
(1999) 03 RAJ CK 0019

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2565 and 3877 of 1991

Banshi Lal Nayati

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 09-03-1999

Acts Referred:

Citation : (1999) 2 RLW 873 : (1999) 1 WLN 453

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Judgement

B.S. Chauhan, J.—Both these petitions have been filed in respect of the judgment and order dated 13.3.1990 passed by the Rajasthan Civil Services Appellate Tribunal, by which the order dated 9.4.1985, passed by the District Collector, Chittorgarh, giving compulsory retirement to petitioner - employee Banshi Lal Nayati has been quashed. S.B. Civil Writ Petition No. 2565/1991 has been filed by petitioner-employee for seeking direction to implement the said judgment and order, while S.B. Civil Writ Petition No. 3877/1991 has been filed by the State for setting aside the said judgment.

2. The facts and circumstances giving rise to these cases are that petitioner Banshi Lal Nayati entered in the service of the respondents as Patwari on 2.7.1951. He had been given compulsory retirement vide impugned order dated 9.4.1985 (Annexure. 1) in exercise of the powers conferred under Rule 244(2) of the Rajasthan Service Rules, 1951 (for short, "the Rules"). Being aggrieved and dissatisfied, he prepared an appeal before the Tribunal, which has been allowed by the judgment and order dated 13.3.1990 mainly on the following grounds-

(i) petitioner had earlier been given some adverse entries, on the basis of which he was given compulsory retirement earlier. However, the said order was quashed and petitioner was reinstated in service vide order dated 4.5.1977;

(ii) any adverse entry prior to the date of reinstatement i.e. 4.5.1977, being a report of remote-past, cannot be taken into consideration while considering the

case under Rule 244(2) of the Rules, and reinstatement had wiped-out the effect of such an adverse entry;

(iii) after reinstatement in 1977, the Service Record of the petitioner was average or satisfactory except one entry of 1978- 79, wherein his performance was assessed as "average" but in over-all assessment, the remark had been given to the effect that the employee was unreliable, irresponsible and was a habitual liar. As no specific incident had been mentioned by the Reporting Officer in support of the said adverse entry, the same could not have been taken into account being vague;

(iv) the Minutes of the Screening Committee revealed that he was not found fit for promotion on several occasions, i.e. in the years 1978-79, 1979-80 and 1980-81 and it could not have been a ground of compulsory retirement; and

(v) the adverse entry did not appear to have been communicated to the petitioner and in such circumstance, the same could not have been taken into account while passing the impugned order dated 9.4.1985.

3. Being aggrieved of the order dated 13.3.1990 passed by the tribunal, the State has preferred the aforesaid writ petition for setting aside the same and the petitioner-employee has filed the aforesaid writ petition for enforcement of the said judgment.

4. Heard Mr. Sajjan Singh, learned Counsel for the petitioner-employee and Mr. R.K. Soni and Mr. M.R. Singhvi, for the respondents.

5. The issue of compulsory retirement has been considered by the Hon''ble Supreme Court in *Bainkunthnath Das and Anr. v. Chief District Medical Officer, Beripada and Anr.* 1992 (2) SCC 211, wherein, after considering all its earlier judgments, the Hon''ble Supreme Court laid down the following principles-

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

(ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate Court, they may interfere if they are satisfied that the order is passed (a) *mala fide*, or (b) that it is based on no evidence, or (c) that it is arbitrary - in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

(iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter of course attaching more importance to record of and performance during the later

years. The record to be so considered would naturally include the entire in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.

Interference is permissible only on the grounds mentioned in (Hi) above....

6. Same view has been reiterated by the Hon'ble Supreme Court in P & T Board and Ors. v. C.S.N. Murti 1992 (4) SCC 317 ; Union of India Vs. V.P. Seth and another, ; S. Ramachandra Raju Vs. State of Orissa, ; State of U.P. and Another Vs. Abhai Kishore Masta, ; Chief General Manager, State Bank of India, Bhubaneswar and others Vs. Suresh Chandra Behera, ; and Narasingh Patnaik Vs. State of Orissa, .

7. In I.K. Misra v. Union of India and Ors. 1997 (6) SCC 227, the Apex Court held that the power to give compulsory retirement is absolute but the Authority must form an opinion bona-fide that the retirement was in public interest. In Satya Prakash Gupta v. State of Haryana 1997 SCC (L & S) 1764, the Hon'ble Supreme Court up-held the order of compulsory retirement on the ground that the employee had been awarded punishment. While deciding the said case, the Supreme Court placed reliance on its earlier judgment in C.D. Ailawadi v. Union of India 1990 (2) SCC 328 . In Haryana State Electricity Board Vs. K.C. Gambhir, , the Hon'ble, Supreme Court held that not only un-communicated adverse entries but also the entries on which representations are pending consideration, can be taken into account while giving compulsory retirement.

8. In H.G. Venkatachaliah Setty Vs . Union of India and others, (1997) 11 SCC 366 , the Apex Court held that even solitary uncommunicated adverse remarks may form the basis of passing an order of compulsory retirement depending upon the facts of a given case.

9. In State of M.P. and Others Vs. Indra Sen Jain, , the Supreme Court held that the Authority was justified in passing the order of compulsory retirement in public interest as it came to the conclusion that the employee was not having good relations with public and there were allegations of corruption against him. It further observed that it was not necessary for the Authority to recite in the order that "action was initiated in public interest." The only requirement is that there must be material to initiate such action.

10. In The State of Punjab Vs. Gurdas Singh, , the Supreme Court observed as under-

Before the decision to retire a government servant prematurely is taken, the

Authorities are required to consider the whole record of service. Any adverse entry prior to earning of promotion or putting of efficiency bar or picking up higher rank is not wiped out and can be taken into consideration while considering the over-all performance of the employee during whole of his tenure of service whether it is in public interest to retain him in service. The whole record of service of the employee will include any uncommunicated adverse entries as well,

(Emphasis added).

11. In Union of India (UOI) Vs. M.E. Reddy and Another, , the Hon"ble Supreme Court considered the effect of taking into consideration the adverse entry which had not been communicated to the employee. The Court observed that some of the remarks may be purely innocuous or may be connected with general reputation of honesty or integrity that a particular employee enjoys. In such a case, it would be difficult, if not impossible, to prove by positive evidence that a particular officer is dishonest but those who had opportunity to watch the performance of the said official from close quarter, are in a position to know the nature and character not only of his performance but also of the reputation that he enjoys. Therefore, even uncommunicated entries may be taken into account while giving an employee compulsory retirement.

12. In State of U.P. and Anr. v. Bihari Lal 1994 (Suppl.) 3 SCC 593, the Apex Court observed as under-

It is on overall assessment of the record, the authority would reach a decision whether the government servant should be compulsorily retired in public interest. In an appropriate case, there may not be tangible material but the reputation of officer built around him could be such that his further continuance would imperil the efficiency of the public service and would breed indiscipline among other public servants. Therefore, the Government could legitimately exercise their power to compulsorily retire a government servant. The Court has to see whether before the exercise of the power, the authority has taken into consideration the overall record even including some of the adverse remarks, though for technical reasons might be expunged on appeal or revision. What is needed to be looked into is the bona fide decision taken in the public interest to augment efficiency in the public service. In the absence of any malafide exercise of power or arbitrary exercise of power, a possible different conclusion would not be a ground for interference by a court....

13. In M.S. Bindra Vs. Union of India and Others, , the Hon"ble Supreme Court observed that judicial scrutiny of any order imposing premature compulsory retirement is permissible if the order is either arbitrary or malafide or it is based on no evidence. The observation that principles of natural justice have no place in the context of compulsory retirement does not mean that the version of the delinquent officer is necessary to reach a correct conclusion, the same may be obviated on the assumption that other materials alone need be looked into. The

Hon''ble Supreme Court placed reliance on its earlier judgment in Union of India (UOI) Vs. Col. J.N. Sinha and Another, , wherein it has been held that "if the appropriate authority forms the requisite opinion bonafide, its opinion cannot be challenged before the Courts though it is open to the aggrieved party to contend that the requisite opinion has not been formed or that it is based on no collateral ground or that it is an arbitrary decision."

14. In State of Gujarat and Ors. v. Suryakant Chunnial Shah 1998 (8) JT 326, the Hon''ble Supreme Court considered its earlier judgment in H.C. Gargi v. State of Haryana 1986 JT 253 ; Gian Singh Mann Vs. High Court of Punjab and Haryana and Another, Kailash Chandra Agrawal v. State of Madhya Pradesh and Ors. 1987 (3) JT 241 ; and K. Kandaswamy Vs. Union of India, , and observed that when an appropriate authority forms bonafide opinion that compulsory retirement of the Government employee is in the public interest, the Court would not interfere with the order.

15. In Madan Mohan Choudhary v. State of Bihar 1999 (1) JT 459, the Hon''ble Supreme Court considered a large number of its earlier judgments and held that adverse entries recorded in normal course at any point of time, i.e. at any remote stage, can be taken into consideration, as examining the entire record of the case would include any past entry at whatsoever distance of time it had been recorded. The only requirement is that the entry should be recorded in the normal course. In case it has been recorded in a peculiar circumstance, it should not be relied upon. In that case the adverse entries were found to have been recorded for three years "at one go"/simultaneously and that too when the Standing Committee of the High Court had already formed the opinion to compulsorily retire the appellant-officer from Bihar Higher Judicial Service. The Court approved the law laid down in Bainkunthnath Das (supra) but quashed the order of compulsory retirement as the action of the respondents was not found to be bonafide.

16. The case of the petitioner-employee is examined in view of the above-referred law. In the instant case, the Tribunal has erred in holding that an entry, which has not been communicated, cannot be taken into account, as such an observation runs counter to the law laid down by the Hon''ble Supreme Court in large number of cases referred to above. Secondly, the observation that his reinstatement earlier had wiped-out the effect of earlier adverse entries, is not in consonance with the law laid down in Gurdas Singh (supra) wherein it has categorically been held that adverse entry prior to promotion or putting of efficiency bar or picking-up of higher rank, is not wiped-out and the same has to be taken into consideration otherwise it will not be a case of examining the entire record. The Tribunal has gravely erred in brushing aside the fact that petitioner-employee had earlier been awarded the punishment of stoppage of two annual grade increments with cumulative effect, vide order dated 30.6.81, only on the ground that it had been awarded seven- eight years prior to the order of compulsory retirement. In view of the law referred to above, the appreciation of

material fact in such a casual manner is not permissible and remotness of an adversity does not constitute any mitigating circumstance in favour of the petitioner.

17. Petitioner-employee has not alleged any malafide against any individual person/officer nor has he impleaded any person by name. It cannot be said to be a case where the impugned order is based on no evidence or in the facts and circumstances of the case it was not warranted.

18. Thus, in view of the above, S.B. Civil Writ Petition No. 3877/1991 filed by the State succeeds and is allowed. The impugned judgment and order dated 13.3.1990, passed by the Tribunal is hereby set-aside and the impugned order dated 9.5.1985, giving compulsory retirement to the petitioner is up-held. S.B. Civil Writ Petition No. 2565/1991 filed by the petitioner-employee is hereby dismissed. However, there shall be no order as to costs.