

(2003) 03 SC CK 0040

In the Supreme Court Of India

Case No : Civil Appeal No. 5111 of 2002

Jugal Chandra Saikia

APPELLANT

Vs

State of Assam and Another

RESPONDENT

Date of Decision : 04-03-2003

Acts Referred:

Citation : AIR 2003 SC 1362 : (2003) AIRSCW 1787 : (2003) 97 FLR 328 : (2003) 3 RLW 340 : (2003) 3 SCALE 193 : (2003) 4 SCC 59 : (2003) SCC(L&S) 394 : (2003) 2 SCR 615 : (2003) 3 SLJ 248 : (2003) 2 Supreme 825

Hon'ble Judges : Shivaraj V. Patil, J;Arijit Pasayat, J

Bench : Division Bench

Advocate : S. Ravindra Bhat, Naveen R. Nath, Sanjay Sharawat and Hetu Arora, for the Appellant; Krishna Sarma, for Corporate Law Group, for the Respondent

Final Decision : Allowed

Judgement

1. The appellant was compulsorily retired from service by the order dated 11.4.1994. He assailed the said order of his compulsory retirement by filing a writ petition. The learned Single Judge rejecting the contentions urged on behalf of the appellant upheld the same. The appellant pursued the matter further by filing a writ appeal before a Division Bench or the same High Court. The Division Bench of the High Court after considering the rival contentions urged on behalf of the parties and keeping in view the principles stated in the case of Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, , dismissed the writ appeal affirming the order passed by the learned Single Judge. Hence the appellant is before us in this appeal questioning the validity and correctness of the impugned order passed by the Division Bench of the High Court.

2. Learned counsel for the appellant submitted that although the two contentions, namely, the order of compulsory retirement was punitive and stigmatic and that the said order was arbitrary and unreasonable, were urged before the Division Bench of the High Court, he does not press the first

contention but he emphatically argued that the order of compulsory retirement is unsustainable, because the said order was based only on the one man Committee report of K.S. Rao, of which the appellant was not at all made aware; if the authorities had considered the entire material touching the service record of the appellant, reasonable view would have been different. In support of his submissions he cited few decisions.

3. In opposition, the learned counsel for the respondents made submissions supporting the impugned judgment. In particular, the learned counsel drew out attention to para 9 of the impugned judgment to contend that the entire service record of the appellant was perused by the competent authority as well as by the High Court. According to the learned counsel, no fault can be found with the impugned judgment.

4. The order of compulsory retirement was passed on the basis of the recommendation of the Screening Committee. The Screening Committee consisted of the Chief Secretary of the State, Secretary (Judicial Department) and Secretary of the Animal Husbandry and Veterinary Department. The said Committee in its report has stated thus:

"The Committee perused the records made available by the department in respect of Dr. Jugal Chandra Saikia and has reasons to viewed that Dr. Jugal Chandra Saikia has indulged in serious malpractices in undertaking fraudulent transactions constituting the LoC scandal of the Animal Husbandry and Veterinary Department and was indicated in the report of the K.S. Rao Committee constituted to enquire into the said LoC scandal. The Committee is also convinced that Dr. Jugal Chandra Saikia has substantially contributed in bringing disrepute to the Government with his fraudulent activities and doubtful integrity.

The Committee, therefore, is of the opinion that Dr. Jugal Chandra Saikia has both outlived his utility and is of doubtful integrity and his continuance in Government service any further would be detrimental to public interest."

5. It is evident from the report extracted above that the Committee on perusal of the records made available to it by the Department in respect of the appellant and on their subjective satisfaction found that the appellant indulged in serious malpractices in undertaking fraudulent transactions constituting the LoC scandal of the Animal Husbandry department as was indicated in the report of K.S. Rao Committee constituted to enquire into the (sic) LoC scandal. It is further stated in the report that the Committee was also convinced that the appellant had substantially contributed in bringing disrepute to the Government with his fraudulent activities and doubtful integrity. The Committee concluded that the appellant has both outlived his utility and was of doubtful integrity and his continuance in Government service any further would be detrimental to public interest. Looking to this report it becomes difficult for us to agree with the learned counsel for the appellant that the Screening Committee acted only on the

basis of the report of Rao Committee. An opinion was formed looking to the entire records. The High Court found that on the basis of the records an opinion was formed to retire the appellant compulsorily from service. Paragraph 9 of the impugned judgment reads thus:

"The second submission of Mr. Misra, learned counsel for the appellant has to be understood in the context of the second principle laid down by the Apex Court in the case of Baikuntha Nath Das (supra) that the power of compulsorily retire a Government servant is based on the subjective satisfaction of the Government. While such satisfaction has to be based on an overall consideration of the service record as held by the Apex Court, in our considered view, the service record of the Government servant alone is not the only material for arriving at the requisite satisfaction. The service record of the concerned Government servant may provide reasonable material for arriving at the required satisfaction. But in a given case, there may be other materials on which such satisfaction can be founded. In the instant case, such satisfaction appears to have founded on the basis of the report of the Rao Committee which indicted the appellant and on the basis of the indictment of the Screening Committee came to the conclusion that the appellant has outlived his utility and is of doubtful integrity and his further retention in public service would not be in the public interest. The said materials on which the satisfaction has been reached cannot be said to be irrelevant, extraneous or unreasonable. In that view of the matter, we are unable to accept Mr. Misra's arguments that the record of service is the only material on which the satisfaction of the authority can be reached. The said conclusion does not follow from the decisions of the Apex Court referred to by Mr. Misra as mentioned in the earlier part of the judgment. The second contention of Mr. Misra, therefore, fails."

6. It appears from the impugned judgment that several persons who were said to have been involved in the LoC scandal were compulsorily retired from service. A mention is made to a Division Bench judgment of the same High Court in the case of Dwipen Konwar v. State of Assam 1998 (1) G.L.T. 478 wherein the compulsory retirement of petitioner therein was upheld. It cannot be disputed that the passing of an order of compulsory retirement depends on subjective satisfaction of the competent authority, of course on objective consideration. Unless it is shown that the order of compulsory retirement was passed arbitrarily and without application of mind or that such formation of opinion to retire compulsorily was based on no evidence or that the order of compulsory retirement was totally perverse, the Court cannot interfere. The Division Bench of the High Court, in our opinion, was right in upholding the order of compulsory retirement in view of the law laid down by this Court in the case of Baikunth Nath Das (supra), particularly the principles indicated in paragraph 34 of the said judgment which reads:

"34. Following principles emerge from the above discussion:

(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 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 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 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 (iii) above. This aspect has been discussed in paras 30 to 32 above."

7. Learned counsel for the appellant relied on the judgment of this Court in the *The State of Gujarat and Another Vs. Suryakant Chunilal Shah*, . That was a case where there was no material before the Reviewing Committee inasmuch as there were no adverse remarks in the character roll entry; the integrity was not doubtful at any time, the character roll entries subsequent to the respondent's promotion to the post of Assistant Food Controller (Class II) was not available. In those circumstances, the Court took the view that the order of compulsory retirement was bad. Further, in that case the Reviewing Committee had not recommended for compulsory retirement of the officer.

8. The case of *M.S. Bindra Vs. Union of India and Others*, also does not help the appellant again, if we look to what is stated in paragraphs 19 and 20 of the same judgment. That was a case where on facts it was found that there was utter dearth of evidence for the Screening Committee to conclude that the appellant had doubtful integrity and that such a conclusion did not stand judicial scrutiny even within the limited permissible scope. Further, that was a case where the officer had established unblemished reputation, and earned encomiums from all concerned till then and his integrity was proclaimed doubtful merely on the strength of statements of persons prosecuted by such officers.

9. The last case relied on by the learned counsel for the appellant is S. Ramachandra Raju Vs. State of Orissa, . That again is a case where the officer was compulsorily retired relying on the adverse entry for one year, i.e. for 1987-88, made by the Principal against whom mala fide was alleged but not denied; all other relevant records were ignored. So the formation of opinion in those circumstances based on adverse entry for one year 1987-88, was held not proper.

10. In the present case no mala fides are attributed. The Screening Committee consisting of high officials has perused the records including the report of the Rao Committee and recommended for compulsory retirement. Thereafter, on that recommendation the order of compulsory retirement was passed. The learned Single Judge as well as the Division Bench of the High Court did not find any good ground to interfere with the order of compulsory retirement. This being the position we do not find any merit in this appeal. Consequently it stands dismissed but with no order as to costs.