(2002) 04 GAU CK 0014

In the Gauhati High Court

Case No : Writ Appeal No. 216 of 2001

Mohendra Narayan Nath — APPELLANT

Vs

State of Assam — RESPONDENT

Date of Decision : 25-04-2002

Acts Referred:

Citation : (2003) 96 FLR 364 : (2002) 2 GLT 374

Hon'ble Judges : R.S. Mongia, J;Aftab H. Saikia, J

Bench : Division Bench

Advocate : B.N. Sarma and L.R. Dutta, for the Appellant; A. Hazarika, GA, for the Respondent

Final Decision : Allowed

Judgement

1. Heard Mr. B.N. Sarma, learned counsel for the appellant and Mrs. A. Hazarika, learned Government Advocate for the Respondent State.

2. The Appellant, Shri Mohendra Narayan Nath was a member of the Assam Finance Service and while working as Deputy Director, Assam Administrative Staff College, he was ordered to be compulsorily retired from service vide order dated 11.4.1994 passed by the Secretary to the (Government of Assam, Finance Department. This order was made subject-matter of challenge by the appellant by filing a writ petition (Civil Rule No. 1661/94) which was allowed by the learned Single Judge and the order of compulsory retirement was quashed by order dated 7.3.1995. Against the said judgment and order dated 7.3.1995 the Respondent State of Assam had filed Writ Appeal No 204/95. That writ appeal was allowed by a Division Bench of this Court on 2.6.1995 and the judgment and order of the learned Single Judge was quashed. The matter was remitted back to the learned Single Judge for fresh decision.

3. Before proceeding further with the facts of the case, it may be observed here that a Screening Committee submitted its report on 8.4.1994 regarding the work and conduct of the appellant and some other officers including one Sri Malin

Chandra Gohain. The said report reads as under -

"In continuation of what has been stated above, the Committee recommends that the above mentioned officers namely, (1) Sri Malin Ch. Gohain, Ex. Treasury Officer, Sibsagar (2) Sri Tileswar Dutta (Ex. Treasury Officer, Nagaon) (3) Sri Prabin Ch. Sarma, Treasury Officer, Goalpara (4) Sri Sushil Kr.Gogoi Ex-Treasury Officer, Goalpara and (5) Sri Mahendra Narayan Nath, Ex. Treasury Officer, Barpeta are being of doubtful integrity and having outlived their utility for continuance in Govt. Service in public interest may be considered for retirement as provided under F.R. 56(b)."

4. It is submitted that all those five persons mentioned in the aforesaid report were compulsorily retired on the basis of the aforesaid report. It may further be observed here that there was some separate similar report concerning two other officers namely, Sri Dwipen Konwar and Sri Taranath Gogoi. The said two officers who were working as Deputy Secretary to the Government of Assam, Animal Husbandry and Veterinary Department between 6.1.1992 to September, 1992 and 2.8.1991 to 25.1.1992 respectively. On the basis of a report submitted against them they were also compulsorily retired. Shri Dwipen Konwar, Sri Taranath Gogoi and Sri Malin Chnndra Gohain had challenged their compulsory retirement in Civil Rule Nos. 1578/94, 1577/94 and 3757/94 respectively. The first two writ petitions were dismissed by a common judgment dated 8.5.1995 whereas the third writ petition, i.e., Civil Rule No. 3757/95 was dismissed by a separate judgment dated 24.5.1995. Writ Appeal Nos. 353/95 and 390/95 were filed by Sri Dwipen Kunwar and Sri Taranath Gogoi against the common judgment dated 8.5.1995 whereas Writ Appeal No. 419/95 was filed by Sri Malin Chandra Guhain against the judgment dated 24.05.1995. All those three writ appeals were dismissed by a common judgment and order dated 3.3.1998.

5. The learned Single Judge on remand of the writ petition of the present appellant dismissed the writ petition primarily on the observations made by the Division Bench in the aforesaid appeals in the judgment and order dated 3.3.1998. In the judgment of the learned Single Judge the Screening Committee Report dated 8.4.1994 which has already been reproduced above, was taken note of. The view was taken by the learned Single Judge that if on similar recommendations the case of Sri Malin Chandra Gohain has been dismissed by a Division Bench of this Court, there was no merit in the writ petition filed by the present appellant. Aggrieved by the judgment of the learned Single Judge dated 9.5.2001 the present appeal has been filed.

6. At the time of motion hearing on 18.6.2001, the learned counsel for the appellant had, inter alia, contended that the appellant (writ petitioner) was never conveyed with any adverse remarks specially pertaining to his integrity throughout his service career. Apart from that, in fact he was promoted to the rank of Senior Finance and Accounts Officer (Deputy Director) on 17.3.1993 and, therefore, in these circumstances, the adverse remarks, if any, stood washed out on promotion. These contention were noticed in the order dated 18.6.2001 by

this Court while issuing notice of motion. On 19.9.2001 the counsel for the respondent was directed to produce the ACR file of the appellant as well as the file dealing with the case of the appellant for his premature retirement. The counsel for the respondent State Mrs. A. Hazarika, had produced the file before the Bench on 27.11.2001 and the case was admitted by passing the following order :-

"From the files produced before us, we find that the appellant-writ petitioner, along with other officers, was promoted under Regulation 4(d) of the Assam Public Service (Limitation of Function) Regulations to the post of Deputy Director of Assam Administrative Staff Collage. However, nothing has been produced before us to show that after his case for promotion was considered, he incurred any adverse remarks specially regarding integrity. There is further nothing on record to show any adverse remarks pertaining to integrity prior to 17.3.1993 was ever conveyed to the appellant. In this view of the matter, we admit this appeal to regular hearing.

The appellant''s date of birth is 1.3.1941 and in normal course the appellant would have retired on 28.3.1999.

Let this appeal be listed for hearing within three months."

7. It will be apparent from the aforesaid order that the State Government could not show any adverse remarks specially pertaining integrity having been recorded or conveyed to the petitioner-appellant throughout his service career. Further, the appellant (writ petitioner) was promoted to the rank of Senior Finance and Accounts Officer (equivalent to Deputy Director) on 17.3.1993. The compulsory retirement order is dated 11.4.1994. Nothing was shown to the Bench that any adverse remark was recorded or conveyed to the appellant after 17.3.1993. That being so, the very basis for prematurely retiring the appellant for his integrity was without any material. As will be seen from the Screening Committee Report dated 8.4.1994 that it has been mentioned that the integrity of the appellant and some other officers was doubtful, which, as observed above, we find that there was nothing on record to support this observation of the Screening Committee. Coupled with the aforesaid fact is the promotion of the appellant to the next rank, i.e., Deputy Director. The learned counsel for the appellant cited an Apex Court judgment in Baikuntha Nath Das v. Chief District Medical Officer, Baripada, reported as AIR 1992 SC 1021, wherein it has been observed-

"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 year. 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."

8. From the above observations, it will be apparent that the adverse report, if any, lost its sting after the promotion. From the aforesaid resume of the facts, it will be apparent that there was no material with the respondent to order compulsory retirement of the appellant-writ petitioner. Consequently, the order of compulsory retirement cannot be sustained as being without any basis and material.

9. For the foregoing reasons, we allow this appeal and set aside the judgment of the learned Single Judge and allow the writ petition. We quash the order of compulsory retirement dated 11.04.1994. Needless to mention that appellant will be entitled to all consequential benefits, which be released to him within a period of 6 months.

