

Supreme Court of India

Anil Kumar Mahajan vs Uoi,Secretary,Department Of ... on 2 July, 2013

Author: ...J.

Bench: G.S. Singhvi, Sudhansu Jyoti Mukhopadhaya

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4944 OF 2013
(ARISING OUT OF SLP(C) NO.26400 OF 2010)

ANIL KUMAR MAHAJAN

APPELLANT

VERUS

UNION OF INDIA THROUGH SECRETARY,
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES
AND PENSIONS, DEPARTMENT OF PERSONNEL
AND TRAINING, NEW DELHI. AND OTHERS

RESPONDENTS

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

Leave granted.

1 2. This appeal has been preferred by the appellant against the judgment of the Division Bench of the High Court of Delhi dated 20th April, 2010 in W.P.(C)No.2622 of 2010. The relevant portion of the said judgment reads as follows:

O R D E R 20.04.2010 After some arguments, learned counsel for the petitioner seeks to withdraw the petition as a finding has been given by the respondents, that the petitioner is an insane person and the petition has been filed by the insane person himself and not through the next friend.

In the circumstances, learned counsel for the petitioner seeks to withdraw the petition with liberty to file an appropriate petition through the next friend.

Dismissed as withdrawn with the liberty prayed for.

All the pending applications are also disposed.

3. The aforesaid order has been challenged by the appellant on two counts mainly:

i) The High Court failed to decide the question as to whether the appellant is an insane person; and

ii) If so, i.e. if the appellant is insane, the High Court ought not to have allowed the lawyer who received instructions from an insane person to withdraw the case.

4. In this case, it is not necessary to discuss all the facts, except the relevant one, as mentioned hereunder:

The appellant joined the Indian Administrative Service (I.A.S.) on 12th July, 1977. He alleged that while he was posted as an Additional Secretary-cum-Editor of State Gazetteer, Bihar at Patna, he was placed under suspension from 17th February, 1988 to 20th February, 1988 and by another order dated 24th February, 1988 he was placed under suspension till further orders. Subsequently, the order of suspension was revoked on 24th February, 1990. He moved before the Central Administrative Tribunal, Patna Bench, in O.A.No.288/1991 seeking a direction to the respondents to promote him to the selection grade from the date he became entitled with all the consequential benefits. The appellant contended that he has a clean service record, except for the year 1985-86 for which an adverse ACR was communicated to him by letter dated 25th February, 1989, after a lapse of near about three years. The detailed facts related to adverse entry, etc. were brought on record and the Tribunal after hearing the parties, by the judgment dated 22nd June, 1992 held that it was not just and fair to act upon the adverse entry of 1985-86 against which the appellant's representation is still pending and directed the respondents to consider his case in the next DPC for promotion to the selection grade on the basis of existing material. The said application was accordingly disposed of by the Tribunal.

5. It appears that another application Registration O.A.No.238/1991 was preferred by the appellant before the Central Administrative Tribunal, Patna Bench, wherein on the revocation order of suspension he prayed for a direction to the respondents to give him a post befitting to his status with further prayer to direct the respondents to pay his salary for the period from February, 1990 onwards with interest and cost. The said application was disposed of on 10th October, 1992 with a direction to the respondents to pay the appellant salary for the certain period with interest.

6. Subsequently, the appellant was placed under suspension on 20th May, 1993 and was subjected to departmental inquiry by the Member Board of Revenue and Inquiry Officer who framed charges by Memo No. 6056 dated 22nd June, 1993 against the appellant.

7. Appellant in his reply stated that a number of time he was placed under suspension and proceedings were initiated in that regard, and orders are made directing him to be present before a Medical Board, which not only tortured him but also his family, and also stated that he had developed incurable ulcer, hence he expressed his inability to be present before the inquiry.

8. It appears that one of the charges was that the appellant while posted as Officer on Special Duty, Bihar State Planning Council had directed Treasury Officers, Secretariat Treasury, Patna to reject the bills of one Shri P.K. Mishra, Development Commissioner which was an act beyond his

jurisdiction. The second charge was that while submitting one of the Travelling Allowance Bills, the appellant requested the Secretary(Personnel) to countersign the bill. He alleged that his Controlling Officer, i.e., the Development Commissioner cannot countersign the bill as a case is being pursued against him under Mental Health Act, 1987. The third charge was that the appellant accused the Development Commissioner of losing his mental stability. Fourth charge was related to description of duties written by him as per the confidential report (1985-

86) which shows that the appellant has become a victim of imbalanced mental illness. Fifth charge was that one Shri Bhaskar Banerjee, the then Land Reforms Commissioner has accused the appellant of being indisciplined, irresponsible, unstable and mentally sick.

9. The appellant filed a representation on 25th February, 2000 to the respondents seeking voluntary retirement. He remained under suspension for a long period. When the suspension was not revoked even after several years, the appellant preferred representation before the higher authorities which was rejected by the Ministry of Personnel, Public Grievances & Pension Department of Personnel & Training on 29th April, 2002. The representation of the appellant seeking voluntary retirement was also rejected on the ground that he had not qualified the minimum 20 years of service and thus as per the respondents, he was not eligible for voluntary retirement.

10. After about 11 years the Inquiry Officer submitted the report on 4th December, 2004. According to the appellant he was not granted any opportunity of being heard and the Inquiry Officer submitted an ex-parte report against him. The suspension order seems to have been revoked by the respondents with effect from 23rd October, 1998.

11. A writ petition was filed by the appellant before the High Court; wherein a counter-affidavit was filed and the respondents took a plea that despite the revocation of the suspension order of the appellant, he never joined the duties and remained absent despite repeated reminders made by the Department. In the writ petition preferred by the appellant, the High Court has recorded the submissions of the appellant that he would be satisfied if the respondents considered his request for voluntary retirement and release him from his service. A contempt petition was also filed by the appellant in 2006 on the ground of violation of the order dated 9th May, 2006 passed by the Delhi High Court. During the pendency of the writ petition and the contempt petition, the authorities the passed impugned order dated 15th October, 2007, whereby the appellant was compulsorily retired from service.

12. The appellant preferred an application being O.A.No.2784/2008 before the Central Administrative Tribunal, Principal Bench, New Delhi wherein he challenged the departmental proceedings. Before the Tribunal, learned counsel for the appellant contended that though the Inquiry Officer had returned a finding in favour of the appellant, insofar as charge No.3 is concerned, but the disciplinary authority without recording a note of dissent held that the said charge as well stands proved. The Tribunal accepted that the disciplinary authority had not recorded any note of dissent and accepted the report of the Inquiry Officer. The tentative view of the disciplinary authority, even when charge No.3 stood not proved; was to punish the appellant with the compulsory retirement. But the Tribunal found that it was only U.P.S.C. which has returned a

finding of guilt insofar as, charge No.3 was concerned, and the disciplinary authority has only accepted the said finding. Confronted with the aforesaid position, learned counsel for the appellant contended that the U.P.S.C. had no jurisdiction whatsoever to return a finding on charge No.3 by reversing the finding given by the Inquiry Officer, and that it had only an advisory role to play. It was further urged that the disciplinary authority was not bound to accept the advice of U.P.S.C. The Tribunal went into the aspects of the case but held that in the context of the facts and circumstances of the present case, there is no need to go into the same as a positive finding has been given by the Inquiry Officer that the appellant was totally insane. The disciplinary authority agreed to the same and despite the fact that charge No.3 was not proved, and while taking the same to have not been proved, it was the opinion of the disciplinary authority that the appellant would need to be compulsorily retired. Therefore, the Tribunal held that the opinion or advice of U.P.S.C. has made no difference whatsoever in the case. Insofar as the insanity of the appellant was concerned, it appears that the appellant was asked to appear before the duly constituted Medical Board on eight occasions and he refused to appear before the Medical Board. Instead, he challenged the order of the Inquiry Officer calling upon him to appear before the Medical Board.

The Tribunal, further, observed that yet another reason to hold the appellant is insane, i.e., his non-appearance before the duly constituted Medical Board, which would necessarily lead to an irresistible presumption that had the appellant appeared before the Medical Board the opinion of the Board would indeed have been that the appellant is insane. Having found no merit, the Tribunal dismissed the original application.

13. The appellant then preferred the writ petition being W.P.(C)No.2622/2010 challenging the finding of the Tribunal in the said case. The Division Bench passed the impugned order dated 20th April, 2010, as quoted in the preceding paragraph.

14. The SLP was preferred by the appellant in person. In view of the severe cardio respiratory problem of the appellant, subsequently he did not appear in person, he engaged the counsel.

15. On hearing the parties and perusing the records, we find that there was some problem going on between the appellant and the authorities of the State which resulted in creating numerous problems. Since 1988, the appellant was suspended and for promotion and posting he had to move before the Tribunal in the year 1990. The departmental inquiry was initiated, wherein the allegation was made that the appellant was mentally sick and then the allegations of indiscipline, irresponsible and misbehaviour were made. The inquiry was proceeded for about 11 years, when the finding was given that the appellant is insane and the order of compulsory retirement was passed on 15th October, 2007.

16. The Persons with disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as the 'Act, 1995') was enacted in the year 1995 with the following statement of objects and reasons:

- i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and

rehabilitation of persons with disabilities;

ii) to create barrier free environment for persons with disabilities;

iii) to remove any discrimination against persons with disabilities in the sharing of development benefits, vis-à-vis non-disabled persons;

iv) to counteract any situation of the abuse and the exploitation of persons with disabilities;

v) to lay down a strategy for comprehensive development of programmes and services and equalization of opportunities for persons with disabilities; and

vi) to make special provision of the intergration of persons with disabilities into the social mainstream. Section 2(i) defines disability:

Section 2(i) "disability" means-

- (i) blindness;
- (ii) low vision;
- (iii) leprosy-cured;
- (iv) hearing impairment;

- (v) loco motor disability;
- (vi) mental retardation;
- (vii) mental illness;

17. There is a prohibition imposed under Section 47 to dispense with, or reduce in rank, an employee who acquires a disability during his service, which reads as follows:

47 - Non-discrimination in Government employments. - (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

18. The appellant was appointed in the service of respondents as an IAS officer and joined in the year 1977. He served for 30 years till the order of his compulsory retirement was issued on 15th October, 2007. It is not the case of the respondents that the appellant was insane and in spite of that he was appointed as an IAS Officer in 1977. Therefore, even it is presumed that the appellant became insane, as held by the Inquiry Officer, mentally illness being one of the disabilities under Section 2(i) of the Act, 1995, under Section 47 it was not open to the respondents to dispense with, or reduce in rank of the appellant, who acquired a disability during his service. If the appellant, after acquiring disability was not suitable for the post he was holding, should have been shifted to some other post with the same pay scale and service benefits. Further, if it was not possible to adjust the appellant against any post, the respondents ought to have kept the appellant on a supernumerary post until a suitable post is available or, until the appellant attained the age of superannuation whichever was earlier.

19. In view of the aforesaid finding, we are of the view that it was not open to the authorities to dispense with the service of the appellant or to compulsory retire him from service. The High Court also failed to notice the relevant fact and without going into the merit allowed the counsel to withdraw the writ petition merely on the basis of the finding of Inquiry Officer. In fact the High Court ought to have referred the matter to a Medical Board to find out whether the appellant was insane and if so found, in that case instead of dismissing the case as withdrawn, the matter should have been decided on merit by appointing an Advocate as amicus curiae.

20. It is informed at the bar that in normal course the appellant would have superannuated from service on 31st July, 2012. In that view of the matter, now there is no question of reinstatement of the appellant though he may be entitled for consequential benefits including arrears of pay. Having regard to the facts and finding given above, we have no other option but to set aside the order of compulsory retirement of the appellant dated 15th October, 2007 passed by the respondents; the order dated 22nd December, 2008 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A.No.2784/2008 and the impugned order dated 20th April, 2010 passed by the High Court of Delhi in W.P.(C)No.2622/2010 and the case is remitted to the respondents with a direction to treat the appellant continued in the service till the date of his superannuation. The appellant shall be paid full salary minus the subsistence allowance already received for the period from the date of initiation of departmental proceeding on the ground that he was suffering from mental illness till the date of compulsory retirement. The appellant shall also be provided with full salary from the date of compulsory retirement till the date of superannuation in view of the first and second proviso to Section 47 of the Act, 1995. If the appellant has already been superannuated, he

will also be entitled to full retiral benefits counting the total period in service. The benefits shall be paid to the appellant within three months, else the respondents will be liable to pay interest at the rate of 6% per annum from the date the amount was due, till the actual payment.

21. The appeal is allowed with the aforesaid observations and directions but there shall be no order as to costs.

...J.

(G.S. SINGHVI) ...J.

(SUDHANSU JYOTI MUKHOPADHAYA) NEW DELHI, JULY 2, 2013.