
(2021) 05 UK CK 0003

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 273 Of 2020

Karam Singh

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 04-05-2021

Acts Referred:

Constitution Of India, 1950 — Article 311

Citation : (2021) 05 UK CK 0003

Hon'ble Judges : Ravindra Maithani, J

Bench : Single Bench

Advocate : Shivanand Bhatt, N.P. Shah

Final Decision : Allowed

Judgement

Ravindra Maithani, J

1. The petitioner challenges the order of compulsory retirement dated 17.01.2020.

2. It is the case of the petitioner that in the month of July, 1995, he was appointed as Patwari (the Revenue Sub Inspector). Since the date of his

appointment, he has been discharging his duties efficiently. As per the Recruitment and Promotion Rules prevalent and applicable, the promotional post

of Patwari is Kanoongo (Revenue Inspector). On 07.11.2019, the petitioner was directed to join training of Kanoongo. He was relieved by the District

Magistrate on 18.11.2019 for joining the training, which he joined at the Training Centre, Almora. The training was for a period of three months, which

was to come to an end on 15.02.2020.

3. It is further the case of the petitioner that pursuant to the Government Order dated 20.02.2020 and 24.07.2019, a Screening Committee was

constituted, which on 18.11.2019, in paragraph 8 of its report, considered the case of the petitioner and recommended that the petitioner should not be compulsorily retired and should be allowed to continue beyond 50 years. But again, suddenly, on 17.01.2020, the petitioner was compulsorily retired without giving him any notice.

4. State filed its counter affidavit. The factual aspects have not been denied. According to the counter affidavit of the State, pursuant to the

Government Order, on 10.01.2020, the Screening Committee in its meeting considered the service record of the petitioner. There were various

adverse entries of the years 1997-1998, 2003-2004, 2004-2005 and 2007-2008 and also considered the report dated 10.01.2020 of the Sub Divisional

Magistrate, Narendra Nagar with regard to the explanation sought from the petitioner and made recommendation that the petitioner be compulsorily

retired. Pursuant to which, on 17.01.2020, the petitioner has been compulsorily retired.

5. Heard learned counsel for the parties and perused the record.

6. Learned counsel for the petitioner would submit that on 07.11.2019, the petitioner was recommended for training for his promotion and he joined the

training. For compulsory retirement, the Screening Committee met on 18.11.2019 and considered the case of the petitioner, examined the entire

service records including the adverse entries recorded in the year 1998-1999, 2003-2004, 2004-2005 and 2007- 2008 as well as the report of Sub

Divisional Magistrate dated 09.09.2019 and recommended that the petitioner should not be compulsorily retired and should be allowed to continue. But,

it is argued that just within next two months, the case of the petitioner was again considered and he has been compulsorily retired, which is not

permissible according to law. Learned counsel would submit that the whole exercise of evaluating the case of the employees above 50 years is done

pursuant to Government Order No. 131 dated 20.02.2002 (Annexure 1), which at Sl. No. 6 gives time table for the Screening Committee and

according to sub-Clause (2) of it, the screening of the employees above 50 years will have to be done each year. It is submitted that the screening

committee has to meet once in a year to consider the case of the employees, who have completed 50 years. In a year twice the Committee cannot sit

as per Government Order dated 20.02.2020. Learned counsel would also submit

that in its meeting dated 18.11.2019, the Screening Committee had considered the entire service record of the petitioner and recommended him for continuance beyond 50 years. Thereafter, he could have been assessed after one year. But again reviewing the case in the month of January, 2020, a procedural, impropriety has been done by the respondent State, which requires to be rectified by quashing the impugned order.

7. It is also argued that, in fact, by giving promotion, the earlier adverse remarks had washed off, in view of settled law. In support of his contention, learned counsel has placed reliance upon the principles of law, as laid down in the cases of Arun Kumar Gupta Vs. State of Jharkhand and another, (2020) 13 SCC 355 and Surendra Singh Negi (since deceased) & others Vs. State of Uttranchal & others, 2010 (1) UD 71.

8. In the case of Arun Kumar Gupta (supra), in para 7, Honâ??ble Supreme Court made reference to the principles which guide in the cases of compulsory retirement, which is as hereunder:-

â??7. A three-Judge Bench in Baikuntha Nath Das v. District Medica (1999) 1 SCC 529 : 1999 SCC (L&S) 313 Officer 1 dealing with the concept of compulsory retirement laid down the following principles: (SCC pp.315-16, para 34)

â??34. The 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 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 mater 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 â?" 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.

Interference is permissible only on the grounds mentioned in (iii) above. This aspect has been discussed in paras 30 to 32 above.

9. Also in para 15 of the judgment in the case of Arun Kumar Gupta (supra), the Hon'ble Supreme Court discussed the washed-off theory as

hereunder:-

"15. One of the main arguments raised by the petitioners is that since the petitioners have been promoted to various higher posts, their record prior

to the promotion will lose its sting and is not of much value. Reliance is placed on the observations of this Court in D. Ramaswami v. State of T.N.

(1982) 1 SCC 510 : 1982 SCC (L&S) 115, wherein this Court held as follows: (SCC p. 513, para 4).

"4. In the face of the promotion of the appellant just a few months earlier and nothing even mildly suggestive of the ineptitude or inefficiency

thereafter, it is impossible to sustain the order of the Government retiring the appellant from service. The learned counsel for the State of Tamil Nadu

argued that the Government was entitled to take into consideration the entire history of the appellant including that part of it which was prior to his

promotion. We do not say that the previous history of a government servant should be completely ignored, once he is promoted. Sometimes, past

events may help to assess present conduct. But when there is nothing in the present conduct casting any doubt on the wisdom of the promotion, we

see no justification for needless digging into the past."

10. In the case of Surendra Singh Negi (supra), the Hon'ble Supreme Court made reference to the phrase "public interest" as hereunder:-

"15. Therefore, the significant aspect here is "public interest", and

[illegible]

[illegible]

11. On the other hand, learned counsel for the State would submit that the entire exercise is not mala fide or arbitrary. The service record has been examined before passing the impugned order.

â??56 (a) Except as otherwise provided in this rule, every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years:

Provided further that a Government servant, who has attained the age of fifty-eight years on or before the first day of the November, 2001 and is on extension in service, shall retire from service on expiry of his extended period of service.

|â?
|â?

â?|â?
 |â?|

(c) Notwithstanding anything contained in Clause (a) or Clause (b), the appointing authority may, at any time, by notice to any Government servant (whether permanent or temporary), without assigning any reason, require him to retire after he attains the age of fifty years or such Government servant may, by notice to the appointing authority, voluntarily retire at any time after attaining the age of forty five years or after he has completed qualifying service for twenty years.

Provided that:-

[illegible]

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 administration, 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.â??

17. The settled position of law is that the decision of the appropriate authority should not be easily interfered with. The decision should not be put to challenge unless arbitrary, mala fide, bias etc. are shown to have infringed the decision. It is an executive function, but then the procedure and decision

making process are always subject to judicial review. The appropriate authorities cannot function dehors of any rules and regulations. The procedure

has to be followed. After all, it is a matter of putting an end to an employment of the employee, who had served the State for some length of time.

18. In paragraph 16 of the writ petition, the petitioner has stated that his case was considered on 18.11.2019 and the Committee had recommended his

continuation and also opined that it is not a fit for compulsory retirement. This decision was approved by the District Magistrate. In their counter

affidavit, State has no specific denial to it. In fact, in para 12 of its counter affidavit, the State has simply stated that the decision to compulsory retire

the petitioner was taken after considering the entire service record. There is no reply to the minutes of Screening Committee dated 18.11.2019 and

decision taken thereon, as stated by the petitioner.

19. State has not given any reply in their counter affidavit as to how after once having assessed the case of the petitioner on 18.11.2019, again his

case was taken up for consideration on 10.01.2020.

20. As stated, the Government Order dated 20.02.2002 at Sl. No. 6 gives a time table for the proceedings of the Screening Committee and as per the sub-Clause (2) to it, the Screening Committee will sit each year. It does not provide that the Screening Committee may take up the matter at any point of time. It also does not provide that the screening committee may sit at the interval of two months.

21. The recommendation of the screening committee dated 18.11.2019 has been filed by the petitioner, as Annexure 7 to the petition. It begins with that vide Letter No. 218 of 24.07.2019 of the Chief Secretary, State of Uttarakhand directions were given for convening the meeting of Screening Committee.

22. The minutes of the Screening Committee dated 10.01.2020 has been filed by the State alongwith its counter affidavit, which is Annexure 3. In the first paragraph of it, reference to letter no. 218 dated 24.07.2019 of the Chief Secretary has been given and it is stated that if meeting of Screening Committee had not been convened in the year 2019-2020 then, let it be so convened and the narration further speaks that pursuant to it, the meeting of the Screening Committee was held on 10.01.2020. But, this narration itself is wrong because the Screening Committee had, in fact, convened its meeting pursuant to letter no. 218 dated 24.07.2019 of the Chief Secretary, State of Uttarakhand on 18.11.2019, which is Annexure 7 to the writ petition and at Sl No. 8, the case of the petitioner had already been considered in it. It records that the adverse confidential remarks 1998-1999, 2003-2004, 2004-2005 and 2007-2008 as well as the report of the Sub Divisional Magistrate dated 09.09.2019 was also considered and thereafter, the Screening Committee concluded that the petitioner should not be compulsorily retired. These proceedings are not denied.

23. The respondent State in its counter affidavit, in para 3 has stated that the petitioner completed 50 years of age on 31.10.2019. His case was reviewed by the Screening Committee on 18.11.2019 and while doing so, the report of Sub Divisional Magistrate dated 09.09.2019 was considered alongwith ACRs for the year 1998-1999, 2003-2004, 2004-2005 and 2007-2008. In view of the Government Order dated 20.02.2002, after one year again the case of the petitioner could have been considered by the Screening

Committee, but it was considered just after two months on 10.01.2002. It is not provided under any Rules or any guidelines. The Government Order dated 20.02.2002 does not provide for it. How the review was again done just after two months? There is no answer to it by the State Government. Hence, it is procedural impropriety and it vitiates the decision. Therefore, this Court is of the view that the impugned order is bad and it deserves to be set aside.

24. The writ petition is allowed.

25. Impugned order dated 17.01.2020 is set aside.