

Union Of India vs Ravindra Vittal Parmar on 9 May, 2019

Author: S.R.Brahmbhatt

Bench: S.R.Brahmbhatt

C/SCA/8649/2019

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 8649 of 2019

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UNION OF INDIA & 3 others
Versus
RAVINDRA VITTAL PARMAR

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Appearance:

MR ANKIT SHAH(6371) for the Petitioner Nos. 1, 2, 3, 4
HCLS COMMITTEE(4998) for the Respondent No. 1
MR Y.N.OZA SENIOR COUNSEL WITH MR. JAINISH P SHAH
ADVOCATE for the Respondent No. 1

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CORAM: HONOURABLE MR.JUSTICE S.R.BRAHMBHATT
and
HONOURABLE MR.JUSTICE V. B. MAYANI

Date : 09/05/2019

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT)

1. Heard Shri Ankit Shah, learned counsel for the petitioners and Shri Oza, learned senior counsel with Mr. Jainish P. Shah learned counsel for the respondent.

2. The petitioners, original respondents in Original Application No.369 of 2018 filed by the present respondent challenging the order dated 20th July, 2018 passed by the Deputy Director (Administration) for Director General, Prasar Bharti in exercise of power under FR 56 (j) of FRSR, prematurely retiring the petitioner on account of the recommendations made by the concerned committee.

3. Facts in brief, as could be gathered from the memo of petition and the impugned order and judgment shorn off unnecessary details and required for deciding the controversy, deserves to be set out as under:

3.1 The respondent - original petitioner joined All India Radio Ahmedabad as Transmission Executive on 08.12.1995 and was presently serving at AIR Vadodara in the capacity of Programme Executive (In-situ). Earlier the respondent had challenged his transfer orders from DDK, Ahmedabad to AIR Godhra and then to AIR, Vadodara in the Central Administrative Tribunal, Ahmedabad Bench and also before this Court by way of preferring Special Civil Application No.2965 of 2017.

3.2 The respondent is a central government employee deemed to be on deputation to Prasar Bharti (AIR & DD) as per Section 11(1), 11(2) & 11(4) of Prasar Bharati Act, 1990.

Only central government can exercise power to impose such major penalties as per the law. During the pendency of the said petition being Special Civil Application No.2965 of 2017, the department took the action of imposing of FR(j).

3.3 It is stated that there are main three grounds for imposing FR(j): (i) 55 years age or 30 years of job, (ii) doubtful integrity, (iii) inefficiency / ineffectiveness and added that the respondent is 51 years, he has no adverse remarks in any ACR/APAR in the career of more than 22 & ½ years; no doubt has been raised on his integrity / efficiency / effectiveness. The applicant is Group B non-gazetted officer/central government employee on deemed deputation to Prasar Bharati.

3.4 It is stated that in pursuance of the Office Memorandums dated 21.03.2014 & 11.09.2015, for the sake of public interest and also for better administration, it was necessary to chop off dead wood. Therefore, the entire service record of the respondent was sent to the Committee formed for reviewing the performance of the respondent and other employees with the APAR dossiers and other relevant facts. After considering all the aforesaid relevant facts and records, the Committee came to a decision that it is a fit case to prematurely retire the respondent under fundamental Rule 56(j). The minutes of the Review Committee has been accepted/approved by the competent authority i.e. Director General, All India Radio. Accordingly, vide order dated 20.07.2018 by the Directorate General, All India Radio, the respondent was retired under fundamental Rule 56(j).

3.5 The order of premature retirement dated 20.07.2018 was assailed by the respondent by way of Original Application No.369 of 2018, wherein after hearing both the sides, the Tribunal came to conclusion that the said order was not tenable in eye of law and therefore required to be quashed and set aside and accordingly it was quashed and the present petitioners - original respondents in the Original Application were directed to reinstate the respondent - original petitioner with all consequential benefits. Hence, the present petition.

4. Learned counsel appearing for the petitioners invited Court's attention to FR 56(j) and submitted that the provision of FR 56(j) is available to the concerned authority for assessing the retainability of the employee, in case if the employee concerned is fulfilling the criteria mentioned thereunder namely that he should have entered the services before he attained the age of 35 years and he should have attained the age of 50 years when the case for reviewing his retention is considered. The language of FR 56(j) of FRSR though provides absolute power but on account of the decision of the

Supreme Court and the development of law in this field, a methodology for assessing is evolved whereunder the O.M. dated 21.03.2014 at page 45 is issued and in accordance therewith the committee was constituted to review the case of the respondent. The type copy of the report and findings of the committee are placed on record at page 56/A.

5. The counsel for the petitioners strenuously urged that the findings recorded by the committee would convince this Court in respect of the respondent's conduct which would in itself be sufficient to disentitle him to continue in service as the conduct of the petitioner, as narrated by the committee would indicate that the administration had faced quite an embarrassing situation time and again. Moreover, there were serious complaints against the respondent and in view of those findings and the situations, the committee was left with no other alternative but to recommend his premature retirement under FR 56(j) of FRSR which was acted upon by the competent authority and therefore the said order could not have been interfered by the Tribunal.

6. Learned counsel for the petitioners submitted that the authorities cited by the Tribunal mentioned in the order needs no elaboration but the said authority also do not provide that the reviewing committee cannot take the concerned material on record and into consideration for recommending the exercise of FR 56(j) FRSR and in that process if the committee had taken into consideration the inquiry which was pending against the original petitioner and the findings recorded therein, then the same could not have been said to be a co-lateral consideration as observed by the Tribunal. The Court, therefore, may admit the matter and pass appropriate order of relief.

7. The counsel for the respondent submitted that the decisions cited at the bar on behalf of the original petitioner and which have been referred to by the Tribunal in the judgment needs no elaboration. The report of the committee is sufficient to dissuade this Court from interfering with the order passed by the Tribunal impugned in these proceedings. The committee has in fact taken into consideration the material which it was not required to consider, else it would amount to holding the original petitioner guilty of the conduct without there being an opportunity for answering those allegations and charges.

8. Learned counsel for the respondent relies upon the following judgments:

(i) In case of Baldev Raj Chadha Vs. Union Of India And Others, reported in (1980) 4 Supreme Court Cases 321.

(ii) in case of J.N. Chaudhari Vs. Director General and Inspector General of Police & Anr., rendered by this Court in Special Civil Application No.3505 of 1990.

9. This Court has heard learned counsel for the parties and perused the papers. The Court is of the view that the FR 56(j) of FRSR and the development of law based thereupon has by now crystallized so clearly as to leave no room for any doubt qua the propositions which have been cited by the Supreme Court time and again. The Tribunal, infact, has extensively referred to those judgments and come to a conclusion that the reviewing committee had taken into consideration the material

which ought not to have been considered for forming an opinion.

10. The Tribunal has also recorded in its finding that the Tribunal called upon the respondents therein with files and after examining the files, the Tribunal has recorded its conclusion that the competent authority did not form its opinion on the file and that was also one of the ground for quashing the order. Para 18 and 19 of the order of the tribunal is set out hereinbelow:

"18. Further to arrive at a conclusion, the relevant file was called for from the department was perused by us minutely and it is seen from that file that the competent authority does not appear to have recorded on the file its opinion regarding the necessity to retire the government servants in procedure of these Rules as being in public interest and as mentioned earlier it also appears that the order under FR 56(J) has been arrived on the basis of collateral grounds, which is not permissible as stated in the Supreme Court judgment passed in Union of India Vs. Colonel J.N. Sinha & Anr. 1971 AIR 40.

19. In view of the above discussion, we are of the considered opinion that the respondents while issuing the impugned order dated 20.07.2018 whereby premature retirement has been directed to the applicant, have not followed the Criteria, Procedure and Guidelines under FR 56(j), and therefore, the same is liable to be quashed. Accordingly, the impugned order dated 20.07.2018 is quashed and set aside. The respondents are directed to reinstate the applicant in service with all consequential benefits."

11. This Court is of the view that the findings of the committee as contained in the report needs to be reproduced hereunder to articulately indicate that how and in what manner the committee had proceeded which was correctly held to be incorrect procedure based upon wholly extraneous material:

"3. A meeting of the committee was held on 03.07.2018 at 3.00 PM under the chairmanship of Dr. Shailendra Kumar, ADG (P) wherein the above said members attended the meeting. The Committee reviewed the case of Shri Ravindra V. Parmar, PEX (in-site).

AIR, Vadodara to ascertain for refection or otherwise in Government service under the provisions of FR 56 (j) of FRSR. The Committee while reviewing the case followed the criteria as mentioned in Dopt's O.M. NO.25013/1/2013-Estt (A) dated 21.03.2014 viz. integrity, ineffectiveness (fitness / competence) etc, of the employee to continue in the post.

4. All relevant documents in respect of Shri Ravindra V.Parmar like inquiry/Investigation report submitted by Shri Rajiv Sinha, DDG (A), DG DDn. APARs.

Attendance report etc. were placed before the Committee. Which were perused by the Committee at length and the Committee has observed following points.

(i) The committee is informed that in inquiry / investigation into the complaints made by Shri Ravindra V. Parmar, PEX (in- situ). AIR Vadodara against some officer of Doordarshan was conducted and Shri Rajiv Sinha, DDG (A), DG DDn who way appointed as Inquiry Officer vide DG: DDn Order No.A- 11019/25/2017-S.III dated 05.10.2017, has submitted Inquiry Report dated 02.02.2018 and the same was forwarded by Prasar Bharati Sectt. to DG. AIR with the directions to take appropriate action in view of the findings and recommendations of the Inquiry Report.

(ii) After having gone through the Inquiry, Report dated 02.02.2018. Director General. All India Radio (Appointing Authority) vide the note dated 07.06.2018 has observed that the allegation made by Shri Ravindra V. Parmar regarding victimization by way of to transfers in 9 years is not found substantiated. Instead, there is exaggeration and distortion of facts by the complainant. Further, the complainant has been repeatedly using offensive harangue and disparaging remarks against seniors in his representations which are considered extremely defarnatory. DH, AIR has directed to process the case under the relevant provision of FR 56(j) to safeguard discipline and professional ethics of the organization which has tremendous public accountability and onerous responsibility of being able to fend for itself.

(iii)....

By the above acts Shri Ravindra V. Parmar has failed to maintain absolute integrity, devotion to duty and acted in a manner which is unbecoming of a Government Servant thereby violating Rule 3(1)(j), 3(1)(ii) and 3I(ii) of the CCS (Conduct) Rules, 1964.

(iv) On going through the records available and past acts of Shri Ravindra V. Parmar, the Committee has also observed that Shri Parmar does not believe in hierarchy.

(v) The committee has also observed that there is a complaint of sexual harassment against Shri Ravindra V. Parmar, PEX (in-situ), AIR, Vadodara.

(vi) The Committee has observed that Shri Ravindra V. Parmar was transferred from AIR Ahmedabad to AIR, Bikaner by Prasar Bharti vide their order dated 11.02.2011 Shri Parmar did not join AIR Bikner for approx. 10 months.

Later he was transferred to AIR Ahwa (Gujarat). The Committee has observed that Shri Parmar did not follow the transfer order which is gross indiscipline.

(vii) On perusal of the records, it is found that Shri Parmar did not obey several orders regarding transfer and went to Court against transfer order. Thus Shri Parmar is a habitual litigant.

(viii) In his AP AR for the period of
01.04.2004 to 31.03.2005, the Reviewing

Officer had put his remarks that Shri Parmar should learn to become a disciplined & organized member of this Organization. He should desist from his blame-game & mix up with other colleagues. The Committee observed that Shri Parmar is continuously playing blame-game till now.

He is continuously creating nuisance to the Organization. He is gross indisciplined.

(ix) Due to his misconduct and behavior, the Committee has observed that he has become a liability to the Organization.

12. Thus, the aforesaid contents of the committee on the face of it would indicate that the counsel for the respondent was justified in contending that a slipshod shortcut manner was adopted to dispense with the services of the respondent so as to avoid further requirement of inquiry and following the principles of natural justice and the procedural aspect therein. This is preciously not permissible in law, as the Tribunal has correctly observed that the extraneous material has gone into consideration on which the original respondent did not have any opportunity to respond. Moreover, the Tribunal's findings qua the competent authority's omission to form opinion and record it on the files also renders the original order of premature retirement dated 20.07.2018 vitiates.

13. In view of the aforesaid discussions, we are of the view that the order passed by the Tribunal when examine under Article 227 of the Constitution of India, though the petition is styled as under Article 226 of the Constitution of India but it is treated to be filed under Article 227 of the Constitution of India, would not call for any interference and as a result thereof the petition being bereft of merits, deserves rejection and is accordingly rejected. However, there shall be no order as to costs.

(S.R.BRAHMBHATT, J.) (V. B. MAYANI, J.) Pankaj