
(2002) 11 AP CK 0035
In the Andhra Pradesh High Court
Case No : Writ Petition No. 18547 of 1998

M. Ravikumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-11-2002

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 48, 56

Citation : (2003) 1 ALD 128 : (2002) 6 ALT 671 : (2003) 96 FLR 442

Hon'ble Judges : D.S.R. Varma, J; Bilal Nazki, J

Bench : Division Bench

Advocate : K.K. Chakravarthy, for the Appellant; V.C. Ramulu, SC for Central Government, for the Respondent

Final Decision : Dismissed

Judgement

Bilal Nazki, J.—The petitioner worked in the NCC Directorate, A.P., Secunderabad as UDC and subsequently he was transferred to AMC Centre, Hyderabad in 1964. He went to Bombay in 1967 and came back on transfer to NCC Directorate, Secunderabad during the year 1990. He was transferred to Bhubaneswar in December, 1990. He had some personal difficulties therefore he requested for his transfer to Hyderabad and on such transfer he joined at Secunderabad in February, 1992. Till his retirement he was posted in Secunderabad. According to the petitioner, he was compulsorily retired under Rule 48 of the CCS Rules, 1972 and Rule 56(j) of the Fundamental Rules by an order dated 18-8-1994. He was relieved from the post on 31-8-1994. Aggrieved by the order he filed O.A. No. 1212/94 before the Central Administrative Tribunal, Hyderabad. On 14-3-1995 the said O.A was disposed of by the Tribunal directing the respondents to dispose of the representation dated 15-9-1994 after considering the same. The Representation Committee rejected the representation of the petitioner and a communication was sent to him by 1st respondent vide order dated 17-5-1995. Aggrieved by the order of rejection of representation the petitioner filed another O.A being O.A. No.728/95 before the Central Administrative Tribunal, Hyderabad.

On 18-2-1998 the Tribunal dismissed the O.A on the ground that there were no merits. The main contention, which was raised before the Tribunal and before this Court, was that the decision to compulsorily retire the petitioner was without any basis. It was also contended that the grounds taken by him in his representation were not considered by the Representation Committee. It was also contended that the decision to retire the petitioner compulsorily appears to have been based on confidential reports which were never communicated to the petitioner.

2. The respondents have filed their counter in which they stated that the representation made by the petitioner on 15th September, 1994 was not considered earlier as the matter was pending before the Tribunal but after the Tribunal disposed of O.A. No. 1212/94 and directed the respondents to dispose of the representation, the representation was considered by the Representation Committee and the same was rejected on the following grounds:

(a) That the performance of Shri M. Ravi Kumar had not been satisfactory as reflected by consistent adverse remarks/ comments in his Annual Confidential Reports / record of service;

(b) that the grounds advanced in his representation are neither justified nor bear relevance to the decision to retire him prematurely.

3. Now, the main contentions raised by the petitioner before the Tribunal and this Court are that the order retiring him prematurely was arbitrary inasmuch as the adverse entries which were recorded against him had been taken into consideration although they were never communicated to him. The second argument made was that, although the punishment had been given to him of withholding of increments but subsequently the increments were released therefore that punishment could not be the cause for retiring him prematurely. In reply, the respondents submitted that whether an adverse entry is communicated or not would not be the deciding point in coming to a conclusion whether an order of compulsory retirement was valid because it is settled law that all entries communicated or uncommunicated must be taken into consideration while deciding the matter of continuance of an employee. In this case reliance is placed by the respondents on the judgment of the Supreme Court reported in *Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another*, . In this judgment the Supreme Court considered the effect of some of the earlier judgments which had laid down that the uncommunicated adverse entries could not be taken into consideration while ordering compulsory retirement. It also considered some of the judgments which were contrary to the view expressed that adverse entries could be taken into consideration. This judgment was by three Judge Bench. It dissented from two earlier Division Bench judgments wherein it was held that, to order compulsory retirement on the basis of uncommunicated adverse entries in the official record was unfair and contrary to the principles of natural justice. This view was expressed in *Brij Mohan Singh Chopra Vs. State of Punjab*, , and *Baidyanath Mahapatra Vs. State of Orissa* and

Another, . The three Judge Bench (supra) held that an order of compulsory retirement does not constitute any punishment or involve any stigma therefore it need not comply with the principles of natural justice. This three Judge Bench, after evaluating the earlier judgments on the subject and the arguments made at the Bar, laid down the following principles:

(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 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 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.

In the context of these principles we are of the view that the respondents were within their rights to consider the whole of the record of the petitioner while taking a decision with regard to his retirement. It is revealed that during his tenure in the department he had been warned orally and in writing several times. He had been awarded formal punishment thrice under CCS (CCA) Rules, 1965. But, the learned Counsel for the petitioner submits that during the year 1991 the question relating to crossing of efficiency bar of the petitioner arose and it was denied to him. But later on he was allowed to cross efficiency bar. According to the respondents it was denied to him twice as he did not have the requisite efficiency but according to the petitioner he could not cross the efficiency bar because at that time his request for transfer from Bhubaneswar was pending and when he came to Secunderabad on transfer he was allowed to cross the efficiency bar and increments were awarded to him. According to the petitioner,

from 1992 to 1994 his ACRs were good.

4. In the light of these contentions it is argued that once the petitioner was allowed to cross the efficiency bar he could have not been retired because of inefficiency. In this context many judgments have been pressed into service. One of the judgments is D. Ramaswami Vs. State of Tamil Nadu, . In this case, the person who was retired compulsorily had been promoted just before the order of retirement. In para-4 the Supreme Court held:

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

The learned Counsel submits that promotions should be akin to crossing of efficiency bar because parameters for both are the same. We, however, do not find ourselves in agreement with this contention. Crossing of efficiency bar for the purpose of increments is almost a routine matter and in case of highly inefficient officers this is withheld and not withheld permanently, as in the case of present petitioner for three years it was withheld and in 1994 the increments were allowed to be withdrawn. By allowing the petitioner to cross the efficiency bar there is no opinion expressed about the petitioner's suitability and merit which is always reflected in an order of promotion which is issued after process of selection. In the case before the Supreme Court in D. Ramaswamy's case (supra) it was not a case of promotion by seniority but promotion on selection by assessing the suitability and merit.

5. The petitioner contended that his ACRs for the year 1992-93 and 1993-94 were good but this man was in service for almost 20 years therefore only the confidential reports of two years could not be taken into consideration specifically when the Rules and instructions issued provide for taking into account the whole service record. The Government of India issued Office Memorandum No.25013/14/ 77-Estt.(A), dated 5th January, 1978 which is titled as "Instructions regarding premature retirement of Central Government Servants." Under instruction 5(c) under the caption "Criteria, Procedure and Guidelines " it has been laid down that:

"(c) While the entire service record of an officer should be considered at the time of review, no employee should ordinarily be retired on grounds of ineffectiveness if his service during the preceding 5 years, or where he has been promoted to a

higher post during that 5 years period, his service in the highest post, has been found satisfactory."

So, according to these instructions the entire service record has to be taken into consideration but no employee should ordinarily be retired on grounds of ineffectiveness if his service during the preceding 5 years or where he has been promoted to a higher post during that 5 years period his service in the higher post has been found satisfactory. The records pertaining to the last 5 years also do not speak very good of the petitioner. On 28th May, 1990 the petitioner was served with a warning on the ground that his performance was not satisfactory. He was also informed that he had got the habit of delaying/ pending of work assigned to him. On 10th August, 1990 he was communicated the adverse remarks. He had been warned verbally number of times for being absent from duty on important occasions and on visits of VIPs. Therefore, even the 5 years record, although the petitioner had been allowed to cross the efficiency bar, was not that good. Besides, the order of retirement does not attach a stigma to the petitioner. Therefore, the writ petition must fail and is accordingly dismissed.