

A UNION OF INDIA & ORS.

v.

SHAIK ALI

OCTOBER 17, 1989

B [A.M. AHMADI AND K.N. SAIKIA, JJ.]

*Indian Railway Establishment Code: Rule 2046(h)(ii)—Premature retirement—Permissible only when railway servant has attained the age of 55 years—Similar to F.R. 56(j).*

C *Liberalised Pension Rules, 1950/Railway Pension Manual: Rule 2(2)/paragraph 620(ii)—Premature retirement—Requirement of public interest—Need for incorporation by way of amendment—Stressed.*

D The respondent, employed as Yard Master in the South Central Railway, was on duty between 14.00 and 22.00 hours on 23rd February' 86. In the absence of a reliever, he was to continue his duty till 8.00 hours on 24th February' 86. He allowed his staff to take meals and since they did not return within a reasonable time, he went towards the cabin where the staff usually took their meals. The Divisional Safety Officer who was coming down from the cabin, enquired of the respondent's identity. The respondent in turn asked for the identity of the said officer. The officer was annoyed at this and threatened the respondent with dire consequences. Immediately thereafter the respondent was placed under suspension. Further suspension followed and the respondent was visited with the order of premature retirement under Rule 2046 of Indian Railway Establishment Code.

F Respondent challenged the said order before the Central Administrative Tribunal and the Tribunal, relying on its decision in *Shri Gafoor Mia & Ors. v. Director, DMRL, AISLJ 1988 2 CAT 277* held that the Divisional Railway Manager who passed the impugned order of premature retirement was not competent to make such an order, and set aside the order.

G This appeal, by special leave, is against the Tribunal's order. Though under sub-clause (ii) of rule 2046(h), a class III employee cannot be retired prematurely after he has attained the age of 55 years, (unlike officers of class I & II) this clause was invoked in the case of respondent who was admittedly in class III service and did not attain the H age of 55 years. Appellant relied on para 620(ii) of the Railway Pension

Manual which gives the authority power to remove from service a railway servant after he completed 30 years service. A

On behalf of Respondent, it was contended that the appellant had been shifting its stand and trying to support the order on an extraneous ground which did not find a place in the order viz. unsatisfactory service record of the respondent; and there is no basis for it in view of the promotions secured by the respondent, the last of which was just before the premature retirement. B

Dismissing the appeal, this Court,

HELD: 1.1 The order was passed under Rule 2046(h)(ii) of the Indian Railway Establishment Code without verifying whether or not the incumbent had attained the age of fifty-five years. Since the respondent was indisputably in class III service at the time the order came to be made, his case was governed by the second clause of Rule 2046(h). The impugned order recites that the respondent had already completed thirty years of qualifying service but it does not state that he had attained the age of fifty-five years. According to the respondent he was running 54th year on that date. That obviously took his case out of the purview of the said rule. Even if the order was intended to be under Rule 2(2) of the Liberalised Pension Rules, 1950, this requirement had to be satisfied. The immediate and proximate reason for passing the impugned order was undoubtedly the unfortunate incident of 23/24th February, 1986. But for that incident there was no occasion for the Review Committee to examine the case of the respondent. If the service record of the respondent was so bad as is now sought to be made out, he would not have been promoted to the post of Asstt. Yard Master on 22nd August, 1984 and later to the post of Yard Master on 31st January, 1986. The order of premature retirement is punitive in nature and having been passed in flagrant violation of the principles of natural justice, cannot be allowed to stand. [426G-H; 460F-G; 463A-B] C D E F

1.2 F.R. 56(j) of the Fundamental Rules is substantially the same as Rule 2046(h)(ii) of the Railway Establishment Code and Rule 2(2) of the Liberalised Pension Rules, 1950 is substantially the same as paragraph 620 of Railway Pension Manual. Since Rule 2(2) has been struck down as violative of Article 14 of the Constitution, paragraph 620(ii) would meet the same fate. Apart from the competence of the Divisional Railway Manager to pass the order, the order cannot also be supported under paragraph 620(ii). [462B-D] G

A *Senior Superintendent of Post Office & Ors., v. Izhar Hussain*, [1989] 2 Scale 222, relied on.

*Union of India v. R. Narasimhan*, [1988] Suppl. SCC 636, referred to.

B 2. The authorities concerned will do well to amend Rule 2(2) of the Liberalised Pension Rules, 1950, and paragraph 620(ii) of the Railway Pension Manual, so as to incorporate therein the requirement of public interest, making it clear that premature retirement on completion of qualifying service of thirty years can be ordered in public interest only. [463C-D]

C CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2413 of 1989.

From the Judgment and Order dated 3.10.1988/12.10.1988 of the Central Administrative Tribunal, Hyderabad in O.A. No. 307 of 1987.

D Anil Dev Singh, B. Parthasarthy, Hemant Sharma and C.V. Subba Rao for the Appellants.

Mrs. Kitty Kumaramangalam, Ms. Vijayalaxmi, Kailash Vasdev, P. Parmeshwaran and A.T.M. Sampath for the Respondent.

E The Judgment of the Court was delivered by

F AHMADI, J. The Central Administrative Tribunal, Hyderabad by its order dated 3rd October, 1988 held that the Divisional Railway Manager (BG) SC Railway, Secunderabad was not competent to pass the impugned order dated 25th April, 1986 retiring the railway servant Shaik Ali from service under Rule 2046(h)(ii) of Indian Railway Establishment Code, Volume II—Pension Rules (hereinafter called 'the Code'). The Union of India feeling aggrieved by the said order has come in appeal to this Court by special leave.

G The respondent Shaik Ali joined the erstwhile Nizam State Railway Service as Pointsman in 1953 or thereabouts and secured promotions from time to time in the course of his service, the last promotion being as Yard Master in the revised scale of Rs.550-750 on 31st January, 1986. The facts show that he was on duty between 14.00 and 22.00 hours on 23rd February, 1986 at Sanatnagar Station. As his reliever did not turn up at 23.00 hours, he was compelled to perform

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duty from 22.00 hours to 08.00 hours of 24th February, 1986. At about 23.15 hours, he permitted the staff working under him to have their meals and report for duty as soon as possible. As the staff members did not return to duty within a reasonable time he went towards the cabin where they usually took their meals. At that time the Divisional Safety Officer, A. Bharat Bhushan, came down from the cabin and inquired of the respondent's identity. The respondent countered by inquiring about the identity of the said officer. It is the respondent's say that as he did not know the said officer he asked for his identity before disclosing his identity. The officer was annoyed at the behaviour of the respondent and threatened him with dire consequences. It is the respondent's case that immediately thereafter he was placed under suspension. When he went to meet the officer at the suggestion of the Station Superintendent, the said officer behaved rudely and refused to listen to his explanation. By a subsequent order dated 19th March, 1986, the respondent was kept under further suspension w.e.f. 4th March, 1986. He was not charge-sheeted nor was any inquiry held against him but he was visited with the order of premature retirement dated 25th April, 1986, the relevant part whereof reads as under:

“Whereas the Divisional Railway Manager (BG), Secunderabad is of the opinion that it is in the public interest to do so.

Now therefore, in exercise of the powers conferred by Clause (h)(ii) of Rule 2046 of Indian Railway Establishment Code, Volume II—Pension Rules, the Divisional Railway Manager (BG), Secunderabad hereby retires Shri Shaik Ali, Assistant Ward Master, Sanatnagar with immediate effect that he having already completed 30 years of qualifying service.

It was further directed that the respondent should be paid a sum equivalent to the amount of his pay plus allowances for a period of three months in lieu of three months notice calculated at the rate at which he was drawing salary immediately before his retirement. The respondent challenged this order of premature retirement by preferring an application under Section 19 of the Administrative Tribunals Act, 1985. The Central Administrative Tribunal after reading the relevant Rule 2046(h)(ii) with Para 620(ii) of the Railway Pension Manual came to the conclusion that the Divisional Railway Manager who passed the impugned order of premature retirement was not competent to make such an order. In taking this view the Tribunal relied on an earlier

A decision of the Full Bench in *AISLJ* 1988 2 CAT 277 wherein it held that the highest authority among the appointing authorities alone was competent to impose any of the punishments specified in Article 311 of the Constitution. In this view that the Tribunal took, the Tribunal set aside the impugned order of premature retirement dated 25th April, 1986. It is against the said order that the Union of India has preferred this appeal.

Under Rule 2046(a) of the Code ordinarily every railway servant would retire on the day he attains the age of 58 years. However, notwithstanding the said provision, Rule 2046(h) entitles the appointing authority to retire him before he reaches the age of superannuation. Rule 2046(h), insofar as it is relevant for our purposes, reads as under:

“2046(h). Notwithstanding anything contained in this rule, the appointing authority shall, if it is of the opinion that it is in the public interest to do so, have the absolute right to retire any railway servant giving him notice of not less than three months in writing or three months’ pay and allowances in lieu of such notice—

(i) if he is in Class I or Class II service or post and had entered Government service before attaining the age of thirty-five years, after he has attained the age of fifty years.

(ii) in any other case after he has attained the age of fifty-five years.”

Since the respondent was indisputably in Class III service at the time the impugned order came to be made his case was governed by the second clause of Rule 2046(h). The impugned order recites that the respondent had already completed thirty years of qualifying service but it does not state that he had attained the age of fifty-five years. The respondent’s contention was that he could not be prematurely retired under clause (ii) of Rule 2046(h) since he had not attained the age of fifty-five years on the date of the impugned order. According to him he was running 54th year on that date. That obviously took his case out of the purview of the said rule.

Realising this difficulty an attempt was made by the department to fall back on paragraph 620(ii) of the Railway Pension Manual which reads as under:

“620(ii). The authority competent to remove the railway servant from service may also require him to retire any time after he has completed thirty years’ qualifying service provided that the authority shall give in this behalf, a notice in writing to the railway servant, at least three months before the date on which he is required to retire or three month’s pay and allowances in lieu of such notice.”

Reliance was also placed on the decision of this Court in *Union of India v. R. Narasimhan*, [1988] Suppl. SCC 636 in support of the contention that a railway servant governed by the Railway Pension Manual may be prematurely retired by ‘the authority competent to remove him from service’ on his completing thirty years of qualifying service. Under this rule, power is conferred on the authority competent to remove him from service to retire a railway servant who has completed thirty years of qualifying service regardless of his age. The Tribunal took the view that although Rule 2046(h)(ii) would not be attracted in the absence of evidence that the incumbent had attained the age of fifty-five years, the department would be entitled to rely on para 620(ii) to support the order if it can show that the officer who passed the order was competent to do so under the said paragraph. The Tribunal was, however, of the opinion that since the power under paragraph 620(ii) could be exercised only by the authority competent to remove the railway servant from service, the Divisional Railway Manager not being such authority was not competent to pass the impugned order and hence the order was clearly void and inoperative in law. In taking this view, the Tribunal relied on an earlier Full Bench decision referred to above. We were told that as the said Full Bench decision of the Tribunal was under scrutiny by this Court, this Civil Appeal should be tagged on with similar matters pending in this Court. However, the learned counsel for the respondent-employee submitted that it was not necessary to tag on this matter with other matters arising out of the Tribunal’s Full Bench decision since in the instant case she proposed to support the Tribunal’s order on the twin grounds (i) that paragraph 620(ii) was *ultra vires* Article 14 of the Constitution and (ii) that the impugned order was punitive in nature and could not have been passed without a proper enquiry. Insofar as the first contention is concerned she placed reliance on this Court’s decision in *Senior Superintendent of Post Office & Ors. v. Izhar Hussain*, [1989] 2 Scale 222 wherein a similar Rule 2(2) of the Liberalised Pension Rules, 1950 was struck down as offending Article 14 of the Constitution. So far as the second limb of her submission is concerned she stated that the respondent had been promoted to the post of Yard Master on 31st

- A January, 1986 and hence there was no occasion to prematurely terminate his service by the impugned order. In *Izhar Hussain's* case the Court was concerned with F.R. 56(j) and Rule 2(2) of the Pension Rules. F.R. 56(j) is substantially the same as Rule 2046(h)(ii) of the Code and Rule 2(2) is substantially the same as paragraph 620 with which we are concerned. Since Rule 2(2) has been struck down as
- B violative of Article 14 of the Constitution, paragraph 620(ii) would meet the same fate. The learned counsel for the Railway Administration, realising this difficulty tried to support the impugned order on the ground that it was in public interest to retire the respondent. Counsel for the respondent contended that the railway administration has been shifting its stand, it first passed the impugned order under Rule
- C 2046(h)(ii) of the Code and then relied on Rule 2(2) of the Pension Rules and when that was found to be of no assistance switched over to paragraph 620(ii) of the Railway Pension Manual and is now trying to support the order on an extraneous ground which does not find a mention in the impugned order. We think the criticism is well founded. We are, therefore, of the view that apart from the competence of the
- D Divisional Railway Manager to pass the order, the impugned order cannot be supported under paragraph 620(ii) for the aforesaid reason.

- We next find that the learned counsel for the respondent-employee is on *terra firma* so far as the second limb of her contention is concerned. The facts clearly reveal that after the respondent joined
- E the Nizam State Railway service in 1953 he secured promotions in due course and was appointed an Assistant Yard Master by an order dated 22nd August, 1984. Thereafter, he was promoted to the next higher post of Yard Master by the order of 31st January, 1986. While he was discharging duties as Yard Master on 24th February, 1986, the incident in question occurred which is said to be forming the basis for the
- F impugned order of 25th April, 1986. We find from the facts that the Divisional Safety Officer was annoyed by the fact that the respondent had demanded that he disclose his identity before he (the respondent) did so. The respondent was immediately placed under suspension and the said officer refused to listen to his explanation. The suspension order was further extended by the order of 19th March, 1966. This was
- G followed by the impugned order of retirement dated 25th April, 1986. The order was passed under Rule 2046(h)(ii) of the Code without verifying whether or not the incumbent had attained the age of fifty-five years. Even if the order was intended to be under Rule 2(2) of the Pension Rules, this requirement had to be satisfied. The immediate and proximate reason for passing the impugned order was undoubtedly
- H the unfortunate incident of 23/24th February, 1986. But for that

incident there was no occasion for the Review Committee to examine the case of the respondent. If the service record of the respondent was so bad as is now sought to be made out, he would not have been promoted to the post of Assistant Yard Master on 22nd August, 1984 and later to the post of Yard Master on 31st January, 1986. We are, therefore, satisfied that the impugned order of premature retirement is punitive in nature and having been passed in flagrant violation of the principles of natural justice cannot be allowed to stand.

For the above reasons (different from the one on which the Tribunal founded its decision), we are of the opinion that the ultimate order passed by the Tribunal does not require interference. We, therefore, dismiss this appeal with costs. Cost quantified at Rs.3,000.

Before we part we may observe that the concerned authorities will do well to amend Rule 2(2) of the Pension Rules and Paragraph 620(ii) referred to above so as to incorporate therein the requirement of public interest, that is to say, the premature retirement on completion of qualifying service of thirty years can be ordered in public interest only.

G.N.

Appeal dismissed.