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The Director, therefore, has clearly exceeded his jurisdiction, in saying that the individual right-holders who have reclaimed land in excees of their rightful possessions should be allowed to retain possession on payment of certain dues.

Equally untenable is the decision of the Director, on the question of partition of *shamilat* land. The Director has sought to evolve a formula of his own in effecting partition of the excess *shamilat* lands possessed by the landowners. It is true that the Director has added a rider that the aggrieved parties would be free to have a proper remedy in a Court of law, but he was clearly in error in deciding a question which he had no jurisdiction to entertain. The partition of *shamilat* land does not fall within the province of the Consolidation authorities and the parties should be left to have this done by Civil Courts of the land. This is exactly what the Consolidation Officer had done and the Director should not have taken a different course by making adjustments in the scheme under section 42 of the Act.

In the result, this petition would be allowed and the order passed by the Director of Consolidation of Holdings on 29th of March, 1964, quashed. In the circumstances, I would make no order as to costs.

R. S.

CIVIL MISCELLANEOUS

Before S. S. Dulat, Acting Chief Justice and Shamsher Bahadur, J.

H. E. DARUWALLA,—*Petitioner.*

versus

INDIAN AIRLINES CORPORATION, AIRLINES HOUSE, NEW DELHI,—*Respondent.*

Civil Writ 178—D of 1965.

1965

August, 9th

Air Corporation Act (XXVII of 1953)—S.45—Rules framed under—Rule 12—Interpretation of—Employees of the Corporation—Whether entitled to continue in service as a matter of course till they attain the age of 58—Rule 12—Whether ultra vires *the Act.*

Held, that in view of Rule 12 framed by the Corporation under section 45 of the Air Corporation Act, 1953, an employee has to retire at the age of 58 but the competent authority may require him to retire after he has attained the age of 55 years on being given three months' notice and no reason need be assigned by the

authority. The rule does not vest any right in the employee to remain in service after attaining the age of 55 years.

Held, that it is indisputable that the Corporation has the power under section 45 of the Act to frame the conditions of service for its officers. Equally clear is the power of the Corporation to change these rules from time to time. The employee will be bound by the rules which may be framed in respect of their conditions of services from time to time and will be governed by the amended rules up-to-date even though they may have joined the service under the un-amended rules relating to a particular matter.

Held, that by no stretch of imagination can it be said that the retirement of an employee after he attains the age of 55 years is unreasonable. The rule lays down a reasonable classification and cannot be attacked on ground of discrimination and is, therefore, not *ultra vires*.

Petition under Articles 226 and 227 of the Constitution of India praying that this Hon'ble Court may be pleased to quash the order dated 25th March, 1965, of the respondent retiring the petitioner.

AVADH BEHARI LAL, ADVOCATE, for the Petitioner.

G. B. PAI AND RAVINDER NARAIN, ADVOCATE, for the Respondent.

ORDER.

The following judgment of the Court was delivered by:—

Shamsher Bahadur, J.

SHAMSHER BAHADUR, J.—Both the writ petitions of H. E. Daruwalla (Civil Writ No. 178-D of 1965) and D. S. Pandit (Civil Writ No. 319-D of 1965), who are employees of the respondent-Indian Airlines Corporation, raise a common question, regarding the construction of the amended rule 12, relating to the retirement of engineers and general employees of the respondent, and will be disposed of by this judgment.

H. E. Daruwalla was recruited as a cadet by the Imperial Airways for training in the Traffic Department on the recommendation of the Indian Government. After his training in England, he was posted in Egypt for one year to serve under the Imperial Airways and thereafter took employment in 1937 as Station Superintendent at Karachi with the Indian National Airways where he served till 1953. On 1st of August, 1953, all the Airlines in India, were nationalised and the Government of India created a Corporation known as the 'Indian Airlines

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Corporation' in pursuance of the provisions of the Air Corporation Act, 1953 (hereinafter called the Act). H. E. Daruwalla, in 1955,, was graded as Traffic Manager and was appointed in Grade 17, with retrospective effect from 1st of January, 1953. He received promotion to the post of Senior Traffic Manager, on 1st of November, 1960, still retaining his Grade 17, in which the emoluments range from Rs. 1,550 to 1,850 with an increment of Rs. 75 per year,—*vide* Annexure D. 1.

The other petitioner, D. S. Pandit, first joined the Indian Transcontinental Airlines in 1934 which was at that time, a Government of India undertaking. In 1942, he joined the Indian National Airways, New Delhi, which amalgamated and became a part of the Corporation under the Act. The petitioner had been employed as Engineer-in-charge at Nagpur.

Both the petitioners having been asked to retire after the age of 55 and before the attainment of the age of 58, have contended that the rule of retirement has to be construed to mean that they should continue in service as a matter of course till they have attained the age of 58. It becomes necessary to examine the relevant rules. Originally, the rule, as it stood in Chapter III was to this effect:—

> "12. An employee shall retire from the service of the Corporation on attaining the age of 55 years, provided that employees in Grade 1 to 12, who, on 1st April, 1955, had attained the age of 52 years or above may continue in the service of the Corporation till they attain the age of 57 years."

By a circular letter of 4th October, 1960 (Annexure B in Civil Writ No. 178-D of 1965), it was stated that:—

> "In supersession of all previous instructions on the subject, in future, extension of service of Indian Airlines Corporation employees, on reaching the age of superannuation, will be considered on individual merits in the case of personnel of the technical cadres and experienced administrators only, provided the extension is in the definite interest of the Corporation."

Later, another circular was issued which is Annexure 'C' to the same petition, of 9th of June, 1961, in which it was said that extension of service beyond the age of 55 years was, in the case of all the employees of the Corporation, to be considered on the following conditions—

(i) medical fitness of the employee to discharge his normal duties satisfactorily;

(ii) competent authority certifies that the past service record of the employee is satisfactory; and

(iii) that there is a vacancy in the Standard Force.

It was, stated in the circular that extension of service beyond the age of 55 was to be granted for one year at a time and was not to extend after the employee had attained the age of 57 years. Annexure 'C-I' of 15th of January, 1963, embodies the amended rule as it now stands which is to this effect :—

"12. *For Engineering and General Employees.*—An employee shall retire from the service of the Corporation on attaining the age of 58 years, provided that the competent authority may require an employee to retire after he attains the age of 55 years on giving three months' notice without assigning any reason. An employee may retire voluntarily after attaining the age of 55 years giving three months' notice."

This is the rule which falls for construction by this Court. As we read this rule, it seems plain to us that while an employee has to retire at the age of 58, the competent authority may require him to retire after he has attained the age of 55 years on his being given three months' notice and no reason need be assigned by the authority. The employee is also given an option to retire after having attained the age of 55.

The learned counsel for both the petitioners have first argued that the rule itself is *ultra vires* as it amounts to removal from service without an opportunity being given to the employee and in any event it should be construed

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to mean that there is a compulsive force behind this rule that no employee should be retired before he attains the age of 58.

Section 45 of the Act, gives power to a Corporation to make regulations and is to this effect:—

"45. (1). Each of the Corporations may, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations not inconsistent with this Act or the rules made thereunder for the administration of the affairs of the Corporation and for carrying out its functions.

(2) In particular and without prejudice to the generality of the foregoing power, any such regulations may provide for all or any of the following matters, namely—

(a) * * *

(b) the terms and conditions of service of officers and other employees of the Corporation other than the General Manager and officers of any other categories referred to in section 44;

(c) to

(g) * * *"

It has not been argued and indeed the position appears to be indisputable that the Corporation has the power under section 45 of the Act to frame the conditions of service for its officers. Equally clear is the power of the Corporation to change these rules from time to time. An employee would be governed by the amended rules up-to-date, even though he may have joined the service under the un-amended rules relating to a particular matter. It is thus clear to us that the amended rule with regard to retirement would apply to both the petitioners. H. E. Daruwalla, attained the age of 55 on the 2nd of March, 1964, and he was informed by Annexure 'D' of 16th of February, 1965, that he can take 127 days' privilege leave which was lying to his credit and he would retire thereafter. The orders for his substitute were also made on 24th of February, 1965. On the same day, he made a representation to the effect that he was entitled to remain

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in service till he could be compulsorily retired on attaining the age of 58. In reply to this representation, Daruwalla was informed on 19th of March, 1965 (Annexure 'H'), that on a consideration of his representation the Corporation had decided to retire him, with effect from 8th of August, 1965. He was permitted to take privilege leave for 129 days before he was due to retire. The petitioner declined to take any leave and has preferred a petition under Articles 226 and 227 of the Constitution of India, to this Court.

D. S. Pandit, the petitioner in Civil Writ No. 319-D of 1965, had completed the age of 55 on 19th of November, 1963, and the decision was taken to retire him with effect from 1st of July, 1965.

In both cases, it has been argued that the petitioners having been allowed to continue after the age of 55 years, could only have been retired after the attainment of the age of 58. The amended rule, however, says that an employee can be retired "after he attains the age of 55 years on giving three months' notice without assigning any reason". This rule can only mean that the competent authority can make up its mind after the employee has attained the age of 55 and he can be retired any time before attaining the age of 58.

Great stress had been laid by both the learned counsel on the circular of 9th of June, 1961, which lays down that all employees of the Corporation may continue after 55 years of fulfilment of three conditions satisfactorily. It has, however, to be emphasised that the power to extend the period is discretionary and no employee can claim as a matter of right to remain in service after 55 even under the original rule embodied in Annexure A and amended by Annexure 'C'. The matter, in our opinion, has been put beyond the pale of controversy by the new amended rule embodied in Annexure 'C-I' of 15th of January, 1963, which applies to the petitioners. The rule does not vest any right in the employee to remain in service after attaining the age of 55.

Another point taken by the learned counsel is that the circular of 15th of January, 1963, embodying the new rule is not binding on the petitioners and in any event is *ultra vires*. It has not been indicated how the rule is *ultra vires*. It is within the scope of the Corporation to frame the rules with regard to conditions of service and the

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matter of retirement clearly constitutes conditions of service. It may be reiterated again that the employees are bound by the rules which may be framed in respect of their conditions from time to time.

A point has also been made that the letters written to the petitioner had not been signed by the Chairman. In the affidavits filed on behalf of the respondent, it has been stated by the signatory of the letters informing the petitioners that they would be retired from the dates mentioned therein that these had been issued under the authority of the Chairman, who himself had taken the decision to retire them under rule 12.

Lastly, it has been very strenuously urged that the rule which empowers a competent authority to give three months' notice after an employee has reached the age of 55, without assigning any reasons is arbitrary, harsh and unjust and opens floodgates for the exercise of discriminatory and unfettered powers. The rules of law with regard to the exercise of powers relating to compulsory retirement have recently been reiterated by their Lordships of the Supreme Court in *Moti Ram Deka* v. *N. E. Frontier Railway* (1) *and Gurdev Singh Sidhu* v. *The State of Punjab* (2) and the learned counsel for the petitioners have relied on both of them. Neither of these authorities denigrate in any way the rule that normally speaking the competent authority has a power to retire a person compusorily under service rules without attracting the provisions of Article 311 of the Constitution. In *Moti Ram Deka's* case, which was that of a railway employee, it was said that :—

> "It is clear from the relevant rules in the Railway Code that a permanent post carries a definite rate of pay without a limit of time, and a servant who substantively holds a permanent post has a title to hold the post of which he is substantively appointed, and that, in terms, means that a permanent servant has a right to hold the post until, of course, he reaches the age of superannuation or until he is compulsorily retired under the relevant rule".

(1) A.I.R. 1964 S.C. 600.
(2) A.I.R. 1964 S.C. 1585.

This statement of the law cannot be construed to mean that compulsory retirement under the service rules would attract the provision with regard to fair and reasonable opportunity contemplated in Article 311. The petitioners have been ordered to be compulsorily retired after attaining the age of 55 in accordance with the provisions of the amended rule. Chief Justice, Gajendragadkar, in the later judgment of *Gurdev Singh Sidhu* v. *The State of Punjab* (2), pointed out at page 1589 that:—

> "In this connection, it is hardly necessary to emphasise that for the efficient administration of the State, it is absolutely essential that permanent public servants should enjoy a sense of security of tenure. The safeguard which Article 311(2) affords to permanent public servants is no more than this that in case it is intended to dismiss, remove or reduce them in rank, a reasonable opportunity should be given to them of showing cause against the action proposed to be taken in regard to them. A claim for security of tenure does not mean security of tenure for dishonest, corrupt, or inefficient public servants. The claim merely insists that before they are removed, the permanent public servants should be given an opportunity to meet the charge on which they are sought to be removed. Therefore, it seems that only two exceptions can be treated as valid in dealing with the scope and effect of the protection afforded by Article 311(2). If a permanent public servant is asked to retire on the ground that he has reached the age of superannuation which has been reasonably fixed, Article 311(2) does not apply, because such retirement is neither dismissal nor removal of the public servant. If a permanent public servant is compolsorily retired under the rules which prescribe the normal age of superannuation and provide for a reasonably long period of qualified service after which alone compulsory retirement can be ordered, that again may not amount to dismissal or removal under Article 311 (2) maily because that is the effect of a long series of decisions of this Court. But where

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while reserving the power to the State to compulsorily retire a permanent public servant, a rule is framed prescribing a proper age of superannuation, and another rule is added giving the power to the State to compulsorily retire a permanent public servant at the end of 10 years of his service, that cannot, we think, be treated as falling outside Article 311(2).....".

In other words, if the rule arbitrarily fixes a comparatively short period to give the authority power to retire a person, that may be hit by Article 311(2). By no stretch of imagination could it be said that the attainment of the age of 55 would be regarded as unreasonable for a person to retire. We are of the opinion, that the rule lays down a reasonable classification and cannot be attacked on ground of discrimination. In the case of D. S. Pandit, it has also been urged that the power has been exercised *mala fide* as the petitioner has been made a scapegoat in respect of a certain air crash which had occurred at Agra. This allegation has been denied on behalf of the respondent and cannot be investigated any further in these writ proceedings.

In our opinion, there is no force in these petitions which must fall and are dismissed. In the circumstances, we would make no order as to costs.

R. S.

CIVIL MISCELLANEOUS

Before S. S. Dulat Acting Chief Justice and Shamsher Bahadur, J.

MESSRS OBSERVER PUBLICATIONS PRIVATE LTD.,—*Petitioner.*

versus

RAILWAY BOARD, MINISTRY OF RAILWAYS,—*Respondent.*

C.W. 197-D/1965.

1965

August, 11th

Constitution of India (1950)—*Art.* 14—*Railways Act* (*IX of* 1890)—*S.* 28—*Railway Board—Whether competent to ban the sale of a news weekly at book stalls of railway stations—Indian Railway Code—Clause* 742—*Obscene books—Whether includes newspapers —Indian Railway Board Act* (*IV of* 1905)—*S.* 2—*Railway Board party to the writ petition—Union Government—whether necessary*