

Form No. J (2)
Item No.10
Court No.26

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

**M.A.T. 146 of 2024
IA NO: CAN/1/2024**

**Swapan Kumar Roy Ex-Head Constable/GD
Vs.
Union of India & ors.**

For the Appellant : Mr. K.B.S. Mahapatra, Advocate
Mr. G. C. Chakraborty, Advocate
Mr. Kasinath Bhattacharya, Advocate

For the Respondents : Mr. Ashoke Kumar Chakraborty
Ld. A.S.G.
Mr. Swapan Kumar Nandi, Advocate
Ms. Banani Bhattacharya, Advocate

Heard on : 03.09.2024

Judgment on : 03.09.2024

DEBANGSU BASAK, J.:-

1. Appeal is directed against the judgment and order dated January 4, 2024 passed by the learned Single Judge in WPA 6288 of 2012.

2. By the impugned judgment and order, learned Single Judge disposed of the writ petition by permitting the appellant before us to make a representation before review committee. In the event, such representation was made, learned Single Judge directed the review committee to dispose of the same on merits in accordance with the law.

3. Learned advocate appearing for the appellant draws the attention of the Court to the writ petition of the appellant. He submits that, appellant is aggrieved by the order dated March 13, 2012 by which, Rule 48(1)(b) of the Central Civil Services (Pension) Rules, 1972 was invoked as against the appellant. He submits that, there was no justification for invocation of such provision to compulsorily retire the appellant. He contends that, appellant received promotion within the last 5 years from the date of the order of compulsory retirement.

4. Learned advocate appearing for the appellant relies upon **(2008) 17 Supreme Court Cases 365 (Uttar Pradesh Cooperative Sugar Factories Federation Limited versus P.P. Gautam and others)** and submits that since, Rule 48 gave unbridled power of compulsory retirement the same should not be employed for the purpose of compulsory retiring the appellant.

5. Learned advocate appearing for the appellant refers to Rule 48 of the Central Civil Services (Pension) Rules, 1972 and Appendix-9 thereof and submits that, the criteria, procedure and guidelines referred to therein were not valid so far as the appellant is concerned. He also

draws the attention of the Court to Annexure-II and submits that constitution of the Committee was incorrect. He refers to the supplementary affidavit and submits that, the constitution of the review board was not valid as it was not presided over by the appropriate authority. According to him, the review committee was required to be constituted by the Director General as he was head of the department. Director General was not present in the review committee.

6. Learned Additional Solicitor General appearing for the respondents authorities submits that, the appellant was found unfit to remain in service and therefore, provisions of Rule 48(1)(b) of the Central Civil Services (Pension) Rules were employed. He submits that, there is a provision for review which the appellant applies for will be considered by the review authority. He points out that, an order of compulsory retirement is not a punishment. Moreover, referring to the establishment manual, he submits that, the composition of the review committee was in accordance with the circulation issued by the establishment. He submits that, where the law is silent it can be supplemented by the establishment. In the facts of the present case, he contends that, the constitution of the review board cannot be faulted.

7. Learned Additional Solicitor General points out that, legality and validity of Rule 48 of the CCS (Pension) Rules is not under challenge in the writ petition. In fact, none of the provisions which the appellant alluded in course of argument are under challenge in the writ petition.

8. We considered the contention of the parties. The appellant was working as the Head Constable with the Central Industrial Security Force and was posted last at the Kolkata Port Trust.

9. Apparently, appellant wanted posting at a place near to a place where, educational facilities for a differently abled child of the appellant was available. Materials placed on record suggest that, the appellant was accommodated on a number of times of such issue by the authority.

10. Appellant attained 30 years of service. Rule 48 of the CCS Rules contemplates two methods for retirement. One method prescribed is the employee concerned applying for retirement and other is the employer retiring the employee.

11. In the facts of the present case, Rule 48 of the CCS Rules was employed by the employer to terminate the employee.

12. Rule 48 read with Annexure-9 prescribes an elaborate procedure by which, an employer can retire an employee on completion of 30 years of service.

13. Hon'ble Supreme Court in ***P.P. Gautam and others (supra)*** was concerned with similar provisions permitting the employer to retire an employee and found the same to bestow unbridled power on the employer in absence of regulations modulating the same.

14. In the facts of the present case Rule 48 of the CCS (Pension) Rules stands modulated by the Appendix-9 which provides an elaborate

procedure for the employer to retire an employee on completion of 30 years of service.

15. It is the contention of the appellant that, the procedure followed was not valid. Firstly the composition of the review board was not correct. We are afraid, we are not in a position to agree with the contention of the appellant that, the composition of the review board was incorrect. Materials produced on record establish that, the composition of the review board was in accordance with the establishment manual prevalent at the point of time.

16. The contention of the appellant that, he was promoted within five years from the order of retirement, unfortunately is not substantiated by the evidence on record. Appellant was granted benefit under the career progression scheme within last five years of the order of retirement. We are unable to consider grant of such benefit as a grant of promotion in the service career of the appellant.

17. Materials of the appellant were considered by the review committee board to arrive at a decision of retiring the appellant. Such material and the due consideration thereof cannot be said to be perverse. Courts are slow to interfere with the decision taken by the administration particularly with regard to service, when, such decision is not established to be perverse.

18. Since, the appellant is not willing to make any representation as directed by the learned Single Judge in the impugned order, such portion of the impugned order is set aside.

19. We find no merit in the appeal.

20. MAT 146 of 2024 along with connected application being CAN/1/2024 are disposed of without any order as to costs.

21. In the order dated June 14, 2024, the name of the advocate for the respondents has been inadvertently typed as “Mr. Swapan Kumar Roy” instead of **“Mr. Swapan Kumar Nandi”**. The same shall be corrected and read as **“Mr. Swapan Kumar Nandi”**.

22. Other portion of the order dated June 14, 2024 remains unaltered.

23. Department is directed to make necessary correction in the order.

24. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Debangsu Basak, J.)

25. I agree.

(Md. Shabbar Rashidi, J.)