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Date : 24/08/2025

State of U.P. and Another Vs Abhai Kishore Masta

Court: Supreme Court of India

Date of Decision: Dec. 1, 1994

Citation: (1995) 70 FLR 789 : (1994) 7 JT 748 : (1995) 2 PLJR 72 : (1994) 5 SCALE 57 : (1995) 1 SCC 336 : (1994) 6 SCR 224 Supp : (1995) 2 SLJ 1 : (1995) 1 UJ 213 : (1995) 1 UPLBEC 202

Hon'ble Judges: S. C. Sen, J; B.P. Jeevan Reddy, J

Bench: Division Bench

Final Decision: Allowed

Judgement

B.P. Jeevan Reddy, J.
Leave granted. Heard counsel for both the parties.

2. The appeal is directed against the judgment of a Division Bench of the Allahabad High Court (Lucknow Bench) allowing the writ petition filed

by the respondent.

3. While the respondent was working as an Executive Engineer at Etawah he was suspended pending enquiry on 13.10 1983 into certain charges.

He challenged the said order by way of writ petition in the Allahabad High Court which was dismissed. Though the enquiry commenced, it was not

concluded by the year 1988 when the respondent filed another Writ Petition No. 4116 of 1988) challenging the continuation of the order of

suspension pending enquiry. The High Court suspended the order of suspension pending enquiry ok August 8, 1968.

4. While the said enquiry was pending, the respondent was retired compulsorily under Fundamental Rule 56-J by an order of the Government

dated 28th December, 1989. The respondent then filed Writ Petition 1518 of 1990 questioning the same. While this writ petition was pending

before the High Court, final orders were passed in the aforementioned disciplinary proceedings on 18th July, 1990, imposing the punishment of

reduction in rank, to be given effect to in case the order of compulsory retirement is set aside. Thereupon the respondent amended his Writ Petition

(1518 of 1990) to question the order of punishment as well The main ground urged in support of the attack against the order of punishment was

the failure of the disciplinary authority to furnish a copy of the enquiry report to him before imposing the punishment.

5. The High Court allowed the writ petition and quashed the order of compulsory retirement made under Fundamental Rule 45-J on the ground

that the order having been passed during the pendency of disciplinary proceedings must be deemed to be penal in nature. This was so held

following an earlier decision of the said Court in J.N. Bajpai v. State of U.P. and Ors. 1990 (8) LCD 149, So far as the order of punishment is

concerned it was quashed on the ground of non-supply of enquiry report, purporting to follow the decision of this Court in 278014 . The High

Court observed that it shall be open to the disciplinary authority to furnish a copy of the enquiry report to the respondent and proceed with the

enquiry from that stage onwards. The decision of the Tribunal on both the grounds is questioned in this Appeal.

6. We shall first take up the quashing of the order of punishment made in the disciplinary enquiry. The decision in Mohd. Ramzan Khan has been

explained by a Constitution Bench of this Court in Managing Director, ECIL, Hyderabad v. B. Karunakar 1993 (6) SC 1. It has been held that

where the order of punishment is made earlier to the date of the decision in Ramzan Khan, non-supply of enquiry report does not vitiate the

enquiry. Following the said decision, the order of the High Court quashing the punishment on the said ground is set aside.

7. So far as the order of compulsory retirement under Fundamental Rule 56-J is concerned, we are of the opinion that the principle enunciated by

the High Court in J.N. Bajpai and followed in the Judgment under appeal is unsustainable in law. It cannot be said as a matter of law nor can it be

stated as invariable rule, that any and every order of compulsory retirement made under Fundamental Rule 56-J (or other provision corresponding

thereto) during the pendency of disciplinary proceedings is necessarily penal. It may be or it may not be. It is a matter to be decided on a

verification of the relevant record or the material on which the order is based.

8. In the 272413 it has been held by a Constitution Bench that the test to be applied in such matters is ""does the order of compulsory retirement

cast an aspersion or attach a stigma to the officer when it purports to retire him compulsory?"" It was observed that if the charge or imputation

against the officer is made the condition of the exercise of the power it must be held to be by way of punishment-otherwise not. In other words if it

is found that the authority has adopted an easier course of retiring the employee under Rule 56-J instead of proceeding with and concluding the

enquiry or where it is found that the main reason for compulsorily retiring the employee is the pendency of the disciplinary proceeding or the

levelling of the charges, as the case may be, it would be a case for holding it to be penal. But there may also be a case where the order of

compulsory retirement is not really or mainly based upon the charges or the pendency of disciplinary enquiry. As a matter of fact, in many cases, it

may happen that the authority competent to retire compulsorily under Rule 56-J and authority competent to impose the punishment in the

disciplinary enquiry are different. It may also be that the charges communicated or the pendency of the disciplinary enquiry is only one of the

several circumstances taken into consideration. In such cases it cannot be said that merely because the order of compulsory retirement is made

after the charges are communicated or during the pendency of disciplinary enquiry, it is penal in nature.

9. It is true that merely because the order of compulsory retirement is couched in innocuous language without making imputations against the

government servant, the Court need not conclude that it is not penal in nature. In appropriate cases the Court can lift the veil to find out whether, in

truth, the order is penal in nature vide 275061

10. We may mention that even in the case of termination of a temporary employee this Court has adopted the very same tests as are indicated

hereinabove.

11. We may also mention that the grounds on which an order of compulsory retirement can be interfered with has been set out by this Court in

276597 affirming the principles enunciated in 287780

12. We are, therefore, of the opinion that the High Court was in error in holding that merely because the order of compulsory retirement was

passed during the pendency of a disciplinary enquiry, it must be necessarily deemed to be penal in nature, is unsustainable in law. The Judgment of

the High Court is accordingly set aside and the matter is remitted to the High Court to determine, in the light of the observations made herein,

whether the order of compulsory retirement is, in truth, penal in nature? There shall be no order as to costs.