
(2007) 05 AHC CK 0288
In the Allahabad High Court

Balbir Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 22-05-2007

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2007) 7 AWC 6771 : (2007) 114 FLR 563

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vineet Saran, J.—The petitioner was selected as a Sub Inspector in the Civil Police on 7.3.1974. By an order dated 7.2.2002 passed by the Deputy Inspector General of Police, Bareilly Range, Bareilly, the petitioner was compulsorily retired under Rule 56 (c) of the Fundamental Rules. Aggrieved by the said order, this writ petition has been filed. A further prayer has been made for issuance of a writ in the nature of mandamus commanding the respondents to permit the petitioner to work till completing the age of retirement and to pay him salary and other emoluments admissible to him.

2. I have heard Sri R.P. Singh, learned Counsel for the petitioner as well as learned Standing Counsel appearing for the respondents. Pleadings have been exchanged and with consent of the learned Counsel for the parties this writ petition is being disposed of at this stage.

3. The submission of the learned Counsel for the petitioner is that the impugned order has been passed on extraneous considerations without assigning any reason or giving any opportunity of hearing to the petitioner. The contention of the learned Counsel for the petitioner is that the service record of the petitioner has been very good and only because of the petitioner having made an entry in the General Diary on 13.4.2000 with regard to) pressure exerted on him by the senior officers for submitting a final report in a particular case, a vigilance

enquiry was directed against the petitioner on 17.4.2000. Thereafter on 11.5.2000 and 4.7.2000 the petitioner was repeatedly transferred. When nothing was found against the petitioner in the vigilance enquiry, in order to punish and harm the petitioner, without assigning any reason the impugned order of compulsory retirement has been passed by the respondents.

4. Learned Standing Counsel has, however, justified the action of compulsorily retiring the petitioner and has stated that no notice to the petitioner was required to be given nor any reason was required to be assigned in the order compulsorily retiring the petitioner and as such the same does not call for any interference.

5. In paragraph 3 of the writ petition it has been stated that "The service career of the petitioner is found to be satisfactory and the entire service role of the petitioner contains good, very good and excellent also ". In reply to the said paragraph of the writ petition, it has merely been stated in paragraph 6 of the counter affidavit that such averments are wrong and denied. No explanation as to why the said averments are wrong, has been given in the counter affidavit. It has also not been stated that there has ever been any adverse entry awarded to the petitioner. In paragraph 11 of the writ petition it has been stated that "...the impugned order has been passed without taking into account the entire relevant material, history and service record of the petitioner. The petitioner is quite physically fit to discharge the duties assigned to the post of Sub Inspector of Police and from the service record of the petitioner, no reasonable person would form the requisite opinion on the given material about the retirement of the petitioner. Therefore, the order impugned suffers from perversity". In paragraph 12 of the writ petition the petitioner has stated that "There is nothing adverse in service record of the petitioner which may entitle the respondents to pass the impugned order in the event when the petitioner has been finally exonerated by the Vigilance Department." In paragraph 13 of the writ petition it has been averred that no opportunity of hearing was given to the petitioner prior to the passing of the impugned order and that the subjective satisfaction of the respondents must be verified by independent material and the service record of the petitioner.

6. The reply to paragraphs No. 10,11, 12 and 13 of the writ petition has been given in paragraph 13 of the counter affidavit and it has merely been stated that the averments of the said paragraphs are wrong and that the petitioner was given sufficient opportunity of hearing. Except for that, nothing has been stated in reply to the specific averments made by the petitioner in paragraphs No. 11 and 12 of the writ petition, relevant extract of which have been quoted above. As such, from the record it does not appear that there was any material against the petitioner so as to warrant an order of compulsory retirement. Merely because a Vigilance enquiry had been initiated against the petitioner would not be a sufficient ground to take such action against the petitioner. In the vigilance enquiry report also nothing material has been found against him, as the property

which was sold by the wife of the petitioner was inherited by her from her parents. The only remark against the petitioner in the said report is that prior permission of such sale had not been obtained by the petitioner.

7. The Apex Court in the case of Smt. S.R. Venkataraman Vs. Union of India (UOI) and Another, has held that "An administrative order which is based on reasons of fact which do not exist must, therefore, be held to be infected with an abuse of power." In the present case, the impugned order appears to be infected with abuse of power as it is based on no reason of fact.

8. While dealing with a case of compulsory retirement, the Supreme Court in the case of Baldev Raj Chadha Vs. Union of India (UOI) and Others, has held that onus lies on the State to furnish material before the Court to justify its action in public interest. In paragraph 8 of the judgment the Court has observed as under:

8. This takes us to the meat of the matter, viz, whether the appellant was retired because and only because it was necessary in the public interest so to do. It is an affirmative action, not a negative disposition, a positive conclusion, not a neutral attitude. It is terminal step to justify which the onus is on the Administration, not a matter where the victim must make out the contrary. Security of tenure is the condition of efficiency of service. The Administration, to be competent, must have servants who are not plagued by uncertainty about tomorrow. At the age of 50 when you have family responsibility and the sombre problems of one's own life's evening, your experience, accomplishments and fullness of fitness become an asset to the Administration, if and only if you are not harried or worried by "what will happen to me and my family?" "Where will I go if cashiered?" "How will I survive when I am, too old to be newly employed and too young to be superannuated?" These considerations become all the more important in departments where functional independence, fearless scrutiny, and freedom to expose evil or error in high places is the talk.... So it is that we must emphatically state that under the guise of "public interest" if unlimited discretion is regarded acceptable for making an order of premature retirement, it will be the surest menace to public interest and must fail for unreasonableness, arbitrariness and disguised dismissal. To constitutionalise the rule, we must so read it as to free it from the potential for the mischiefs we have just projected. The exercise of power must be bona fide and promote public interest. There is no demonstrable ground to infer mala fides here and the only infirmity alleged which deserves serious notice is as to whether the order has been made in public interest. When an order is challenged and its validity depends on its being supported by public interest the State must disclose the material so that the court may be satisfied that the order is not bad for want of any material whatever which, to a reasonable man reasonably instructed in the law, is sufficient to sustain the grounds of "public interest" justifying forced retirement of the public servant. Judges cannot substitute their judgment for that of the Administrator but they are not absolved from the minimal review well settled in administrative law and founded on constitutional obligations. The limitations on judicial power in

this area are well known and we are confined to an examination of the material merely to see whether a rational mind may conceivably be satisfied that the compulsory retirement of the officer concerned is necessary in public interest.

(Emphasis supplied).

9. In a more recent case of State of Gujarat Vs. Umedbhai M. Patel, the Apex Court has summarised the principles relating to compulsory retirement in paragraph 11, which is quoted below:

11. The law relating to compulsory retirement has now crystallized into definite principles, which could be broadly summarised thus:

(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administrative, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure.

10. As such it is clear that an order of compulsory retirement cannot be imposed as a punitive measure or as a short cut measure to avoid departmental enquiry. The same can be passed for valid reasons after taking into account the confidential records which may include uncommunicated entries also. The purpose of the same is to chop off the dead wood but cannot be done without having due regard to the entire service record of the officer.

11. In the present case it is not denied by the respondents that the confidential reports of the petitioner contained entries of good, very good and excellent. It has also not been denied that the petitioner is physically fit to discharge duties as Sub Inspector of Police. The fact that the petitioner has already been exonerated in the vigilance enquiry is also not denied. As such, passing of the impugned order of compulsory retirement of the petitioner in the aforesaid

circumstances is nothing but an act which suffers from perversity, as it is clear that the said order has been passed on extraneous considerations and not on the basis of the relevant service record and other material on perusal of which a rational mind may conceivably be satisfied that compulsory retirement of the officer concerned was necessary in public interest.

12. Accordingly, for the foregoing reasons, the impugned order by which the petitioner has been compulsorily retired, deserves to be set aside.

13. This writ petition, thus, stands allowed. The impugned order dated 7.2.2002 passed by Deputy Inspector General of Police, Bareilly Range, Bareilly, Respondent No. 2 is quashed. The petitioner shall be entitled to all consequential benefits. No order as to cost.