

(1982) 09 DEL CK 0003

In the Delhi High Court

Case No : Civil Writ Appeal No. 134 of 1973

H.C. Jain

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 14-09-1982

Acts Referred:

Citation : (1983) ILR Delhi 641 : (1983) RLR 296 : (1983) 1 SLJ 465

Hon'ble Judges : M.L. Jain, J

Bench : Single Bench

Advocate : G.D. Gupta and R.M. Bagai, for the Appellant;

Judgement

M.L. Jain, J.

(1) The petitioner was born on 18-1-1917. He joined Government service as Work Charged Draftsman on 6-10-1939 in the Civil establishment of the Army. He continued to rise and on 23-11-1963 rose to the post of Assistant Executive Engineer (Gazetted Classsi) of 30-10-1972 he was given notice under clause (h) of Regulation 459 of the Civil Service Regulations retiring him from service with effect from the date of expiry of three months from the date of service of the notice. He was thus compulsorily retired.

(2) By this writ petition the petitioner prays that the impugned order of compulsory retirement dated 30-10-1972 be quashed and he should be allowed to continue in service up to the age of 58 years.

(3) The Civil Service Regulations define the conditions of service in the civil departments of the Army Establishments. Regulation 459 provides that every Government servant shall retire on the day he attains the age of 58 years. But the appropriate authority, if it is of opinion that it is in public interest to do so has an absolute right to retire any Government servant by giving notice of not less than three months in writing or three months" pay and allowances in lieu of such notice, in case he attained the age of 55 years. The contention of the respondents is that they have retired the petitioner in exercise of this right. The

case of the petitioner along with other officers was placed before the Review Committee consisting of the defense Secretary as its Chairman and the Additional Secretary- of the Cabinet Secretariat as its member. In the meeting of the Review Committee it was pointed out that according to the criteria fixed by circular letter of the Cabinet Secretariat (Deptt. of Personnel) dated 25-8-1971 for screening of officers for continuation in service beyond the age of 55 years, the entire service record of the officer concerned and not merely the record for the last three years was to be taken into account. The confidential dossiers of the officers were examined by the Review Committee on 4-10-1972 and the Committee found some remedial remarks in the ACRs of 1952, 1953, 1955, 1957, 1960, 1965 and 1967 which had been communicated to the petitioner. On the basis of an overall assessment the Review Committee did not consider the petitioner suitable for continuation in service beyond the age of 55 years. The recommendation of the Review Committee was submitted for approval of the defense Minister who approved same-on 7-10-1972.

(4) In *Union of India and others v. Shvam Shiva Prasad*, 1979 Lab. 1. C. 1157 it was held that in case of compulsory premature -retirement in public interest adverse remarks in confidential reports if not communicated, cannot be allowed to go into the formation of the material on which the retirement of the officer is based and the order of retirement must be set aside. In *Brij Bihar Lal Agarwal v. Hon'ble High Court of Madhya Pradesh and others*, 1980 (3) SLR 583 it was observed that when considering the question of compulsory retirement while it is no doubt desirable to make an overall assessment of the Government servant's records, more than ordinary value should be attached to the confidential reports pertaining to the years immediately preceding such consideration. It is possible that a Government servant may possess a somewhat erratic record in the early years of service, but with the passage of time, he may have so greatly improved that it would be of advantage to continue him in service up to the statutory age of superannuation. Whatever value the confidential reports of earlier years may possess, these pertaining to the later years are not only of direct relevance but also of utmost importance. In *Baldev Raj Chadha Vs. Union of India (UOI) and Others*, it was observed that the requisite opinion that the appropriate authority has to form is that the retirement is in public interest and not in personal, political or other 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. Though 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 court is 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. The order of compulsory retirement

failed because vital materials relevant to the decision, had been ignored and absolute materials, less relevant to the decision, had influenced the decision. It is now urged on behalf of the petitioner that according to instructions of the Army Headquarters, dated 7-6-1965 and 26-7-1965 the recommendations regarding retention beyond 55 years of age have to be made in the confidential reports from the age of 52 years. The petitioner has been retired at the age of 56 years. Having allowed him to continue for a year more it was not permissible to review his case over again. Moreover, the confidential record of the year 1969 shows that he was considered fit for retention in service beyond the age of 55 years. In the confidential report of the year 1970 he was recommended for retention beyond 55 years of age, and permanency pensionary benefits. In the report of the year 1971 again recommendation for retention in service was made. He was described as an experienced officer who had done early well and is sincere and hardworking and is dependable. His performance during the reporting year was quite satisfactory. The Reviewing Officer did, however, say that he was a mediocre performer who has reached his limit. But the totality of these remarks was favorable to the petitioner and if one were to go by them, it was not possible to justify his compulsory retirement. However, when the petitioner was retired, the circular of 1971 had already come into force and, Therefore, there is no doubt that the Review Committee should make its assessment on the basis of the entire service record. Now, let us have a glance at the past record. The confidential reports of the past are as follows :

Year	Initiating Officer	Reviewing Officer	Next Higher Officer	Remarks
1952	1	3	3	Slow at his work and Average. needs urging. Remedial weak points communicated.
1953	1	2	3	Needs pulling up at Should exert himself every stage. Weak more to keep up his . points intimated to work. Remedial him. weak points communicated to the individual.
1954	1	2	3	Considered fit for Not yet recommended promotion subject to for Gazetted passing 2nd Prof. appointment. Exam. in which he has appeared during Oct. 54
1955	1	2	3	Lacks interest. Has Hardworking. 1 believe He is a good slacker no initiative. Does he could not who refuses to not go into details. produce results due pull up in his output . Unreliable. Remedial to unsettled conditions of work and efforts. defects communicated of officers. Cannot be relied . upon as a Sa 1 in GE's Division as his work has to be closely supervised (BELOW AVERAGE) He should be tried at a different area.,
1956	1	2	3	He is taking interest A good worker but in the work entrusted has to be watched to him since he constantly. joined this office. Increment recommended
1957	1	2	3	Should be more Average. Adverse careful in the performance remarks communicated of his duty. under Cesc No. 190827 / EIB (Rec) dated 12 Mar. 58.
1958	1	2	3	Suitable for routine work only.
1959	1	2	3	A quiet worker, though -A sound, hardworking rough in his work Sa 1, who is reliable and well disciplined. and thorough He is methodical and in his work. Not yet tactful. recommended for promotion to Gazetted rank and also he is not qualified.
1960	1	2	3	A well balanced Agrees with the iniquiet" "personality, tiating Officer. Ad Thorough in his verse remarks corn work and well dismunicated under Ce diciplined A bit slow E No. 906112/26-G/ but methodical. Pos- 573/BID(3) dated sasses" very good 20-9-61. judgment and is tactful.
1961	1	2	3	

He is an obedient Recommended for and disciplined the appointment of subordinates He is an ASW. hardworking and tactful. With his experience he should make a successful Asw 1962 A quiet and hard- He has been posted working Sa I posted from Cwe KANin recently. Appears Pur area on 15 to be intelligent and Jun 62, Intelligent tactful, and tactful Sai 1963 A conscientious Agrees with the Ini- Agrees with the Sa I who stood up tiating Officer. Suspensor Reporting to the enormous con- Officer. tract work during the Emergency. Loyal, dependable and amenable to discipline. He displayed judgment and tact in his dealings with the contractors and SDOs. 1964 Painstaking and An ex. Surveyor of The officer's per amenable to disciple -works cadre officer performance will be line. He has recently who lacks in person -watched to see if opted to Engineer personality Diffident in with experience he Cadre from that of giving decisions on makes a good 1 2 3 4 exec Surveyors. Re contract matters-and tive. quires more outdoor Not so good in experience, supervision of work in respect of his sub division . Not yet recommended for further promotion. 1965 Requires some more This officer has fai- Has not been very experience as an exe-led as Abe in charge effective as an Aee cutive. He has to of out-door works. I/C Sub-Division. take more interest in With his long expestudying the workexperience as Sai he procedure and exe-may prove suitable caution of works, as a staff officer. Ad-Lacks control over verse remarks come his subordinate staff municated under He should be tried CWE Barrackpore as a staff officer, letter No. C/104/A/ 66/EKC) dt. 3-11-65 1966 An officer who is good A quiet and well (1) Is more suitable on contractual side disciplined .He has for a Staff rather in the staff appoint failed to prove sui- than an executive ment. Requires marketable for outdoor appointment. experience in the work .Since posted (2) Agrees with (1) executive side as Age technical above except that Should be firm with where he is doing he must be tried out his staff. Slow in his well .Adverse re- again in the exec work and should marks communicative tive take more interest in ted under Cwe Barhis workrackpore No. C/104/A 199/IA Con. Dt. 16-1-67. 1967 A sincere, hardwork-An experienced office -A weak personality king officer, who iscer who is doing well. with poor power of holding the charge speech .He has been of an outstation sub-in his new appoint division at Chakratament at CHAKRA" wef 15-5-67. During TA only for three this short period he months and has not AiN v 1 JltIJt 1 2 3 4 has carried-out the yet found his feet. works in scattered Hs should work areas to the satisfaction hard and have a . He is well better control on behaved and disciplined his staff. He is well !officer. Recommended behaved and well for confirmation disciplined. Adverse in the existing remarks communicated scale. under Cseg No. 906107/16/67/ BR/49/EIB dt. 26-6-1968. This record shows that the officer has continuously improved from 1956 and it is no wonder that during the last three years before he reached 55 years of age, his officers recommended retention of his services up to 58 years of age. In these circumstances, the guidelines provided do not appear to have been followed and the assessment made by the Committee is ex facie unsustainable. No single adverse entry was communicated to him from 1967 onwards. There is no doubt that in the year 1968 he had received two charge sheets in one he was punished when the

departmental enquiry resulted in imposition of a penalty of reduction of pay by two stages in time scale of pay for a period of two years with cumulative effect vide order dated 21-11-1970, but it will be noticed that the charge-sheet dated 7-2-1968 accused him of certain procedural irregularities. It is urged that this punishment cannot be taken into consideration in view of the instructions contained in the office memorandum of the Cabinet Secretariat, Department of Personnel, dated 25-8-1971 that specific acts of misconduct as a short-cut - to initiating formal disciplinary proceedings should not be made the basis of compulsory retirement of a government servant. It was further contended that it was not a case of misconduct but only procedural irregularities. At any rate he had been punished for the same. Further, penalty of dismissal, Therefore, was unwarranted. The alleged misconduct pertains to the period of 1965-1966 and thereafter the service record of the petitioner has been unblemished. In the second charge which was served on him on 25-1-1968 again he was accused of certain procedural irregularity. It was withdrawn and a fresh memo of charges was issued on 7-2-1973. It could not be served on him because he proceeded on leave and no further action appears to have since then been taken. In both the cases the statement of allegations do not give any specific instances but simply enumerates duties which is alleged not to have performed. The learned counsel the petitioner submitted that regulation 459 is analogous to Fr 56(J) with reference to which in J.R. Jain v. Union of India and others, 1973 (2) Slr 309 it was held that the punishment of withholding two increments could not be taken into consideration by the appropriate authority while forming the requisite opinion.

(5) After considering the entire matter, it appears to me that the respondents have not been able to show in any manner that the compulsory retirement of the petitioner was in public interest and if they had applied the well settled standards to such cases, they would have found it difficult to support their opinion.

(6) I, Therefore, accept this petition and quash the compulsory retirement of the petitioner and direct that he shall be deemed to have retired after attaining the age of 58 years with all consequential benefits. There shall be no order as to costs.