
(2025) 09 AHC CK 0702
In the Allahabad High Court
Case No : Writ A No. 3505 Of 2024

Pradeep Kumar

APPELLANT

Vs

Union of India and 4 others

RESPONDENT

Date of Decision : 01-09-2025

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16

Citation : (2025) 09 AHC CK 0702

Hon'ble Judges : Saurabh Shyam Shamshery, J

Bench : Single Bench

Advocate : Sandeep Kumar, Vishakha Pande

Final Decision : Dismissed

Judgement

Saurabh Shyam Shamshery, J

1. Present case is arising out of an order dated 18.08.2023 passed by the Executive Director, North Zone, Food Corporation of India whereby petitioner was compulsorily retired in the interest of Corporation and public interest in general as well as an order dated 24.11.2023 whereby the representation of petitioner was rejected after examination by the Representation Committee.

2. Sri Ashok Khare, learned Senior Advocate assisted by Sri Shariq Shamim has not disputed a well settled position of law that order of compulsorily retirement is itself not an order of punishment nor it casts any stigma, however, he has argued that Reviewing Committee has not considered the detailed representation filed by the petitioner that his immediate previous service record was found satisfactory that he was found fit for promotion and was promoted also before impugned order was passed as well as broad criteria as mentioned in Circular dated 09.07.2021 issued by Food Corporation of India were also not followed and without assigning any reason, his representation was rejected by the Reviewing Committee.

3. Learned Senior Advocate has referred Clause No. 22(2) of Food Corporation of

India Staff Regulation, 1971 as amended as well as Clause-10 of Circular dated 09.07.2021 and for reference, same are quoted below :-

"(2) (A) (1) Notwithstanding anything contained in this Regulation, the Appropriate Authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Corporation employee by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice:

(a) If he is, in Category I & II service or post in a substantive, quasi-permanent or temporary capacity and had entered Corporation service before attaining the age of 35 years, after he has attained the age of 50 years;"

"10. Broad Criteria to be followed by the Review Committee:- The broad criteria to be followed by the Review Committee while making the recommendations are as follows:-

(i) Corporation employees whose Integrity is doubtful shall be retired.

(ii) Corporation employees found to be Ineffective shall also be retired. The basic consideration in identifying such Corporation employees should be their fitness / competence to continue in the post held.

(iii) No Corporation employee should ordinarily be retired on ground of Ineffectiveness, if, in any event, he would be retiring on superannuation within a period of one year from the date of consideration of his case. However, in a case where there is a sudden and steep fall in the competence, efficiency or effectiveness of a Corporation employee, it would be open to review such a case also for premature retirement: The said instruction of not retiring the Corporation employee within one year on the ground of Ineffectiveness except in case of sudden and steep. Ineffectiveness, but not on the ground of doubtful Integrity.

(iv) No Corporation employee should ordinarily be retired on ground of ineffectiveness, if, his service during the preceding 5 years or where he has been promoted to a higher post during that 5 year period, his service in the highest post, has been found satisfactory. There is no such stipulation, however, where the Corporation employee is to be retired on grounds of doubtful Integrity. In case of those Corporation employees who have been promoted during the last 5 years, the previous entries in the APARs may be taken into account if he was promoted on the basis of seniority cum fitness, and not on the basis of merit.

(v) The entire service record of a Corporation employee should be considered at the time of review. The expression 'service record' refers to all relevant records and therefore, the review should not be confined to the consideration of the APAR dossier. The personal file of the Corporation employee may contain valuable material. Similarly, his work and performance could also be assessed by looking

into files dealt with by him or in any papers or reports prepared and submitted by him. It would be useful if the concerned Internal Committee puts together all the data available about Corporation employee and prepares a comprehensive brief for consideration by the Review Committee. Even un-communicated remarks in the APARs may be taken into consideration.”

4. Learned Senior Advocate has referred contents of representation filed by the petitioner before Reviewing Committee that his ACR for year 2015, 2016, 2018 and 2019 was ‘very good’ and his integrity and character was not doubted to make him unfit to continue in organization service and for public interest in general.

5. Learned Senior Advocate has also submitted that undisputedly petitioner has suffered 28 disciplinary proceedings between 2013 and 2020 and out of which two proceedings were dropped and in one case, a warning was given and in other case, increment was stopped for 2 years and for remaining 24 cases only, symbolic recovery penalty was imposed.

6. Learned Senior Advocate has further referred a judgment of High Court of Uttarakhand at Nainital as well as High Court of Punjab and Haryana wherein different High Courts have passed order in favour of employees that in a case where an employee was promoted in preceding 5 years, said fact would be an important factor for consideration of a representation filed against the compulsory retirement by the Reviewing Committee.

7. Learned Senior Advocate has also referred that petitioner was treated differently whereas there are example of other employees whose applications were accepted by Reviewing Committee and orders of compulsorily retirement were interfered.

8. Per contra, Sri Prem Narayan Rai, learned counsel for Union of India and Sri Santosh Kumar Mishra, learned counsel for respondent-FCI have referred a judgment passed by Supreme Court in C.I.S.F. vs. H.C. (GD) Om Prakash, AIR Online 2022 SC 122 : (2022) 5 SCC 100 and a judgment passed by coordinate Bench of this Court in Jagat Narayan vs. State of U.P. and others, AIR Online 2023 All 657 that entire record of employee-petitioner was rightly considered and it could not be limited only of last few years as well as procedure prescribed was followed by Reviewing Committee.

9. Learned counsel has further submitted that petitioner’s service record is not unblemished and admittedly he has suffered various disciplinary proceedings wherein punishment awarded on multiple times, therefore, there was no illegality in impugned order.

10. I have considered above submissions and perused the record.

11. In order to consider rival submissions, few paragraphs of H.C. (GD) Om Prakash (supra) being relevant are quoted below :-

"12. In the judgment reported as Rajasthan SRTC v. Babu Lal Jangir [Rajasthan SRTC v. Babu Lal Jangir, (2013) 10 SCC 551: (2014) 2 SCC (L&S) 219] , the High Court had taken into consideration adverse entries for the period 12 years prior to premature retirement. This Court held that Brij Mohan Singh Chopra v. State of Punjab [Brij Mohan Singh Chopra v. State of Punjab, (1987) 2 SCC 188] was overruled only on the second proposition that an order of compulsory retirement is required to be passed after complying with the principles of natural justice. This Court also considered the "washed-off theory" i.e. the remarks would be wiped off on account of such record being of remote past. Reliance was placed upon a three-Judge Bench judgment of this Court reported as Pyare Mohan Lal v. State of Jharkhand [Pyare Mohan Lal v. State of Jharkhand, (2010) 10 SCC 693 : (2011) 1 SCC (L&S) 550] and it was observed that :

(Babu Lal Jangir case [Rajasthan SRTC v. Babu Lal Jangir, (2013) 10 SCC 551: (2014) 2 SCC (L&S) 219] , SCC pp. 563-64, paras 22-23)

"22. It clearly follows from the above that the clarification given by a two-Judge Bench judgment in Badrinath [Badrinath v. State of T.N., (2000) 8 SCC 395 : 2001 SCC (L&S) 13] is not correct and the observations of this Court in Gurdas Singh [State of Punjab v. Gurdas Singh, (1998) 4 SCC 92 : 1998 SCC (L&S) 1004] to the effect that the adverse entries prior to the promotion or crossing of efficiency bar or picking up higher rank are not wiped off and can be taken into account while considering the overall performance of the employee when it comes to the consideration of case of that employee for premature retirement.

23. The principle of law which is clarified and stands crystallised after the judgment in Pyare Mohan Lal v. State of Jharkhand [Pyare Mohan Lal v. State of Jharkhand, (2010) 10 SCC 693 : (2011) 1 SCC (L&S) 550] is that after the promotion of an employee the adverse entries prior thereto would have no relevance and can be treated as wiped off when the case of the government employee is to be considered for further promotion. However, this "washed-off theory" will have no application when the case of an employee is being assessed to determine whether he is fit to be retained in service or requires to be given compulsory retirement. The rationale given is that since such an assessment is based on "entire service record", there is no question of not taking into consideration the earlier old adverse entries or record of the old period. We may hasten to add that while such a record can be taken into consideration, at the same time, the service record of the immediate past period will have to be given due credence and weightage. For example, as against some very old adverse entries where the immediate past record shows exemplary performance, ignoring such a record of recent past and acting only on the basis of old adverse entries, to retire a person will be a clear example of arbitrary exercise of power. However, if old record pertains to integrity of a person then that may be sufficient to justify the order of premature retirement of the government servant."

13. There are numerous other judgments upholding the orders of premature

retirement of judicial officers inter alia on the ground that the judicial service is not akin to other services. A person discharging judicial duties acts on behalf of the State in discharge of its sovereign functions. Dispensation of justice is not only an onerous duty but has been considered as discharge of a pious duty, therefore, it is a very serious matter. This Court in *Ram Murti Yadav v. State of U.P.* [*Ram Murti Yadav v. State of U.P.*, (2020) 1 SCC 801 : (2020) 1 SCC (L&S) 245] held as under : (SCC p. 805, para 6)

“6. ... The scope for judicial review of an order of compulsory retirement based on the subjective satisfaction of the employer is extremely narrow and restricted. Only if it is found to be based on arbitrary or capricious grounds, vitiated by mala fides, overlooks relevant materials, could there be limited scope for interference. The court, in judicial review, cannot sit in judgment over the same as an appellate authority. Principles of natural justice have no application in a case of compulsory retirement.”

14. Thus, we find that the High Court has not only misread the judgment of this Court in *Baikuntha Nath Das* [*Baikuntha Nath Das v. District Medical Officer*, (1992) 2 SCC 299 : 1993 SCC (L&S) 521] but wrongly applied the principles laid down therein. The adverse remarks can be taken into consideration as mentioned in the number of judgments mentioned above. There is also a factual error in the order [*Om Prakash v. Central Industrial Security Force*, 2011 SCC OnLine Del 4388] of the High Court that there are no adverse remarks and that the ACRs for the year 1990 till the year 2009 were either good or very good. In fact, the summary of ACRs as reproduced by the High Court itself shows average, satisfactory and in fact below average reports as well.

15. The entire service record is to be taken into consideration which would include the ACRs of the period prior to the promotion. The order of premature retirement is required to be passed on the basis of entire service records, though the recent reports would carry their own weight.”

12. Aforesaid judgment is squarely applicable in present case that in order to ascertain whether petitioner was fit to retain in service or was a case for compulsory retirement, his entire service record could be looked into, therefore, there is no illegality if entire record of petitioner was looked, therefore, a fact that petitioner was suffered with more than about 28 punishments within a period of 7 years would be a relevant fact to decide where petitioner was fit to continue or not in service.

13. Court also takes note of relevant Regulation i.e. Clause-10 of Circular dated 09.07.2021 and its Clause-V has specifically provided that :-

“The entire service record of a Corporation employee should be considered at the time of review. The expression 'service record' refers to all relevant records and therefore, the review should not be confined to the consideration of the APAR dossier.”

14. Therefore, an argument of learned Senior Advocate that his past record of 5 years was found good and he was found fit for promotion would have more weightage and earlier record which also includes multiple orders of punishment may be ignored, if accepted would be contrary to above referred Clauses of Circular dated 09.07.2021.

15. Facts of other cases wherein Reviewing Committee has passed favourable orders cannot be a ground to reconsider case of petitioner since their facts and their service records are not before this Court and each case is decided on basis of its own facts.

16. Court takes note of sub-clause-V of Clause – 10 of Circular dated 09.07.2021, however, Court is of the view that all clauses have to be read jointly. Clause-IV provides that;

“No Corporation employee should ordinarily be retired on ground of ineffectiveness, if, his service during the preceding 5 years or where he has been promoted to a higher post during that 5 year period, his service in the highest post, has been found satisfactory”, however, later part of said Clause puts a caveat also that it would be considered only if employee was promoted on basis of merit and not on basis of seniority cum fitness, whereas learned Senior Advocate for petitioner has not put up his case that promotion of petitioner was based on merit only and not on basis of seniority cum fitness, therefore, benefit as sought by the petitioner of said Clause cannot be granted. In view of above, judgment of Birendra Singh Chauhan and others vs. Food Corporation of India and others and other connected cases, 2023:PHHC:164004 would also not much helpful to the case of petitioner.

17. In view of above, on basis of facts of present case and on basis of joint reading of sub-Clause X, the argument raised by learned Senior Advocate for petitioner has no legal basis, therefore, no case is made out for interference.

18. Court is also of the view that facts of present case are squarely covered by H.C. (GD) Om Prakash (supra) which is against the petitioner since the scope for judicial review of an order of compulsory retirement based on the subjective satisfaction of the employer is extremely narrow and restricted and since petitioner has failed to show that it was based on arbitrary or extraneous ground or affected by malafide, this Court in judicial review cannot sit as an Appellate Authority.

19. In view of overall circumstances, writ petition is dismissed.