
(2006) 03 AHC CK 0245
In the Allahabad High Court
Case No : Writ Petition No. 1888 (S/B) of 2005

Maresh Chand Agrawal	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 27-03-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 6 AWC 6547

Hon'ble Judges : Rajiv Sharma, J; Pradeep Kant, J

Bench : Division Bench

Advocate : Upendra Nath Misra, S.K. Kalia and Kshemendra Shukla, for the Appellant; I.P. Singh, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Kant and Rajiv Sharma, JJ.—Heard learned Counsel for the Petitioner Sri S. K. Kalia assisted by Sri Kshemendra Shukla and Sri I. P. Singh for Respondent.

2. The Petitioner, who is an Executive Engineer in U. P. Jal Nigam, has challenged the order of his compulsory retirement from service dated 1.9.2005 under Article 226 of the Constitution of India.

3. The Petitioner was initially appointed on ad hoc basis as Assistant Engineer in the erstwhile U. P. Local Self-Government Engineering Department (U.P.L.S.G.E.D.) on 20.3.1974, on which post he joined on 27.3.1974. On the enforcement of U. P. Water Supply and Sewerage Act, 1975, U. P. Jal Nigam was established and the services of the Petitioner stood merged with U. P. Jal Nigam as a regular Assistant Engineer. Looking to the work and conduct of the Petitioner, which according to him, was excellent, time scale was granted to the Petitioner after completion of stipulated period of service with effect from 1.1.1985 and latter on he was promoted to the post of Executive Engineer vide order dated 21.6.2000.

4. It appears that a Committee was constituted for screening the cases of the

officers for the purpose of compulsory retirement. The Committee recommended for the compulsory retirement of the Petitioner which was accepted by the Appointing Authority and the order of compulsory retirement as aforesaid has been passed.

5. The Screening Committee considered the entire service record of the officers who were to be screened with more emphasis to the last 10 years service record. The criteria for screening out the officer was determined as under:

(i) marks were allocated to Annual Character Roll remarks, categorywise and in case the officer belongs to general category could not or did not acquire a minimum number of marks (9) on the basis of his Character Roll entries, he was liable to be retired compulsorily, which, in the case of an officer of reserved category were only 6 marks.

(ii) in case the officer had been awarded a punishment of recovery or he had deposited any amount towards recovery, as a result of some fault committed by him during his service period, it would constitute a ground for compulsory retirement.

6. The details of the service record which formed the basis for passing the impugned order of compulsory retirement of the Petitioner can be summarized as under:

(a) During the period October, 1979 to April, 1981, while the Petitioner was posted as Assistant Engineer Ghaziabad, the Petitioner has made complaint about irregularities being committed by the Engineers in the Division directly to the Chief Minister, as a result of which all the Engineers including the Petitioner were suspended and the charge-sheet was given. The Petitioner was awarded a punishment on 12.7.1988 of withholding three increments permanently and also his integrity alongwith censure entry. The Petitioner preferred appeal against the aforesaid order of punishment and the appellate authority on 8.6.1991, certified the integrity and reduced the punishment to censure entry as stoppage of one increment.

(b) Between July, 1985 to June, 1992, when the Petitioner was posted as Assistant Engineer at Paudi, he was charged for not taking account of unused construction material issued by the Junior Engineer to the Contract and on reply being given by the Petitioner all the charges were found not to be proved but on an explanation called, he was awarded a punishment of recovery of Rs. 17,955. This order was passed on 29.12.1999. The charge mainly was that of lack of supervision amongst subordinate Junior Engineers and loss to the department. The Petitioner deposited the aforesaid amount.

(c) For the period 1996-97, when the Petitioner was working as Assistant Engineer (Project Manager) at Paudi Garhwal, an adverse remark was given in his Confidential Roll for a period of three months only namely, with effect from 6.1.1997 to 31.3.1997. The adverse remark of three months period was not

challenged by the Petitioner as it being of a very small period for less than three months.

7. Sri S. K. Kalia, appearing for the Petitioner analyzing the aforesaid adverse material submitted that in effect the award of censure entry that too on the own complaint of the Petitioner to the Chief Minister, with stoppage of one increment wherein the integrity was duly certified, firstly, related to the period October, 1979 to April, 1981, vide order dated 8.6.1991, i.e., of a distant past and secondly, it was not such a material which was sufficient to discard the Petitioner from service as it could not be treated as an adverse material for the purpose at all.

8. With respect to deposit of Rs. 17,955 towards recovery, the learned Counsel submitted that besides the same also being an incident of remote past, once the Petitioner had deposited the amount he cannot be punished twice, i.e. by asking him to deposit the amount and then to compulsory retire him on that ground.

9. We answer the aforesaid plea as follows:

In a case of recovery the Screening Committee has to see that whether the recovery order was passed as a result of some embezzlement committed by the public servant or misappropriation of funds or was a result of misutilization of Government funds or it was a case of mere technicality or some sort of lack of supervision. The examples are only illustrative but mean that for every type of recovery it cannot be presumed that the officer was dishonest or he was not fit for being retained in service. It is the task of the Screening Committee to look into the gravity of the charge for which the punishment of recovery has been ordered and the amount has been realized. In case recovery has been ordered on some serious charge as observed earlier, such punishment may call for compulsory retirement of the public servant, but in case the recovery was ordered because of some technical lapse or lack of supervision without any direct involvement of the officer, in the loss occasioned, such a punishment in itself alone would not form a reasonable material for compulsory retirement of the officer.

10. As against the adverse remarks of less than three months though the Petitioner did not challenge the same he submits that the remarks were absolutely general in nature and vague namely ; "not following the instructions of the higher authority". Submission is that it is the only entry during the period of 31 years of service charging the Petitioner of not following the instructions of the higher authorities. No such complaint was ever made nor any such entry was ever awarded and in any case such a vague remark cannot form a basis of compulsory retirement.

11. The learned Counsel, in fact challenged the very criteria adopted by the Screening Committee for screening out the officers for the purposes of compulsory retirement. He submitted that the award of marks and laying down the minimum number of marks necessarily to be acquired by an officer on the

basis of marks allocated to the Annual Character Roll Entries, according to its category, was a criteria which is followed in the matter of selection for promotion strictly based on merit but the said criteria could not have been introduced for the purpose of considering the compulsory retirement of the officer. Also challenging the order it has been urged that the aforesaid material, which was the only material in the entire service record of 31 years of the Petitioner was not at all adverse nor relevant for ousting the Petitioner from service, particularly when the Petitioner was promoted on the post of Executive Engineer in June, 2000, itself.

12. Learned Counsel for the Petitioner submitted that the Petitioner having been promoted to the post of Executive Engineer by a duly constituted Selection Committee consisting of (i) Managing Director, i.e., the Appointing Authority, (ii) concerned Chief Engineer, (iii) Superintending Engineer belonging to S.C./S.T. category, and (iv) Superintending Engineer belonging to other backward category could not have been subjected to compulsory retirement on the basis of material prior to the date of promotion. Submission, is that once the Petitioner was promoted on the post of Executive Engineer in June, 2000, on the basis of same service record though the criteria was seniority subject to rejection of unfit, it cannot be said that the Petitioner has lost his utility in service.

13. In response the learned Counsel for the U. P. Jal Nigam Sri I. P. Singh submitted that this Court would not look into the sufficiency or adequacy of the material and that the aforesaid service record was sufficient enough for the Screening Committee to form an opinion objectively for compulsory retiring the Petitioner. His further submission is that the criteria of awarding marks to the Character Roll entries for the purpose of determining the candidature of the officer cannot be said to be arbitrary or unreasonable and though it is admitted that such a criteria is adopted in the matter of promotion to the higher post where the criteria is "merit" but there is no bar, if the same is applied in the matter of compulsory retirement. He also defended that if an officer has been subjected to certain recovery it means that he was not fit to be retained in service any further, and therefore, such a criteria also for compulsory retirement cannot be faulted with.

14. 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 the promotion is to be made on the basis of "merit". The learned Counsel for the State explained that though there is no Rule which allocates marks for a particular category of Annual remark but in practice for a very-very long time uniformly the marks are allocated to the Character Roll entry and that 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 the appointments/promotions are given to the persons falling in the highest category on the basis

of their inter-se seniority namely; the senior most person in the top most category would be offered the appointments/promotions as against the existing vacancies and the rest would follow to the extent of vacancies available.

15. 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 officers 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 dead-wood. The Committee has to form an opinion that the officer is of no use for being retained in service or that he has become a dead wood or that he is a person of doubtful integrity or dishonest or inefficient. 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 officers though less in the merit than the person(s) 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.

16. Relying upon the case of R.P. Pandey U. P. Power Corporation Ltd. and others, 2004 (22) LCD 20, it has been submitted on behalf U. P. Jal Nigam that the Petitioner having been promoted on the post of Executive Engineer in June, 2000, on the criteria of "seniority subject to rejection of unfit" cannot say that the service record of the period prior to the said promotion could not have been seen. In the case of R. P. Pandey the Court found that adverse material prior to the promotion made strictly on merit would not form the basis of compulsory retiring the officer concerned but this principle would not apply in a case where promotion is made on the basis of seniority.

17. Sri S. K. Kalia, relying upon the case of Badrinath Vs. Government of Tamil Nadu and Others, submitted that the Apex Court while dealing with a case of promotion laid down certain criteria for consideration, making them applicable in the case of compulsory retirement also. The relevant extract of the said report reads 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 non-promotion was bad according to Wednesbury principles or it was mala fides.

(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.

18. Emphasizing, and applying the principles laid down in paragraphs 3, 4 and 5 above, it is being urged that the material used against the Petitioner could not have been made the basis of his compulsory retirement. Punishment of the censure entry with stoppage of one increment and deposit of amount of recovery Rs. 17,955, relate to a period of distant past viz. the year October, 1979 to April, 1981, in which the order of punishment was passed on 12.7.1988 and after appeal, on 8.6.1991 and that of a period from July, 1985 to September, 1991, for which the recovery was made in the year 1999.

19. Compulsory retirement is not a punishment but while considering the case of compulsory retirement the Screening Committee and the Appointing Authority has to satisfy about the necessity to retire a public servant or Government servant before he reaches the prescribed age of superannuation. The criteria which is to be adopted or is to be followed in such matters necessarily has to be such, which assists the Screening Committee in finding out the work and conduct of the public servant so as to form an opinion as to whether such a public servant has lost his utility and has become a dead-wood. Of course if a public servant is found to be dishonest or inefficient he could be compulsorily retired.

20. 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 his service but may have

improved in the given passages of time. A public servant who has improved or is improving, cannot be declared as dead-wood or unsuitable and therefore, it is settled that entries of distant past should not be allowed to override the entries of the recent past. Thus, though entire service record is to be seen but due weightage has to be given to the entries of the last 10 years as was the criteria. In case the entries or punishment in the service record relates to withholding of integrity or reflect dishonesty or mis-appropriation of funds or financial irregularities or lack of integrity or alike, it can be considered, even if, the officer has been promoted.

21. 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" 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, and also the fact of promotion being given, on appreciation of the same service record. In essence the gravity of the nature of the entries has to be adjudicated objectively.

22. We have perused the adverse material relied for the purposes of passing of the impugned order. We find that none of the entry or punishment could have formed the basis for compulsory retirement of the Petitioner. The censure entry and stoppage of one increment related to the period between October, 1979 to April, 1981, only. The aforesaid punishment was ordered on 8.6.1991 and so far the recovery is concerned that related to the period commencing from July, 1979 to September, 1981, in which the order was passed in the year 1999. Besides, the punishment of recovery in which the Petitioner had deposited, a paltry amount of Rs. 17,955 could not have been taken into account for compulsory retirement of the Petitioner as it was not a case of embezzlement or misappropriation of fund, but that of lack of supervision.

23. The adverse entry for the period commencing from 6.1.1997 to 31.3.1997, is absolutely vague and general in nature viz. "not following the instructions of the higher authority" but without disclosing "what instructions of which higher authority, were not followed".

24. In the counter-affidavit the learned Counsel for the Jal Nigam does not dispute about the said entry as has been disclosed in paragraph 15 of the writ petition.

25. The Petitioner having been promoted though on the criteria of seniority subject to rejection of unfit on the post of Executive Engineer in the year 2000 cannot be said to be a dead-wood 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 not certified nor there is any entry withholding his integrity. There is no adverse material even for name sake after his promotion till the date of passing of the impugned order.

26. For the reasons stated above, none of the punishment or adverse entries aforesaid would constitute any adverse material for retiring the Petitioner compulsorily and the impugned order is thus, liable to be quashed.

27. 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.

28. While considering the case of a public servant it is not only the Character Roll which would 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 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.

29. 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.

30. For the reasons stated above, the order of compulsory retirement dated 1.9.2005, is hereby quashed. 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.

31. The writ petition is allowed. Costs easy.