IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6061 OF 2011

UNION OF INDIA & ORS. ..... APPELLANTS

VERSUS

JAGDISH CHANDRA SETHY ..... RESPONDENT

O R D E R

In our opinion, the impugned judgment/order of the High Court dated 07.01.2010, upholding the decision/findings of the Central Administrative Tribunal, Cuttack Bench, Cuttack dated 08.02.2008 passed in O.A. No.828 of 2005, is erroneous and unsustainable.

The impugned judgment relies upon the decision of this Court in *"Ravi Malik v. National Film Development Corporation Limited and Ors."*[1] to hold that a retired public servant could not have been appointed as an inquiry officer. However, the aforesaid decision is founded on the language of Rule 23(b) of the Services Rules and Regulations, 1982 of the National Film Development Corporation Limited, which specifically stipulates that the disciplinary authority may inquire or appoint any public servant to inquire into the truth of imputation of misconduct or misbehaviour against an

1**(2004) 13 SCC 427.**

employee. Therefore, a retired employee cannot be appointed as an inquiry authority.

However, in the present case, the position of the rule is different, as Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965[2] is applicable. The Rule 14(2) states that the disciplinary authority may itself inquire into or under this rule or under provisions of the Public Servants (Inquiries) Act, 1850, appoint an authority to inquire into the truth of the imputation of misconduct or misbehaviour against a government servant. Therefore, the disciplinary authority is empowered to appoint a retired employee as an inquiry authority. It is not necessary that the inquiry officer should be a public servant. Hence, no fault can be found as the inquiry officer was not a public servant, but a retired officer.

Our attention is also drawn to the letter/circular No.13/02/87-VIG.III dated 19.12.1988 of the Department of Posts, the Government of India, which permits the disciplinary authority to appoint a retired government servant as an inquiry officer in order to clear the backlog of pending inquiries in disciplinary cases and to ensure that the inquiry is completed expeditiously.

The legal position is not res integra, as "*Union of* India & Ors. v. *P.C. Ramakrishnayya*"[3], referring to the earlier decision in "*Union of India* v. *Alok Kumar*"[4], has interpreted Rule 14(2) and thereupon held:

2**For Short "CCS (CCA) Rules".**
3**(2010) 8 SCC 644.**
4**(2010) 5 SCC 349.**

"16. In *Alok Kumar*[5] this Court considered in great detail, the meaning of the word "authority" occurring in Rule 9(3) and came to find and hold that a retired officer could also be vested with the delegated authority of the disciplinary authority (see paras 26-62) to hold the inquiry. It may also be noted that in Alok Kumar, this Court also considered the decision in *Ravi Malik* v. *National Film Development Corp. Ltd*[6]. and distinguished it by pointing out that it was in the context of Rule 23(b) of the Service Rules and Regulations, 1982 of National Film Development Corporation. In SCC para 45 of the judgment, the Court observed as follows: (Alok Kumar case, SCC p. 367).:-

> **"45. Reliance placed by the respondents upon the judgment of this Court in *Ravi Malik*[7] is hardly of any assistance to them. Firstly, the facts and the rules falling for consideration before this Court in that case were entirely different. Secondly, the Court was concerned with the expression 'public servant' appearing in Rule 23(b) of the Service Rules and Regulations, 1982 of the Film Development Corporation. The Court expressed the view that 'public servant' should be understood in its common parlance and a retired officer**

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5 **Supra footnote No.4.**
6 **Supra footnote No.1.**
7 **Supra footnote No.1.**

> would not fall within the meaning of 'public servant', as by virtue of his retirement he loses the characteristics of being a public servant. That is not the expression with which we are concerned in the present case. Rule 9(2) as well as Section 3 of the Act have used a very different expression i.e. 'other authority' and 'person/persons'. In other words, the absence of the words 'public servant' of the Government are conspicuous by their very absence. Thus, both these expressions, even as per the dictum of the Court should be interpreted as understood in the common parlance."

In view of the legal position, learned counsel appearing on behalf of the respondent - Jagdish Chandra Sethy has urged that in the present case, the disciplinary authority had not recorded specific reasons why a retired government servant was appointed to act as an inquiry officer. We are not impressed with this argument and reject the same, as a belated afterthought. This submission should not be entertained before this Court, post the inquiry etc.

Accordingly, the appeal is allowed and the impugned judgment of the High Court dated 07.01.2010 rejecting the challenge to the order passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack dated 08.02.2008 in O.A. No.828 of 2005 is set aside. Consequently, O.A. No.828 of 2005 would be treated as dismissed.

Pending application(s), if any, shall stand disposed of.

.....J.
(SANJIV KHANNA)

.....J.
(BELA M. TRIVEDI)

NEW DELHI;
JULY 18, 2023.

ITEM NO.21 COURT NO.3 SECTION XI-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 6061/2011

UNION OF INDIA & ORS. Appellant(s)

VERSUS

JAGDISH CHANDRA SETHY Respondent(s)

Date : 18-07-2023 This appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE BELA M. TRIVEDI

For Appellant(s) Mr. Vikramjeet Banerjee, Sr. Adv.
Ms. Vaishali Verma, Adv.
Mr. G.S. Makkar, AOR
Ms. Shweta Garg, Adv.
Mr. B.K. Satija, Adv.
Mr. Tathagat Sharma, Adv.
Mr. N.C. Zehang, Adv.
Ms. Sweksha, Adv.
Mr. Arvind Kumar Sharma, AOR

For Respondent(s) Ms. Nidhi, AOR

UPON hearing the counsel, the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(BABITA PANDEY) (R.S. NARAYANAN)
COURT MASTER (SH) ASSISTANT REGISTRAR
(Signed order is placed on the file)