
(2009) 02 AHC CK 0155
In the Allahabad High Court

Kishori Lal Raman Sarswat

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-02-2009

Acts Referred:

Constitution of India, 1950 — Article 310, 311

Citation : (2009) 85 AWC 1914 : (2009) 2 AWC 1914 : (2009) 121 FLR 626 : (2009) 2 UPLBEC 1235

Hon'ble Judges : Sudhir Agarwal, J;S. Rafat Alam, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S. Rafat Alam and Sudhir Agarwal, JJ.—Sri Upendra Nath holding brief on behalf of Sri R.K. Nigam, learned Counsel for the appellant vehemently contended that the entire service record has not been considered before passing the impugned order of compulsory retirement and he was also not afforded any opportunity as required under Article 311(2) of the Constitution of India and this aspect of the matter has not been considered by Hon"ble single Judge, therefore, the impugned judgment is liable to be set aside. However, he could not dispute the fact that there exists three adverse entries in his service record. The other findings recorded by Hon"ble single Judge regarding his behaviour etc. has also not been disputed by him as a matter of fact.

2. It is well-settled law that an order of compulsory retirement under Fundamental Rule 56 is not a punishment attracting Article 311 of the Constitution of India.

3. Compulsory retirement is a facet of "doctrine of pleasure" embodied in Article 310 of the Constitution. The rule holds balance between the rights of individual Government servant and the interest of the public. It is intended to enable the employer to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest. The object is to weed out the dead wood in order to maintain high standard of efficiency and

honesty. It does not cast any stigma and cannot be construed to be a punishment of a Government servant when exercised in public interest under Fundamental Rule 56.

4. In *Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI)*, it was held that an officer who has compulsorily retired does not lose any part of the benefit that he has earned and is entitled for pension and other retiral benefits in accordance with Rules. There is no deprivation of the accrued benefits. Though from the point of view of the officer/employee concerned, he may think to have been punished for not being allowed to serve till he attains the age of superannuation prescribed under the Rules, but there is distinction between the loss of benefits already earned and loss of prospects to earn something more. It was held that since compulsory retirement under F.R. 56 (c) is not a punishment when resorted to in public interest, Article 311 of the Constitution of India has no application.

5. The whole purpose of the provision made for compulsory retirement is to weed out the worthless without resorting to bona fide extreme process covered under Article 311 of the Constitution. After all the administration to be efficient has to be manned by active and competent prone workers and should not be manned by drones do nothing, incompetent and unworthies. Lack of efficiency by itself does not amount to a misconduct and, therefore, such incumbent may not be delinquent needs to be punished but may prove to be a burden on the administration, if by insensitive, insouciant, unintelligent or dubious conduct impede the floor or promote stagnation. In a developing country where speed, probity, sensitive, enthusiastic, creativity and non-brevity process are immediately required, callous cadres and paperlogged are the bees setting sin of the administration. Sometimes, reputation or otherwise the information available to the superior officers reflects on the integrity of the employee but there may not be sufficient evidence available to initiate punitive action, but simultaneously conduct and reputation of such person is menace for his continuance in public service is injurious to public interest. In all such cases order of compulsory retirement may be passed by the competent authority.

6. In making the aforesaid observations we are further fortified by the view taken by Apex Court in a catena of judgments subsequent to *Shyam Lal* (supra) and we may refer only some of such recent authorities handed down in the last one decade as hereunder.

7. In *Posts and Telegraphs Board and others Vs. C.S.N. Murthy*, , the Hon''ble Apex Court considered the scope of judicial review as under:

An order of compulsory retirement is not an order of punishment. F. R. 56 (J) authorizes the Government to review the working of its employee at the end of the point of their service referred to therein and to require the servant to retire from service, if in its opinion, public interest calls for an order. Whether the conduct of the employee is such as to justify such a conclusion is primarily for

the departmental authorities to decide. The nature of delinquency and whether it is of such a degree as to require the compulsory retirement of the employee are primarily for the Government to decide upon. The Courts will not interfere with the exercise of this power, if arrived at bona fide and on the basis of material available on the record.

(Emphasis added)

8. In *S. Ramachandra Raju Vs. State of Orissa*, the Apex Court held as under:

It is thus settled law that though the order of compulsory retirement is not a punishment and the Government employee is entitled to draw all retiral benefits including pension, the Government must exercise its power only in the public interest to effectuate the efficiency of the service. The dead wood need to be removed to augment efficiency. Integrity in public service need to be maintained. The exercise of power of compulsory retirement must not be a haunt on public servant but must act as a check and reasonable measure to ensure efficiency of service and free from corruption and incompetence. The officer would live by reputation built around him. In an appropriate case, there may not be sufficient evidence to take punitive disciplinary action of removal from service. But his conduct and reputation is such that his continuance in service would be a menace in public service and injurious to public interest.

9. In *Allahabad Bank Officers Association and another Vs. Allahabad Bank and others*, the Apex Court observed as under:

The power to compulsorily retire a Government servant is one of facets of the doctrine of pleasure incorporated in Article 310 of the Constitution. The object of compulsory retirement is to weed out the dead wood in order to maintain efficiency and initiative in service and also to dispense with the services of those whose integrity is doubtful so as to preserve purity in the administration.

10. In *State of Orissa and others Vs. Ram Chandra Das*, , the Apex Court held:

...It is needless to reiterate that the settled position is that the Government is empowered and would be entitled to compulsorily retire a Government servant in public interest with a view to improve efficiency of administration or to weed out the people of doubtful integrity or are corrupt but sufficient evidence was not available to take disciplinary action in accordance with the rules so as to inculcate a sense of discipline in the service.

11. In *M.S. Bindra Vs. Union of India and Others*, the Hon''ble Apex Court held as under:

Judicial scrutiny of any order imposing premature compulsory retirement is permissible if the order is either arbitrary or mala fide or if it is based on no evidence. The observation that principles of natural justice have no place in the context of compulsory retirement does not mean that if the version of the delinquent officer is necessary to reach the correct conclusion, the same can be

obviated on the assumption that other materials alone need be looked into.

12. Thus, compulsory retirement of an employee is actually a prerogative of the Government but it is also true that it should be based on material and on the satisfaction of the authority concerned based on record that the Government servant should not be allowed to continue in public interest and be made to retire.

13. In *S. Ram Chandra Raju* (supra) the Court held in Para 9 of the judgment that the dead wood needs to be removed to augment efficiency. Integrity of public servants needs to be maintained. The exercise of power of compulsory retirement must not be a haunt on public servant but must act as a check and reasonable measure to ensure efficiency of service and free from corruption and incompetence. The officer would live by reputation built around him. In an appropriate case, there may not be sufficient evidence to take punitive disciplinary action of removal from service. But his conduct and reputation is such that his continuance in service would be a menace in public service and injurious to public interest. This has been followed in *Bishwanath Prasad Singh v. State of Bihar and Ors.* 2001 (2) SCC 305, wherein with respect to the object, purpose and precaution which are to be taken while writing confidential report, the Court emphasized the need of fairness, justness and objectivity in awarding the entries.

14. It would also be useful to refer certain principles in respect to compulsory retirement, culled out by the Hon'ble Apex Court in *Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another*, which have been reiterated in *State of Gujarat Vs. Umedbhai M. Patel*,

(i) When the services of a public servant are no longer useful to the general 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 is 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.

15. In the case in hand it is not disputed that the petitioner-appellant earned three adverse entries which has been considered by the competent authority while passing the order of compulsory retirement under Fundamental Rule 56. It thus cannot be said that there was no material or the decision taken by competent authority is arbitrary or based on no material on record. We, therefore, do not find any fault with the view taken by the Hon''ble single Judge that the petitioner-appellant deserves no relief and the writ petition is liable to be dismissed. The special appeal, therefore, lacks merit and is accordingly dismissed.