
(2012) 05 RAJ CK 0063
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1918 of 2001

Karinda Ram Jatav

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 23-05-2012

Acts Referred:

Citation : (2012) 4 WLN 26

Hon'ble Judges : M.N. Bhandari, J;Ajay Rastogi, J

Bench : Division Bench

Advocate : Rajendra Prasad, for the Appellant; A.K. Sharma with Mr. V.K. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

M.N. Bhandari, J.—By this writ petition, a challenge has been made to the order of compulsory retirement dt. 09.11.2000. Learned counsel for petitioner submits that the impugned order suffers from mala fide of the respondent No. 3, who was having bias against the petitioner thus malicious order deserves to be set aside.

2. Referring to the facts of this case, it is submitted that adverse entries for several years were conveyed to the petitioner by one stroke in the hands of respondent No.3. Those adverse entries were of the period when petitioner was serving under respondent No.3. The petitioner was even served with charge sheets though in one case, he was exonerated and in another case, punishment was reduced. In the aforesaid manner, whole service career of the petitioner was spoiled by none else but respondent No.3. He was having grudge against the petitioner as wishes were not fulfilled. The respondent No. 3 remained posted as Registrar (Vigilance), Rajasthan High Court apart from Registrar General thus having means to harass petitioner. It is out of ill-will of the respondent No. 3 that petitioner had been retired compulsorily from service, otherwise, he was an excellent judicial officer thus prayer is to set aside the impugned order of compulsory retirement.

3. Learned counsel for respondents, on the other hand, submits that the allegations made against respondent No. 3 are without any basis. Referring to the schedule appended to the reply, our attention is drawn towards the material considered by the High Court before compulsory retirement of petitioner. The petitioner was conveyed adverse remarks by different officers when petitioner was not working under respondent No.3. The allegations have been made against respondent No. 3 only to overcome from petitioner's own defaults. Referring to the nature of adverse remarks, it is submitted that consistently adverse remarks are of similar nature and were given by different officers under whom petitioner worked, hence, allegations of bias against respondent No. 3 is without any basis. Petitioner was even punished from time to time for different misconduct hence challenge to the order of compulsory retirement is not based on legal grounds. Petitioner was even superseded in promotion, the details of which have also been given in the schedule attached to the reply. Learned counsel for respondents justified order of compulsory retirement.

4. We have considered rival submissions of learned counsel for the parties and perused record of the case.

5. It is a case where petitioner was conveyed adverse remarks from time to time. It started from the year 1979 and if the schedule appended to the reply is looked into, he was conveyed adverse remarks for every year except for the years 1992 and 1995. Thereby, consistently, petitioner was getting adverse remarks. This is apart from the disciplinary action and punishments thereupon in few cases. Petitioner has made allegations against respondent No. 3 but failed to give cogent reason of bias so as to become instrument for adverse remarks or to initiate disciplinary action. This is apart from the fact that adverse remarks were given by different officers and same is the position of disciplinary action. It is merely for the reason that adverse remarks of few years were conveyed by the respondent No. 3, bias cannot be inferred. The officer having charge of a particular office has to work accordingly. It is admitted by the petitioner himself that respondent No. 3 held post of Registrar (Vigilance) and Registrar General of High Court thus was having duty to convey adverse remarks to all concerned and mere conveying adverse remarks cannot mean that it was given by the said officer.

6. The perusal of record also shows that all adverse remarks were not given by the respondent No. 3 but by different officers. In the aforesaid background, allegations of mala fide against the respondent No. 3 could not be proved.

7. The schedule appended to the reply showing details of the adverse entries are quoted hereunder for ready reference -

STATEMENT OF ADVERSE ENTRIES IN ACRs OF SHRI KARINDA RAM JATAV -

8. Perusal of the adverse entries for different years shows its nature as well as that other than in the year 1992 and 1995, petitioner was continuously given adverse remarks. It is apart from disciplinary action followed by punishment.

9. In the aforesaid background and keeping in mind material available on record, we find that the order of compulsory retirement is based on material. The allegations against respondent No. 3 could not be substantiated by the petitioner thus the only argument raised to challenge the order of compulsory retirement remains without substance. The order of compulsory retirement was passed in the year 2000 and adversity in the service record existed from the year 1979 till the year 1999 except for two years in between. Looking to the consistent adversity in the service record of the petitioner, we do not find any illegality in the order of compulsory retirement.

10. It was observed by the Hon'ble Apex Court in the case of Rajendra Singh Verma (Dead) through L.Rs Vs. Lt. Governor of NCT of Delhi and Another, reported in Rajendra Singh Verma (Dead) through L.Rs Vs. Lt. Governor of NCT of Delhi and Another, thus-

183. 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 officer concerned was promoted to higher position or whether he was granted certain benefits like increments etc.

184. Therefore, this Court in State of Orissa and others Vs. Ram Chandra Das, , observed as under in paragraph 7 of the reported decision:-

7. ... it is settled law that the Government is required to consider the entire record of service.....We find that selfsame material after promotion may not be taken into consideration only to deny him further promotion, if any. But that material undoubtedly would be available to the Government to consider the overall expediency or necessity to continue the government servant in service after he attained the required length of service or qualified period of service for pension.

185. Thus, the respondent High Court was justified in taking into consideration adverse ACRs reflecting on integrity of Mr. M.S. Rohilla for the years 1993, 1994 and 2000 while considering the question whether it was expedient to continue him in service on his attaining the age of 50 years. Similarly, in so far as appellant Mr. P.D. Gupta is concerned for two years that is 1994 and again in

1995 his ACRs were "C - Integrity Doubtful" and again in the year 2000, the position was the same. Further, for two years, i.e., 1994 and 1995 his ACRs "C - Integrity Doubtful" were upheld by the Division Bench of the High Court against which his SLP was dismissed.

In view of what has been held by the Hon"ble Apex Court and looking to the material available on record, we do not find any merit in the writ petition. Hence, same is dismissed.