

(2017) 03 RAJ CK 0118
In the Rajasthan High Court
Case No : 12392 of 2011

Barkatullah Khan S/o Shri Abdul Khalik Khan	APPELLANT
Vs	
The State of Rajasthan	RESPONDENT

Date of Decision : 30-03-2017

Acts Referred:

[Rajasthan Civil Service Pension Rules, 1996](#), Rule 53(1)

Citation : (2017) 03 RAJ CK 0118

Hon'ble Judges : Ajay Rastogi, Kailash Chandra Sharma

Bench : DIVISION BENCH

Advocate : Ajeet Kumar Sharma, V.K.Sharma, Rishipal Agrawal

Final Decision : Dismissed

Judgement

1. By the instant writ petition, the petitioner has impugned order of the Government of Rajasthan dt.31.03.2010 whereby in pursuance of R.53(1) of the Rajasthan Civil Service Pension Rules, 1996, has been compulsorily retired on recommendation of the High Court. He has also challenged the validity of R.53(1) of the Rules, 1996. At the outset, it may be noticed that validity of R.53(1) of the Rules, 1996 has been upheld by this court in Jagdish Prasad Sharma vs. State of Rajasthan [D.B.Civil Writ Petition No.782/2011] decided on 17.08.2016.
2. The facts, in brief, which may be relevant for the present purpose, culled out are that the petitioner was appointed as Munsif/Judicial Magistrate vide order of the Government

dt.19.07.1985, pursuant to which he joined on 22.08.1985. He was promoted in RJS Cadre as Additional Chief Judicial Magistrate vide order dt.26.05.1993 and also as Civil Judge (Senior Division)-cum-Chief Judicial Magistrate vide order dt.28.05.2002. He was further promoted in the Rajasthan Higher Judicial Services as Additional District & Sessions Judge vide order dt.13.12.2004 and while working as Additional District & Sessions Judge, he stood pre-maturely retired vide order impugned dt.31.03.2010.

3. While the petitioner was working as an officer of Rajasthan Higher Judicial Service, a committee of five Judges of this Court was constituted by Hon"ble the Chief Justice vide order dt.30.11.2009 to consider the cases of such of the Judicial Officers of the State of Rajasthan who have become deadwood or have lost their utility for compulsory retirement obviously who qualified pre-conditions, as contemplated u/R.53(1) of Rules 1996. Since one of the Hon"ble Judge stood retired, Hon"ble the Chief Justice reconstituted the committee of remaining four Hon"ble Judges and the Committee in its meeting held on 02.03.2010 considered the cases of good number of Judicial Officers including the petitioner and after examining overall record of service, personal and other files of the Officer, arrived to the conclusion that the petitioner became liability to the judicial service and public interest warrants compulsory retirement of the Officer & accordingly recommended for his compulsory retirement which was placed before the Full Court and after due deliberation and discussions & perusing the overall service record/ACRs, it was resolved by the Full Court to accept the report of the Committee in its meeting held on 20.03.2010 and recommended petitioner"s compulsory retirement and consequently vide Government Order dt.31.03.2010, the petitioner was compulsorily retired u/R.53(1) of Rules 1996.

4. No one appeared on behalf of the petitioner but from the pleadings of the petition, his grievance appears to be that his overall remarks about his service history are overwhelming in his favour and the material considered for his compulsory retirement are not sufficient for passing the order impugned & his total service record has not been taken into consideration even a man of ordinary prudence would not arrive to a conclusion for his compulsory retirement and no opportunity of hearing was afforded before the impugned action being taken against him and without calling for explanation, taking a decision of compulsory retirement have no foundation and action of the respondents deserves to be quashed being arbitrarily exercised by the authority.

5. The respondents have filed their reply and while supporting the order impugned submitted that from the overall assessment of service record including personal and other files of the Officer, he has proved himself to be a liability upon judicial service and therefore in the public interest he was recommended for compulsory retirement. The recommendations of the Committee dt.02.03.2010 for compulsory retirement of the petitioner in public interest was placed before the Full Court and the Full Court in its meeting dt.20.03.2010 after scrutinizing the entire service record and other files of the Officer and unanimously in its view that recommendations of the committee deserve acceptance and it will be in public interest to compulsorily retire the petitioner and consequently vide Government order dt.31.03.2010, the petitioner stood compulsorily retired u/R.53(1) of Rules 1996.

6. We have heard counsel for the respondents & with their assistance examined the material on record.

7. At the outset, we would like to quote R.53(1) of the Rules, 1996 under which the petitioner has been compulsorily retired and

extract of the Rule which is relevant for the purpose reads as

infra:-

"At any time, after a government servant has completed 15 years qualifying service or has attained the age of 50 years, whichever is earlier, the appointing authority, upon having been satisfied that the concerned government servant has on account of his indolence or doubtful integrity or incompetence to discharge official duties or inefficiency in due performance of official duties, has lost his utility, may require the concerned Government servant to retire in public interest after following the procedure laid down by the Government in Department of Personnel/ Administrative Reforms Department. In case of such retirement, the Government servant shall be entitled to retiring pension".

8. It would be seen from R.53(1) which gives right to the competent authority to retire any government servant who has completed 15 years of qualifying service or has attained the age of 50 years whichever is earlier after recording subjective satisfaction of the authority forming opinion that it is in the public interest to pre mature retire government servant from service.

9. Before adverting to the question whether the compulsorily retirement order suffers from any legal infirmity, we would consider it appropriate to refer to the report of the Committee constituted of four Hon"ble Judges who examined overall service record of the petitioner in its meeting held on 02.03.2010. The report reads as follows:-

"The name of the petitioner appeared in the zone of consideration at Sl. No. 12 in the list of ADJ (Regular) officers before the Hon"ble Committee. Hon"ble Committee considered the case of the petitioner and recommended the name of the petitioner for compulsory retirement in the public interest, observing as under-

"He was born on 01.01.1956 and joined the service in the cadre of Rajasthan Judicial Services in the year 1985. Presently he is posted as Additional District Judge, Barmer.

His ACRs" of I and II part of 1986, 1987,1988, I Part of 1989,1990,1991,1994,1995 and 1996 etc, were of average category. In the year 1993, disposal of civil work was not adequate and remark was communicated and it was treated as advisory. Again in 1994 his quality of judgments was found not up to the mark and it was observed that it requires improvement and the

officer was rated as an average Officer. On representation of Officer, the said remark was treated as advisory and not adverse against him.

In the year 1995, complaints about his integrity was reported by the District Judge concerned and it was also reported that he was not fair and impartial in dealing with public and the Bar. The quality of judgment requires improvement and his integrity was not certified from 01.01.1995 to 05.05.1995 and he has been rated as average, whereas Hon"ble the Inspecting Judge rated him as below average.

In the ACR of II part of 1995, the District Judge again reported Complaints regarding integrity of the officer and the Hon"ble Inspecting Judge also found him to be an Officer of doubtful integrity and his

judgments on facts and law were not found sound, well reasoned and expressed in good language. His integrity certificate was again withheld and adverse remarks were communicated to the Officer. His representation was considered and rejected and then review application was also considered and rejected.

As per File No. R/Vig/256/1995, the Officer did not commit the accused in a case under Section 304 to Sessions Court for trial and converted the case under Section 304-A IPC for trial before himself, for which he was warned to be careful in future.

In view of the fact that his integrity certificate has been withheld more than once and his work is found to be below average in spite of adverse remarks communicated to improve himself, he possesses no good reputation with respect to his integrity. His continuity in the Office may harm the institution.

In view of overall assessment of the service record including personal and other files of Shri Barkatullah khan, he has proved himself to be liability upon the judicial service and, therefore, in the public interest such Judicial officer may be compulsorily retired immediately. It is further recommended that enquiry, if any, pending against him under Rules 16 and 17 of the CCA Rules, may be dropped. It is further recommended that the Officer may be given a Bank Draft of the amount equivalent to three months" pay and allowances in lieu of notice period alongwith order of retirement."

The above report of the Committee dated 02.03.2010 was accepted by the Hon"ble Full Court in its meeting dated 20.03.2010 and therefore on recommendation of the Hon"ble High Court and consideration by the Government, order of compulsory retirement dated 31.03.2010 (Annexure-19 of the writ petition) of the petitioner was issued by the State Government."(Emphasis supplied.)

10. The report of the Committee clearly indicates that apart from his work performance, his integrity was withheld, quality of judgment, general reputation & honesty was not found good and

serious allegations of corrupt practices have been alleged against him.

11. It is indeed settled law that order of compulsory retirement is not a punishment, it implies no stigma nor any suggestion of misbehaviour and is based on subjective satisfaction of the authority and this principle has been consistently followed by the Apex Court in their authoritative pronouncements that the authority is under obligation to consider the entire record of service before taking a decision of compulsory retirement of course attaching more importance of service record of later 5-10 years but at the same time, as regards honesty and integrity of Officer is concerned, even a solitary instance could be considered to be sufficient and there cannot be any compromise as regards honesty and integrity of a Judicial Officer. The principle which emerges and laid down for consideration to test the validity of order of compulsory retirement have been considered in the case of *Baikuntha Nath Das and Anr. V. Chief District Medical Officer, Baripada and Anr .* reported in AIR 1992 SC 1020 has laid down certain guiding principles for the Courts, on which it can interfere in the order of compulsory retirement and that includes mala fides, if the order is based on no evidence, or if the order is arbitrary in the sense that no reasonable person with ordinary prudence would form the requisite opinion on the given material, if it is found to be a perverse order. The Court held as under:

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

(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 the 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 entries 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."

12. Similar view has been reiterated by the Apex Court in Posts and Telegraphs Board and ors. V. C.S.N. Murthy reported in AIR 1992 SC 1368 and the Apex Court has observed ad-infra:-

"There was a very limited scope of judicial review in a case of compulsory retirement and it was permissible only on the grounds of non-application of mind; mala fides; or want of material particulars. Power to retire compulsorily a Government servant in terms of Service Rules is absolute, provided the authority concerned forms a bona fide opinion that compulsory retirement is in public interest."

13. The above settled principles as regards judicial service came to be examined by the Apex Court in Nawal Singh Vs. State of U.P. And Anr. reported in (2003) 8 SCC 117 which reads ad infra:-

"The judicial service is not a service in the sense of an employment. Judges are discharging their functions while exercising the sovereign judicial power of the State. Their honesty and integrity is expected to be beyond doubt. It should be reflected in their overall reputation. Further nature of judicial service is such that it cannot afford to suffer continuance in service of persons of doubtful integrity or who have lost their utility. If such evaluation is done by the Committee of the High Court Judges and is affirmed in the writ petition, except in very exceptional circumstances, the Supreme Court would not interfere with the same, particularly because the order of compulsory retirement is based on the subjective satisfaction of the authority. The present appeals are required to be decided on the basis of the said principles".

14. And taking note of later decision of the Apex Court, three

Judges Bench of Apex Court in Pyare Mohan Lal Vs. State of Jharkhand and Ors. reported in AIR 2010 SC 3753 observed ad-infra:-

"Thus, the law on the point can be summarized to the effect that an order of compulsory retirement is not a punishment and it does not imply stigma unless such order is passed to impose a punishment for a proved misconduct, as prescribed in the Statutory Rules".

15. This fact cannot be ruled out that judicial service is not a service in the sense of employment and as is commonly understood Judges are discharging their functions exercising the sovereign judicial power of the State. Their honesty and integrity is expected to be beyond doubt. It should be reflected in their overall reputation. There is no manner of doubt that the nature of judicial service is such that it cannot afford to suffer continuance in service of persons of doubtful integrity or who have lost their utility.

16. Compulsory retirement is neither dismissal nor removal and differs from both of them, in that it is not a form of punishment prescribed by the rules and involves no penal consequences, inasmuch as the person retired is entitled to pension and other retiral benefits, proportionate to the period of service standing to his credit.

17. It is also settled by the consistent view of the Apex Court that the order of compulsory retirement does not have adverse consequence and, therefore, the principles of natural justice has no role to play and uncommunicated ACR on record can be taken into consideration and an order of compulsory retirement cannot be set aside for the reason that such un-communicated entries was taken into consideration. The incumbent has not been afforded an opportunity to represent before the same was taken into consideration for passing the order of compulsory retirement,

cannot vitiate the order of compulsory retirement. However, the authority has to take into consideration the entire service record of the officer concerned but more attention to the later 5-10 years of record which would include non-communicated adverse remarks also.

18. Similar view has been taken by the Apex Court in Rajendra

Singh Verma (Dead) through LRs. And Others Vs. Lieutenant Governor (NCT of Delhi) And Others reported in

(2011) 10 Supreme Court Cases 1 which reads ad-infra:

"It is well settled by a catena of decisions of this Court that while considering the case of an officer as to whether he should be continued in service or compulsorily retired, his entire service record up to that date on which consideration is made has to be taken into account. What weight should be attached to earlier entries as compared to recent entries is a matter of evaluation, but there is no manner of doubt that consideration has to be of the entire service record. The fact that an officer, after an earlier adverse entry, was promoted does not wipe out earlier adverse entry at all. It would be wrong to contend that merely for the reason that after an earlier adverse entry an officer was promoted that by itself would preclude the authority from considering the earlier adverse entry. When the law says that the entire service record has to be taken into consideration, the earlier adverse entry, which forms a part of the service record, would also be relevant irrespective of the fact whether the officer concerned was promoted to higher position or whether he was granted certain benefits like increments etc."

19. It is also settled that formation of opinion for compulsory retirement is based on subjective satisfaction of the authority concerned. The Courts can certainly look whether valid material exists or not, or whether the order of compulsory retirement is based on some material or not but sufficiency of material cannot be ground for setting aside the order of compulsory retirement.

20. In the instant case, the respondents have placed on record the complete record of service of the Officer which he rendered as Judicial Officer and was considered by the Committee constituted by Hon''ble the Chief Justice in the meeting dt.02.03.2010 and while examining overall record of service and after evaluation

arrived to the conclusion that the Officer has proved himself to be a liability upon the judicial service and, therefore, in the public interest such Judicial Officer deserves to be compulsorily retired.

21. Report of the Committee was placed before the Full court and the Full Court unanimously took decision after due deliberation and there hardly remains any chance of allegation of non-application of mind and no-where it has been alleged malafide in the process which was adopted by the High Court in taking decision in regard to compulsory retirement of the Officer.

22. Consequently, in our view, on the material which has come on record, we do not find any error being committed by the respondents in taking impugned decision of compulsory retirement of the petitioner vide order dt.31.03.2010 which is based on record of service and further no stigma is attached to the order impugned.

23. In view of the above discussion, we do not find any cogent reason to interfere in the matter and the petition lacks merit and accordingly stands dismissed. No cost.