Union Of India vs V.P. Seth And Another on 11 January, 1994

Equivalent citations: AIR1994SC1261, (1994)IILLJ411SC, AIR 1994 SUPREME COURT 1261, 1994 AIR SCW 604, 1994 SCC (L&S) 1052, (1994) 27 ATC 851, (1995) 4 SCT 626, (1995) 4 SERVLR 708, (1994) 2 LABLJ 411, (1994) 1 LAB LN 882

Bench: A.M. Ahmadi, M.M. Punchhi, N.P. Singh

JUDGMENT

1. On the respondent V. P. Seth completing 50 years of age on February 28, 1986 his case was reviewed under Rule 16(3) of All India Services (Death-cum-Retireraent Benefits) Rules, 1958 and after perusing his record of service a decision was taken to compulsorily retire him. Pursuant to this decision the impugned Order of compulsory retirement dated January 4,1989 came to be passed by respondent No. 1. This Order was challenged by respondent Seth under Section 19 of the Administrative Tribunals Act, 1985, before the Central Administrative Tribunal, Jabalpur Bench, on diverse grounds. The tribunal examined the various contentions raised in support of the challenge but upheld the challenge on the sole ground that certain adverse remarks made in the confidential reports of the incumbent had not been communicated to him yet they were taken into consideration in passing the impugned Order of compulsory retirement. The tribunal, therefore, directed that the full text of the adverse remarks recorded in the A.C.Rs. for the years 1985-86 and 1986-87 for the period ending 31st March, 1986 and 31st March, 1987, respectively, including those relating to enquiry, may be communicated to the incumbent to enable him to represent against them and such representation, if made, should be decided on merits by the competent authorities and until that was done the said material should not be used against him. It may here be mentioned that the case of the Union of India was that the entire record pertaining to the respondent, had been perused and it was realised that his integrity was suspect and, therefore, the Central Government took the decision to compulsorily retire him from service. It is indeed true that the record pertaining to the period subsequent to that which the Screening Committee had taken into consideration was also evaluated for the purpose of reaching the decision whether or not to compulsorily retire the officer. It appears that in his records right from 1968-69 onwards there were remarks indicating that his integrity was suspect. Even the Vigilance Commission was at one point of time required to look into the allegations made against him. It may also be mentioned that in the years 1985-86 and 1986-87, which were subsequent to the review undertaken by the Screening Committee, his record contained certain uncommunicated adverse remarks which were also evaluated before the final decision was taken. It would thus appear that on overall assessment of the officer his integrity was found to be suspect and, therefore, it was decided to exercise the power of compulsory retirement. The Tribunal, however, came to the conclusion that as the remarks of 1985-86 and 1986-87 had not been communicated and as the earlier adverse remarks in connection with his integrity stood eclipsed by his subsequent promotions, the authorities were not justified in terminating his services by way of compulsory retirement.

2. Mr. Goswami the learned Senior Counsel appearing for the appellant rightly points out that the position of law has now been settled by this Court by two recent decisions reported in Baikuntha Nath Das v. Chief District Medical Officer, Baripada and. Posts and Telegraphs Board v. C.S.N. Murthy which clearly hold that un-communicated adverse remarks can certainly be considered for the exercise of power of compulsory retirement. In paragraph 34 (of SCC) (Para 32 of AIR) of the decision first mentioned, this Court evolved the following principles:

> (i) An Order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehavior.
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> (ii) The Order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The Order is passed on the subjective satisfaction of the government.
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> (iii) Principles of natural justice have no place in the context of an Order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate Court, they may interfere if they are satisfied that the Order is. passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material; in short; if it is found to be a perverse Order.
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> (iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/ character rolls, both favourable and adverse.

If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An Order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it excommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.

3. These principles were reiterated with approval in the subsequent decision. It would, therefore, seem that an Order of compulsory retirement can be made subject to judicial review only on grounds of mala fides, arbitrariness or perversity and that the Rule of audi alteram partem has no application since the Order of compulsory retirement in such a situation is not penal in nature. The position of law having thus been settled by two decisions of this Court, we are afraid that the Order of the Tribunal cannot be sustained as the same runs counter to the principles laid down in the said two decisions.

4. In the result, we allow this appeal, set aside the Order of the Tribunal, restore the Order of compulsory retirement but make no Order as to costs.