government servant be retired compulsorily before the normal prescribed age of superannuation. If a public servant is asked to retire on the ground of his having reached the age of superannuation which has been reasonably fixed, then Article 311(2) would very probably not be attracted because an order of this nature is neither a dismissal nor removal. If under the rules, such public servant is compulsorily retired after a period of qualified service, which is reasonably long, then too, the order would neither amount to dismissal nor to removal within the contemplation of article 311(2) of the Constitution of India. However, where power is given to the State to compulsorily retire a permanent public servant at the end of an unreasonably short period of service, short of the prescribed proper age of supernnuation then the order of his compulsory retirement may be considered in substance to amount to removal under article 311(2).

Case referred by the Hon'ble Mr. Justice Inder Dev Dua on 17th December, 1963, to a larger bench for decision of an important question of law involved in the case. The case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice Inder Dev Dua and the Hon'ble Mr. Justice D. K. Mahajan on 15th December, 1964.

Petition under article 226 of the Constitution of India praying that an appropriate Writ, Order or Direction be issued quashing the orders passed by respondents Nos. 3, 4 and 5 and the enquiry proceedings held against the petitioner.

D. S. Nehra and B. S. Bindra, Advocates, for the Petitioner.

Partap Singh and K. L. Khanna, Advocates, for the Respondents.

ORDERS OF THE DIVISION BENCH.

Dua, J.

The following Judgment of the Court was delivered by Dua, J.—This writ petition came up for hearing before me sitting singly, but in view of the importance of the question raised, it was referred to a larger Bench in December, 1963. Now it has been placed before us for disposal.

The facts are stated in the referring order and, therefore, need not be restated. The following four points have been canvassed before us in support of the writ petition by Shri D. S. Nehra, learned counsel for the petitioner:—

(1) Article 311(1) of the Constitution has not been complied with because it is not the appointing authority which has passed the impugned order:

(2) Article 311(2) has been violated.

(3) The impugned order is also violative of the fundamental right of the equality before law enshrined in Article 14, and

(4) The impugned order is *mala fide*.

In reply, it has been stressed on behalf of the respondents that the present is a case of compulsory retirement and is, therefore, not covered by Article 311. It has also been argued that the impugned order has been passed by the appointing authority or at least not by an authority subordinate to the appointing authority. The pleas of *mala fide* and violation of Article 14 have also been controverted.

Dealing with the first point, the petitioner's learned counsel has placed reliance on Annexure R. 2 and R. 4, R. 2 is a confidential letter dated 16th May, 1953 from the General Manager, Northern Railway, New Delhi, to the Divisional Superintendent, Northern Railway, Ferozepur, saying that Milkha Singh, ex-Station Master, Romana Albelsing may be re-appointed in the initial grade for a period of six months in the first instance at the end of which period, a special report of his work and behaviour should be submitted so that the question of continuing him in service beyond that period may be considered. Advice was also sought in this letter if after his discharge Milkha Singh had been paid all the dues such as provident fund and gratuity, etc. It was added that before Milkha Singh was reappointed, he should be asked to withdraw all pending legal notices, if any, which he may have served on the Railway Officers of the administration. Annexure 'R. 4'. dated 12th December, 1953 is also a letter from the headquarters to the Divisional Superintendent, Ferozepur, in answer to a confidential letter dated 19th November, 1953 saying that reemployment of Milkha Singh may be continued and he may be given old rate of pay as well as seniority which he held at the time of discharge, though his employment was directed to be treated as fresh. On the basis of these two documents, it has been sought to be argued that the fresh appointment of Milkha Singh was by the General Manager and,

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therefore, it was the General Manager alone, who should have passed the impugned order.

In our opinion, these two documents do not show that the petitioner was appointed by the General Manager. It is true that the re-appointment was made on the direction of the General Manager but that is very much different from actual appointment.

For the purpose of dealing with point No. 2, which appears to us to be the main challenge seriously pressed by the petitioner's learned counsel, it is necessary to review the legal position. On behalf of the petitioner, our attention has been drawn to a recent decision of the Supreme Court in *Moti Ram Deka*, v. *General Manager, N.E.F. Railway* (1), where after observing that in regard to the age of superannuation, the prescribed rules of superannuation in respect of all public servants in all modern States are *prima facie* based on considerations of life expectation and mental capacity of civil servants bearing in mind the climatic conditions and the nature of work and that they are not fixed on any *ad hoc* basis involving exercise of any discretion, the Court proceeded to make the following observations:—

> "A person who substantively holds a permanent post has a right to continue in service, subject, of course, to the rules of superannuation and the rule as to compulsory retirement. If for any other reason that right is invaded and he is asked to leave his service, the termination of his service must inevitably mean the defeat of his right to continue in service and as such it is in the nature of a penalty and amounts to removal. In other words, termination of the services of a permanent servant otherwise than on the ground of superannuation or compulsory retirement must *per se* amount to his removal and so, if by rule 148(3) or Rule 149(3) such a termination is brought about, the Rule clearly contravenes Article 311(2) and must be held to be invalid. It is common ground that neither of the two rules comtemplates an enquiry....."

(1) A.I.R., 1964, S.C., 600.

The Court then proceeded to consider the *vires* of Rules 148(3) and 149(3) of the Railway Establishment Code and after making the following observations declared those rules to be invalid :—

> "* * * * * in a modern democratic State the efficiency and incorruptibility of public administration is of such importance that it is essential to afford to civil servants adequate protection against capricious action from their superior authority. If a permanent civil servant is guilty of misconduct, he should no doubt be proceeded against promptly under the relevant disciplinary rules, subject, of course, to the safeguard prescribed by Article 311(2), but in regard to honest, straightforward and efficient permanent civil servants it is of utmost importance even from the point of view of the State that they should enjoy a sense of security which alone can make them independent and truly efficient. In our opinion, the sword of Damocles hanging over the heads of permanent railway servant in the form of Rule 148(3) or Rule 149(3) would inevitably create a sense of insecurity in the minds of such servants and would invest appropriate authorities with very wide powers which may conceivably be abused."

Termination of the permanent servant's tenure authorised by the two rules mentioned above was considered by the Supreme Court to be no more and no less than his removal from service attracting the provisions of Article 311(2).

On behalf of the respondents, in support of the contention that the present is a case of compulsory retirement not attracting Article 311, our attention has been invited to the following decisions of the Supreme Court:—

Shyamlal v. *State of U.P.* (2). *The State of Bombay* v. *Saubhag Chand* (3), *Dalip Singh* v. *State of Punjab* (4).

(2) A.I.R., 1954, S.C., 369.
(3) A.I.R., 1957, S.C., 892.
(4) A.I.R. 1960., 1960, S.C., 1305.

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Kailash Chandra v. *The Union of India* (5), *State of Bombay* v. *F. A. Abrahum* (6) *and Jagdish Mitter* v. *The Union of India* (7). *In addition, reference has also been made* to *State of Punjab* v. *Ram Parshad* (8) and *Government of Andhra Pradesh* v. *Mohd. Mominuddin* (9).

In my opinion, the decision of the Supreme Court in *Moti Ram Deka's case* does not lay down an invariable rule that in no case can a person be retired compulsorily before the normal prescribed age of superannuation. If a public servant is asked to retire on the ground of his having reached the age of supernnuation which has been reasonably fixed, then Article 311(2) would very probably not be attracted because an order of this nature is neither a dismissal nor removal. If under the rules, such public servant is compulsorily retired after a period of qualified service, which is reasonably long, then too, the order would neither amount to dismissal nor to removal within the contemplation of Article 311(2). This position appears to be to have become now almost settled as a result of various decisions of the Supreme Court. According to *Moti Ram Deka's case*, it is only where power is given to the State to compulsorily retire a permanent public servant at the end of an unreasonably short period of service, short of the prescribed proper age of superannuation, that the order of his compulsory retirement may be considered in substance to amount to removal under Article 311(2). This, in my view, being the true ratio of the decision in *Moti Ram Deka's case*, I do not see how in the case in hand, the impugned order, after the petitioner has attained the age of 55 years, can be considered to amount to removal, and not an order of compulsory retirement which is within the permissible power of the authority passing the impugned order. R. 13 on which reliance has been placed in support of the challenge to the impugned order quite clearly provides that the appointing authority may require a railway servant to retire after he attains the age of 55 years with a notice period. The decision in *Moti Ram Deka's case* does not hit this provision, for the fixation of the age of 55 years is, in my

(5) A.S.R. 1961, S.C., 1346.
(6) A.S.R., 1962, S.C., 794.
(7) A.S.R., 1964, S.C., 449.
(8) I.L.R. (1963) 1, Punj., 621=A.I.R., 1963, Punj., 345.
(9) A.I.R., 1964, A. P., 206.

opinion, reasonably long and this rule cannot be construed to reduce the prescribed minimum period of service to an extent which would sustain the plea that this retirement is in substance removal from service.

The third ground of challenge that the impugned order is violative of the fundamental right of equality before law as enshrined in Article 14 is also devoid of merit because the rule applies to all persons who have completed the age of 55 years and no arbitrary discrimination has been made out on behalf of the petitioner.

The ground of *mala fide* is also difficult to sustain on the record before us. The return quite convincingly negatives the allegation of *mala fide* averred in the writ petition. It is indeed wholly unnecessary to deal with this point in detail.

For the foregoing reasons, this petition fails and is hereby dismissed but without costs.