

**(2007) 01 AHC CK 0127**  
**In the Allahabad High Court**  
**Case No : Writ Petition No.1849 (S/B) of 2005**

Lala Ram Vidyarthi

APPELLANT

Vs

Chairman, U.P.Jal Nigam, Lucknow

RESPONDENT

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**Date of Decision :** 04-01-2007

**Acts Referred:**

**Citation :** (2007) 01 AHC CK 0127

**Hon'ble Judges :** U.K.Dhaon, J and Allah Raham, J

**Final Decision :** Allowed

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## Judgement

Allah Raham, J.

1. By means of this writ petition under Article 226 of the Constitution of India, the petitioner has challenged the order dated 1.9.2005, whereby he was compulsorily retired from service and has prayed for issue of a writ of certiorari for quashing the impugned order.

2. The brief facts as alleged in the writ petition are that the petitioner was initially appointed on ad hoc basis on 10.11.1972 as Junior Engineer in P.W.D., U.P. Thereafter he was given a regular appointment as Junior Engineer on 20.12.1973 in the then L.S.G.E.D. after a due selection through U.P. Public Service Commission. Subsequently, the petitioner's appointment was made in U.P. Jal Nigam. The petitioner's work and performance of duties were found excellent by his superiors and he was awarded a promotion on 15.8.1984 as Assistant Engineer. On 13.7.1993 the petitioner was given highest pay scale on the post of Assistant Engineer. The petitioner was again promoted on 7.1.1992 as Executive Engineer in U.P. Jal Nigam. Since the work and conduct of the petitioner had been excellent throughout his service career, he was considered for promotion to the next higher post of Superintending Engineer. This was done through a duly constituted Selection Committee. The petitioner was promoted as Superintending Engineer on 26.4.2000. The petitioner has pleaded that his work was appreciated by his Superiors. The Commissioner of Azamgarh Division, Azamgarh vide his letter dated 3.9.2005 had highly appreciated his performance

of work and duties and had recommended to the State Government for issuance of appreciation letter to him. The petitioner was also given appreciation letters dated 19.12.1992, 16.7.1998 and 21.2.2002 (Annexures No.25, 26 and 28) respectively for excellent performance of his work and duty. The petitioner was appointed as the member of the duly constituted Selection Committee by letter dated 19.2.2001, and the letters dated 10.6.2003 and 13.6.2003, the petitioner was appointed as the member of the duly constituted Selection/Recruitment Committee.

3. The respondents No.1 and 2 have filed their counter affidavit and have contested the petition on the grounds inter alia that the petitioner has been retired compulsorily in public interest and the service record of the petitioner is average. He has obtained only 6.98 marks out of 30 marks, which is 23%. It has also been pleaded that the petitioner was promoted on the post of Superintending Engineer on the ground of seniority under reserved category, therefore, it is incorrect to say that he has been promoted on the basis of merit. Before retiring the petitioner compulsorily the entire service record of the petitioner has been considered and special emphasis was given to the petitioner for the last ten years service record. The petitioner was awarded a censure entry by office memorandum dated 31.7.1996 on the basis of certain charges were found proved against him. It has been further stated that the petitioner was given a warning by office memorandum dated 20.10.1997. The writ petition has no force and deserves to be dismissed.

4. Sri Ritu Raj Awasthi, the learned counsel for the petitioner has submitted that the petitioner has an unblemished service record. His integrity was never in question and it was never withheld. His work was appreciated by the Superiors but the order of compulsory retirement was passed in flagrant violation of the provisions of Rule 56(C) of the Fundamental Rules without any material. He has further submitted that the Screening Committee assessed the merit of the petitioner in utter violation of service rules, which amounts to gross abuse of power. He has further submitted that the petitioner belongs to a technical service and the members of the Screening Committee were not part of the organization having sufficient technical knowledge and expertise and without any public interest the order of compulsory retirement was passed. He further submits that the petitioner is neither inefficient nor corrupt nor dishonest or has become deadwood for the service and the conclusion arrived at by the Screening Committee practically keeping the petitioner in the category of no utility is unfair and unjust. Lastly he has also questioned the criteria for award of marks for judging the suitability of a public servant for being retained in service. He has relied upon the decisions of the Hon'ble Supreme Court in *Badri Nath v. Government of Tamil Nadu and Others*, reported in 2000(8) Supreme Court Cases, p.395, and also a Division Bench judgment of this Court reported in 2006 (24) LCD 84, *Jai Kishan Karanwal v. U.P. Jal Nigam* and another.

5. Sri I.P. Singh, the learned counsel for the opposite parties No.1 and 2 submits

that on the basis of the recommendation of the Screening Committee which emphasized on scientific manner by fixing quality point marks, the petitioner was found unsuitable for retention in service and accordingly on the basis of the recommendation of the Screening Committee, the order of compulsory retirement was passed. He has further submitted that the petitioner has become deadwood and is of no utility for the service as he has obtained less marks, prescribed by the Screening Committee, consequently it cannot be said that the action of the respondents was unwarranted, arbitrary, malicious or capricious any manner.

6. We have heard the learned counsel for the parties and have carefully perused the record.

7. Performance of a government servant is reflected in annual Character Roll Entries, therefore, one of the methods of assessing the efficiency, honesty or integrity of a government servant is to look to his Character Roll Entries for the whole tenure from the inception to the date on which decision for his compulsory retirement is taken. If the Character Roll is studded with adverse entries or over all categorization of the employee is poor and there is material also to cast doubts upon his integrity, such government servant cannot be said to be efficient. A government servant has, therefore, to keep his belt light. Adverse entries are required to be communicated so that the government servant, to whom adverse entry is given, may have either opportunity to explain his conduct so as to show that the adverse entry was wholly uncalled for or to silently brood over the matter and on being convinced that his previous conduct justified such an entry to improve his performance.

8. There is no dispute that the criteria of awarding marks as against the Annual Character Roll Entries according to their category is a criteria which is adopted in the matter of promotion to the next higher post where promotion is to be made on the basis of "merit". The learned counsel for the respondents No.1 and 2 has explained that though there is no Rule which provides for allocation of marks for a particular category of annual remark but in practice for a very long time marks are allocated to the Character Roll Entry and the officers, who are considered for promotion are placed in the different category for example "very good", "good" and "unsuitable" as per the total marks obtained by them on adding the marks awarded to them against their Annual Remarks. Thereafter appointments/promotions are given to the persons falling in the highest category on the basis of their inter se seniority namely the senior most persons in the top most category would be offered appointments/promotions as against the existing vacancies and the rest would follow to the extent of vacancies available.

9. The criteria which is applicable in the matter of promotion based on merit cannot be applied for screening out the officers for compulsory retirement. The purpose of the two Committees namely selection for promotion and the Screening Committee for screening out the officers from service is entirely different. In the matter of promotion the comparative merit of the officer is to be

seen so as to promote him on higher post and burden him with more responsibilities whereas in the screening the officers' past conduct, performance, behaviour and service record is to be seen only for the purpose of finding out as to whether the officer has lost his utility and has become a deadwood. The Committee has to confirm an opinion that the officer is of no use for being retained in service or that he has become a deadwood or that he is a person of doubtful integrity or dishonest or inefficient. The yardstick which would be applicable in the case of promotion cannot be applied nor would be applicable in the case of compulsory retirement in so far as the award of marks is concerned in the matter of promotion based on "merit". It is the most meritorious officer under consideration for promotion, would be selected, may be that there may be meritorious officer though less in the merit than the person selected but that would not mean that those persons were not fit for promotion or that it would constitute any adverse material for the purpose of compulsory retirement. Even if, a government servant, in the matter of promotion is not found suitable that itself alone may not be a ground for retiring him compulsorily, of course, unless his past record of service alongwith aforesaid fact for not being found suitable for promotion permits the Screening Committee or Appointing Authority to form such an opinion.

10. In *Badri Nath v. Government of Tamil Nadu and Others*, reported in 2000(8) Supreme Court Cases, p.395, while dealing with a case of promotion Hon<sup>ble</sup> the Apex Court has laid down certain criteria for consideration, making them applicable in the case of compulsory retirement also. The relevant extract is as under:

(1) Under Article 16 of the Constitution, right to be considered for promotion is a fundamental right. It is not the mere consideration for promotion that is important but the consideration must be fair according to established principles governing service jurisprudence.

(2) Courts will not interfere with assessment made by Departmental Promotion Committees unless the aggrieved officer establishes that the nonpromotion was bad according to Wednesbury principles or it was malafides.

(3) Adverse remarks of an officer for the entire period of service can be taken into consideration while promoting an officer or while passing an order of compulsory retirement. But the weight which must be attached to the adverse remarks depends upon certain sound principles of fairness.

(4) If the adverse remarks relate to a distant past and relate to remarks such as his not putting his maximum effort or so on, then those remarks cannot be given weight after a long distance of time, particularly if there are no such remarks during the period before his promotion. This is the position even in cases of compulsory retirement.

(5) If the adverse remarks relate to a period prior to an earlier promotion they must be treated as having lost their sting and as weak material, subject however

to the rider that if they related to dishonestly or lack of integrity they can be considered to have not lost their strength fully so as to be ignored altogether.

(6) Uncommunicated adverse remarks could be relied upon even if no opportunity was given to represent against them before an order of compulsory retirement is passed.?

11. From a perusal of the record which was produced by the opposite parties No.1 and 2, it appears that ten years Annual Character Roll entries of the petitioner from 199495 to 200304 were considered while retiring him compulsorily by passing the impugned order. We may note these entries:

12. Censure entry was awarded to the petitioner on 31.7.1996. A warning was given to the petitioner on 20.10.1997 while another warning was issued on 18.11.2002. It is clear from the record that the integrity of the petitioner was not withheld. Even one entry of censure and another entry of warning had been passed before April 2000 when the petitioner was promoted to the rank of Superintending Engineer. An entry of warning was given to the petitioner on 18.11.2000 but it demonstrates only a marginal lapse on the part of the petitioner without damaging his integrity and conduct. The opposite parties have not been able to show any entry withholding the integrity of the petitioner throughout his career. The last entry of 20032004 is "Ati Uttam". We are of the considered opinion that none of the entries could have formed the basis for compulsory retirement of the petitioner.

13. While considering the case of compulsory retirement it is to be kept in mind that a public servant may have committed irregularities or might have failed in faithful discharge of his duties in the initial stages of the service but may have improved in the given passage of time. A public servant, who has improved or is improving, cannot be declared as deadwood or unsuitable. Thus though entire service record is to be seen but due weightage has to be given to the entries of the last ten years.

14. In a case where promotion of the officer is made on the strict criteria of "merit" the adverse entries of previous past may stand wiped of, but in case of promotion on the criteria of "seniority subject to rejection of unfit", as is the case here, such entries of prior to the promotion may be taken into consideration but the effect of the same has to be judged keeping in mind the later entries. In essence the gravity of the nature of the entries has to be adjudicated objectively.

15. The petitioner having been promoted though on the criteria of seniority subject to rejection of unfit on the post of Superintending Engineer in the year 2000 cannot be said to be a deadwood or unsuitable for being retained in service nor he could be said to be inefficient or dishonest officer or an officer lacking integrity and at no point of time in his entire service tenure his integrity was withheld nor there is any entry withholding his integrity. In *Jai Kishan Karanwal* (supra), a Division Bench of this Court expressed the similar view and the compulsory retirement of the petitioner was quashed.

16. For these reasons we are of the considered opinion that there is no adverse material for retiring the petitioner compulsorily and the impugned order is thus liable to be quashed.

17. We further hold that the criteria of awarding marks and requiring the officer under scrutiny to obtain minimum lower marks for being retained and continued in service was not based on any intelligible criteria, apart from being wholly arbitrary and illegal. The compulsory retirement has to be considered within the parameters of Fundamental Rule 56C of the Financial Hand Book Volume (2) which does not envisage any such scheme. It is the entire service record with due weightage to the record of recent past, has to be considered and if the Committee or the Screening Committee or the Appointing Authority reaches the satisfaction on the basis of objective consideration that the concerned officer has lost his utility or is dishonest or lacks integrity or is inefficient and it is not in public interest to retain him in service, he is to be compulsorily retired.

18. While considering the case of a public servant it is not only the Character Roll which could be relevant either for retaining the officer or public servant in service or for screening him out, but such consideration would also go to the other materials in the service record namely; e.g. appreciation letters or certificates of commendable work by higher or superior authorities or to say of the competent authority or if there is material which though does not find mention in the Character Roll entry but either appreciates or deprecates the work and conduct of the public servant or shows his or her shortcomings or in any other way reflects his or her character, integrity and reputation. All such material cannot be lost sight of by the Screening Committee and has to be considered while making an assessment. Thus relying only upon the award of marks as against the Annual remarks on the basis of criteria of promotion strictly on the basis of "merit" cannot be supported to, under the aforesaid provision. A Division Bench of this Court had considered this point also in Writ petition No.1888 (S/B) of 2005, Mahesh Chand Agarwal v. State of U.P. and Others, decided on 27.3.1006 and held that criteria for award of marks for judging the suitability of a public servant in matters of compulsory retirement cannot be sustained.

19. We, therefore, hold that the criteria for award of marks for judging the suitability of a public servant for being retained or not, in service cannot be sustained.

20. For the reasons stated above, the writ petition is allowed and the order of compulsory retirement dated 1.9.2005 (Annexure22 to the writ petition), is hereby quashed. Since the petitioner has not worked from 1st September 2005 till today on account of the impugned order, he shall be entitled only for 50% of the salary and allowances for the said period. The petitioner shall be allowed to continue in service till he reaches the age of superannuation and would be treated to be in continuous service without any break with all consequential benefits. Costs easy.

(Petition allowed)