
(2008) 02 AHC CK 0133
In the Allahabad High Court

Rajendra Swaroop Kashyap	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 13-02-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : (2008) 2 UPLBEC 81

Hon'ble Judges : Sushil Harkauli, J;Sudhir Agarwal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Petitioner, Rajendra Swaroop Kashyap, has been compulsorily retired in exercise of power under Fundamental Rule 56 (in short "F.R.-56") vide order dated 17th May 2005 issued by the respondent No. 1 on the recommendation of the High Court. Aggrieved, the petitioner has approached this Court in this writ petition under Article 226 of the Constitution of India, seeking a writ of certiorari for quashing the aforesaid order dated 17th May 2005. He has also sought a writ of mandamus, commanding the respondents to reinstate him as District and Sessions Judge with all consequential benefits including arrears of salary and contract of service etc.

2. The facts in brief, as stated in the writ petition, giving rise to the present dispute are that the petitioner was selected for recruitment in U.P. Nyayik Sewa in the year 1972. He was appointed as Munsif-Magistrate and after completion of his training, was posted in District Judgeship, Banda where he joined on 22nd April 1975. He was promoted as Additional Chief Judicial Magistrate/Civil Judge in August 1983 and was further appointed by promotion in U.P. Higher Judicial Service as Additional District & Sessions Judge on 18th March 1987. He was granted selection grade in the pay scale of Rs. 3700-5000 with effect from 1st January 1986 vide order dated 8th April 1991 and was confirmed in U.P. Higher Judicial Service vide order dated 3rd February 1996. Selection grade in the pay scale of Rs. 18750-22850 fell due to the petitioner in 1997 but it was sanctioned

vide Court's order dated 29th September 2004 though w.e.f. 12th September 1997. In September 2004 the petitioner was posted as District Judge, Mahoba, wherefrom he was transferred to Hamirpur in April 2005. While working as District Judge, Hamirpur, he received the impugned order dated 17th May 2005 retiring him compulsorily in public interest.

3. It is said that after the petitioner was promoted as District & Sessions Judge and was sanctioned selection grade in U.P. Higher Judicial Service, subsequent thereto, there is no adverse material justifying his compulsory retirement under FR 56 and, therefore, the decision to retire him pre-mature is arbitrary, based on no adverse material at all. It is said that any adverse material of the period prior to 29th September 2004 ought not to have been considered to form opinion as to whether the petitioner should be compulsorily retired or not. Since there is no adverse material for the subsequent period, it is evident that the authorities have considered the adverse remarks prior to 29th September 2004, it is contended that it vitiates the entire proceedings including the impugned order of compulsory retirement. To fortify his submissions, learned Counsel for the petitioner placed reliance on Apex Court's decisions in *Swami Saran Saksena Vs. State of Uttar Pradesh*, ; *Brij Behari Lal Agarwal Vs. Hon'ble High Court of Madhya Pradesh and Others, State of U.P. and Another Vs. Lalsa Ram*, ; *State of Gujarat Vs. Umedbhai M. Patel*, ; *D. Ramaswami Vs. State of Tamil Nadu*, *Madan Mohan Choudhary Vs. The State of Bihar*, and *Pritam Singh v. Union of India* and Ors. 2004 (103) FLR 310 and further contended that in the past though there were certain character roll entries containing remarks about disposal of cases "below standard" or "inadequate" or "rated low" but it is said that the reasons for such lower disposal of work was always explained by the petitioner and, therefore, the same could not have been the basis to form an opinion to retire him compulsorily, particularly when for other period disposal of work by the petitioner has been found satisfactory, adequate and much higher than the prescribed standard. It is thus submitted that the aforesaid entries could not have been the basis justifying his compulsory retirement under FR 56 and, therefore, the impugned order is vitiated in law.

4. The matter has been contested mainly by respondent No. 3 who has also filed a counter affidavit as well as supplementary counter affidavit. Furnishing details of petitioner's service record, his date of appointment in service and various promotions are not disputed. During service career, the petitioner was awarded entries by the concerned Hon'ble Administrative Judges/District Judges which are adverse in some or the other respects and have been detailed in the counter affidavit which are summarized as under:

Authority giving entry	Year	Relevant extract of adverse part of the remarks
Inspecting Judge	1975-76	"Disposal very inadequate, inspection notes are not satisfactory. Should be very careful in granting adjournments. Character good. Integrity certified by the District Judge."

1976-77 1977-78 1978-79 "Disposal in 1976-77 and 1977-78 below standard Inspecting Judge being 89% and 95.86% respectively. In 1978-79 it was just 100%. Integrity beyond doubt."

1985-86 "Disposal not adequate being 90.2 per cent. Inspecting Judge The District Judge has rated him as a fair officer. Integrity certified." 1987-88 "Disposal not adequate being 90.2 per cent. The Inspecting Judge District Judge has rated him as a fair officer. Integrity certified." 1988-89 "Disposal 79%, which is not adequate. The District Inspecting Judge Judge, otherwise, has rated him as a good officer. Integrity certified." 1993-94 "Disposal is only 38%. It is most inadequate. No Inspecting Judge plausible explanation has been given for such shortfall. From Annual Confidential Remarks of the District Judge it appears that progress and disposal of execution cases was also unsatisfactory and further he was not careful in granting adjournments. Integrity certified." 1997-98 "The officer shall try to dispose of the execution District Judge, Gorakhpur cases expeditiously." 1999-2000 "The work of the officer is 87% as he has been able District Judge, Chitrakoot to give work of 169-5/6 days work against 198 working days. Thus his standard of work is not adequate and is short." (awarded by District Judge, Gorakhpur) 2000-2001 "He has given work 72.42%, which is below the stand Administrative Judge -ard." (awarded by District Judge, Chitrakoot) 2000-2001 "As reported by the District Judge the out-turn being (by Hon"ble Administrative Judge) 72.42%, is below the prescribed standard for which no reasons have been given nor any explanation in this regard has been sought by the District Judge from the officer concerned." which is below the standard."

5. Besides above, in Criminal Revision No. 203 of 1994, Shrawan Kumar Yadav v. State, this Court made following remarks against the petitioner.

Shown utter ignorance to the understanding of decision of High Court in considering the decision reported in the case of Prakash Dhobi v. State of U.P. 1994 JIC 101

6. It is not disputed that all these remarks including the judgment of the Court wherein observations were made against him were duly communicated to him. In respect to some of the remarks he made representations which were rejected. In respect to adverse remarks of 1997-98 where the Administrative Committee passed an order that the remarks being advisory in nature, the representation is rejected. The fact remains that all the aforesaid remarks have continued to exist in the service record of the petitioner.

7. The Hon"ble Chief Justice constituted a Screening Committee consisting of five Hon"ble Judges for screening the service record of Judicial Officers who have completed 50 years of age to find out if their continuance in service after 50 years of age is in public interest. The Screening Committee screened the record of as many as 542 Judicial Officers who had attained the age of 50 years and more on 31st March 2005 and submitted its report dated 2nd April 2005

recommending names of 28 Judicial Officers including the petitioner who deserved compulsory retirement. The aforesaid report was considered by the Full Court and vide resolution dated 30th April 2005, it accepted the recommendations in its entirety. Consequently, vide letter dated 2nd April 2005, sent to the State Government, the Court recommended name of the petitioner, besides others, for compulsory retirement and in response thereto, by order dated 17th May 2005, the petitioner was compulsorily retired under FR 56. It is further averred that the authorities have rightly formed the opinion on the basis of entire service record of the petitioner as contemplated in FR 56(2) as applicable in the State of Uttar Pradesh that he (the petitioner) has outlived his utility and, therefore, his continuance in service is not in public interest and the said opinion formed by the authorities, in view of the aforesaid facts, cannot be said to be arbitrary or based on "no material on record".

8. With respect to grant of selection grade in 2004, it is submitted that in view of the recommendations of First National Judicial Pay Commission (Hon"ble Shetty Commission) and in terms of Government Order dated 4th August 2003, the Hon"ble Chief Justice constituted a Committee, which formulated criterion that for grant of selection grade last five year"s service record would be examined and if any officer had earned any adverse entry during this period or unless was awarded three entries viz. "outstanding", "very good" or "good", he shall not be recommended for grant of selection grade. On the basis of the aforesaid criterion the case of the petitioner was considered and he was granted selection grade w.e.f. 12th September 1997. A supplementary counter affidavit filed by respondent No. 3 contains a copy of the Government Order dated 4th August 2003 whereby the posts of selection grade were created and in para 8 thereof the following conditions and criteria were laid down for grant of selection grade:

1. Karyatmak (Functional) Adhar Par District Judges Ko Samvarg Me Sweekrit Padon (Fast Track Courts Hetu Nishchit Awadhi Ke Liye Sweekrit Pad Sammilit Nahi Hain) Ki Sankhya Ke 25% Tak Chayan Vetanman Anumanya Hoga Bashartey Ki Unhone Samvarg Me Nyuntam Panch Varsh Ki Lagatar Niyamit Sewa Pooru Kar Li Ho.

(Selection grade shall be admissible, on functional basis, up to 25% of the sanctioned posts of District Judges in their cadre provided they have completed five years" continuous regular service in the cadre. (Posts of Fast Tract Courts for a fixed term, are not included in the sanctioned posts)"

2. Super Time Scale 10% selection grade District Judges Ko Anumanya Hoga Bashartey Ki Unhone Nyuntam Teen Varsh Tak Lagatar Selection Grade District Judge Ki Sewa Pooru Kar Li Ho.

"Super time scale shall be admissible to 10% Judges in Selection Grade provided they have completed three years" service as District Judge in Selection Grade"

3. Ukt Dono Vetanman Yogyata-Kram-Jyesthata Ke Aklan Par Sweekrit Kiye Jayenge."

("Determination of the aforesaid two pay scales shall be made on the basis of merit-cum-seniority.")

9. It is also stated that in the year 2003-2004 also, the disposal of work by the petitioner is much below 40.23% which was below the prescribed standard. But his explanation for short disposal was found satisfactory by the Hon"ble Administrative Judge who had mentioned the aforesaid fact in character roll remarks for the year 2003-04. Besides, the petitioner also earned an adverse entry in 1995-96 while posted as Additional District Judge, Varanasi to the following effect:

1(e)(III) Disposal of old cases

Not satisfactory.

1(g) Whether disposal of work is adequate (Give per centage and reasons for short disposal, if any.

Only 79.77% which is inadequate. Officer has explained for the shortfall, which is, according to me, not satisfactory.

10. The petitioner in his rejoinder affidavit has placed reliance on U.P. Judicial Officers (Retirement and Superannuation) Rules, 1992 (hereinafter referred to as "1992 Rules") framed by notification dated 20th October 1992 and it is said that in view thereof FR 56(c) has no application in respect to Judicial Officers. Besides, various entries recorded from time to time as mentioned in the counter affidavit factually are not disputed but it is contended that the performance of the petitioner ought to have been considered in the light of other entries where disposal of work has been found to be satisfactory and adequate and in the light of those entries, it cannot be said that the petitioner has outlived his utility and is rendered dead wood. It is said that this Court may direct the respondents to place the entire service record before it and the Court may examine itself as to whether the decision is just or arbitrary.

11. We have heard Sri W.H. Khan, learned Senior Advocate, assisted by Sri Gulrej Khan, Advocate for the petitioner, learned Standing Counsel for respondents No. 1 and 2 and Sri Amit Sthalekar for respondent No. 3 and have perused record and the authorities cited at the Bar.

12. The applicability of FR 56(c) to Judicial Officers even after promulgation of 1992 Rules is no more res integra since the issue is now settled by the Apex Court in Nawal Singh Vs. State of U.P. and Another, , which is not disputed by learned Counsel for the petitioner, and, therefore, we are not required to dilate on this aspect any more.

13. The only argument which has been canvassed vehemently on behalf of the petitioner is that in view of service record of the petitioner, the decision of the authorities for compulsorily retiring him is arbitrary and based on no material on record and is patently erroneous.

14. An order of compulsory retirement in public interest under FR 56 is not a punishment. It has been held initially in *Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI)*, and consistently followed thereafter. The whole purpose of the provision made for compulsory retirement is to weed out the worthless without resorting to bona fide extreme process covered under Article 311 of the Constitution. After all the administration to be efficient has to be manned by active and competent prone workers and should not be manned by drones do nothing, incompetent and unworthiss. Lack of efficiency by itself does not amount to a misconduct and, therefore, such incumbent may not be delinquent needs to be punished but may prove to be a burden on the administration, if by insensitive, insouciant, unintelligent or dubious conduct impede the floor or promote stagnation. In a developing country where speed, probity, sensitive, enthusiastic, creativity and non-brevity process are immediately required, callous cadres and paper logged are the bees setting sin of the administration. Sometimes, reputation or otherwise the information available to the superior officers reflects on the integrity of the employee but there may not be sufficient evidence available to initiate punitive action, but simultaneously conduct and reputation of such person is menace for his continuance in public service is injurious to public interest. In all such cases order of compulsory retirement may be passed by the competent authority.

15. In *Allahabad Bank Officers Association and another Vs. Allahabad Bank and others*, the Apex Court held:

The object of compulsory retirement is to weed out the dead wood in order to maintain efficiency and initiative in service and also to dispense with the services of those whose integrity is doubtful so as to preserve purity in the administration. (para-5)

16. Reiterating the same, in *S. Ramachandra Raju Vs. State of Orissa*, the Apex Court held that "the dead wood need to be removed to augment efficiency. Integrity in public service need to be maintained.

17. In *State of Orissa and others Vs. Ram Chandra Das*, the Apex Court held:

...It is needless to reiterate that the settled position is that the government is empowered and would be entitled to compulsorily retire a government servant in public interest with a view to improve efficiency of administration or to weed out the people of doubtful integrity or are corrupt but sufficient evidence was not available to take disciplinary action in accordance with the rules so as to inculcate a sense of discipline in the service.(para 3)

18. In respect to Judicial Officers of the State of U.P., in *Nawal Singh (supra)* the Court emphasized the need to maintain high standard of efficiency and honesty of judicial service and said:

Further, it is to be reiterated that the object of compulsory retirement is to weed out the dead wood in order to maintain high standard of efficiency and honesty

to keep judicial service unpolluted. It empowers the authority to retire officers of doubtful integrity which depends upon overall impression gathered by the higher officers and it is impossible to prove by positive evidence that a particular officer is dishonest....

19. When the competent authority after considering the service record of a Government Servant forms an opinion that his continuance in service is not in public interest, he being rendered dead wood or otherwise should not be allowed to continue, such decision and formation of opinion of the competent authority shall not be interfered by the Court in exercise of power of judicial review, if arrived at bona fide and on the basis of material on record. Whether the conduct of the employee is such as to justify such a conclusion is primarily for the departmental authorities to decide.

20. In Posts and Telegraphs Board and others Vs. C.S.N. Murthy, , the Hon''ble Apex Court considered the scope of judicial review and observed that "the nature of delinquency and whether it is of such a degree as to require the compulsory retirement of the employee are primarily for the government to decide upon."

21. The scope of interference in judicial review in the matter of compulsory retirement has been explained in M.S. Bindra Vs. Union of India and Others, observing that if the order is either arbitrary or mala fide or if it is based on no evidence, only then its judicial scrutiny is permissible and not otherwise.

22. Where the matter of compulsory retirement of Judicial Officer is up for consideration in judicial review, the Court would also take into account the fact that the Judicial service has not been held to be a service in the sense of "employment" by the Apex Court in All India Judges' Association and Others Vs. Union of India and Others, and it is said that as members of judiciary they exercise sovereign judicial power of the State. Judges perform a function that is utterly divine. The officers of the subordinate judiciary has responsibility of building up of the case to answer the cause of justice. Judicial service cannot afford to suffer continuance in service of persons who have lost their utility or are not able to cope up with the demand of dispensation of justice with reasonable promptitude.

23. A perusal of the petitioner's character roll entries as reproduced above at least make it clear that throughout his service career he has not been able to dispose of the cases to the extent similarly placed other officers were able to dispose of and, therefore, according to the prescribed norms and standard his disposal was generally found to be inadequate or below standard. This situation has not prevailed in one, two or three years or the period when he was new in service but from the very year in which he entered the service and thereafter, throughout, this trait has been recorded in his annual confidential remarks found lacking upto satisfactory standard. Thus, it cannot be said that the petitioner is an efficient officer.

24. As observed in S. Ram Chandra Raju (supra) callous cadres and paperlogged

are not required in an efficient administration. It is in public interest to retire a never do well officer. It must act as a check and reasonable measure to ensure efficiency of service and free from corruption and incompetence.

25. The entries of 1975-76, 1976-77, 1977-78, 1978-79 pertain to the period when he was Munsif/Magistrate (now designated as Civil Judge (Junior Division)). The entries pertaining to the period 1985-86 was awarded when he was promoted as Civil Judge (now designated as Civil Judge (Senior Division))/Additional Chief Judicial Magistrate. The entries for the period 1987-88, 1988-89, 1993-94, 1995-1996, 1997-98, 1999-2000 and 2000-01 are of the period when he was working in U.P. Higher Judicial Service. Throughout his career, in whatever capacity he has worked, the petitioner has maintained the trend of slow working showing lesser disposal of cases. Sometimes, nature of dispute and other procedural reasons may have caused lesser disposal but the trend has continued for such a long time and in different years, at different places and also in different capacities. Thus, it cannot be said that the aforesaid drawback lacking on his part is exceptional. On the contrary, one would be justified to infer that it is a part of his character and generally he is a slow worker. The reasons might be many but the fact remains that for all of the period mentioned above he was not able to justify the reason of lesser disposal. If such an officer has been opined by the competent authority as an employee who has outlived his utility and has become dead wood, we cannot term it arbitrary or based on no material. The decision of compulsory retirement also cannot be said to be perverse warranting any interference by this Court. It is true that an order of compulsory retirement depends upon subjective satisfaction of competent authority though it has to be formed on objective consideration, but, as we have already observed, the Court will not sit in appeal over the decision of the competent authority to interfere with the order of compulsory retirement for the reason that another view is possible and that would have been a better view.

26. Now coming to the next submission of the learned Counsel for the petitioner that the entries awarded to the petitioner prior to his promotion in selection grade could not have been looked into at all, we do not find any substance therein and the same is rejected for the reasons more than one. In the State of U.P., F.R. 56 as it stands today has been enacted by the legislature vide U.P. Act No. 33 of 1976 [U.P. Fundamental Rule 56 (Amendment and Validation) Act, 1976] and Sub-rule (2) and 2-A thereof specifically provided as under:

(2) In order to be satisfied whether it will be in the public interest to requires a Government servant to retire under Clause (c) the appointing authority may take into consideration any material relating to the Government servant and nothing herein contained shall be construed to exclude from consideration:

(a) any entries relating to any period before such Government servant was allowed to cross any efficiency bar or before he was promoted to any post in an officiating or substantive capacity or on an ad hoc basis; or

(b) any entry against which a representation is pending, provided that the representation is also taken into consideration along with the entry; or

(c) any report of the Vigilance Establishment constituted under the Uttar Pradesh Vigilance Establishment Act 1965,

(2-A) Every such decision shall be deemed to have been taken into the public interest.

27. The statute therefore specifically authorises the competent authority to peruse the entire service record of Government servant including the period before he was allowed either crossing of efficiency bar or promoted to any post in officiating or substantive capacity or on ad hoc basis. The promotion therefore of a Government servant would not weed out the entries in a character roll for the period prior to such promotion. Various judgements cited by learned Counsel for the petitioner, as we have perused, do not support the above submission and, in our view, the judgements are clearly distinguishable. In fact, one of the judgement *Lalsa Ram (Supra)* which is a case involving F.R. 56 as applicable in the State of U.P. On the contrary, it says that if the rules provide, the entire service record would have to be seen to find out as to whether an order of compulsory retirement is justified and cannot be confined to the fact that for the recent past there was no adverse entry. In para 16 of the judgement the Court held:

The Appointing Authority upon consideration of the entire service record as required under the rules and having formed its opinion that the compulsory retirement of the respondent being in public interest issued the order and on the wake of the aforesaid, question of any interference of this Court does not and cannot arise. Interference in these matters by the Courts in exercise of its jurisdiction under the constitutional mandate is very restricted and the Courts shall have to tread on the issue with utmost care and caution by reason of very limited scope of interference. The High Court has in fact ignored this aspect of the matter and proceeded solely on the basis of the factum of there being no adverse entry in recent past. Needless to state that adverse entries did not stand extinguished by mere lapse of time but they continued to be on record and it is for the employer to act and rely thereon in the event of there being, a rule permitting an order of compulsory retirement.

28. Moreover in the case in hand, from the defence of respondent No. 3, it is clear that for granting selection grade with effect from 1997, only preceding five entries were taken into consideration and it was decided that if the officer has earned three entries as outstanding/very good/good and there is no adverse entry, then he would be promoted in selection grade. Therefore, mere date on which the actual order was passed or the Selection Committee held in its meeting would not be relevant to suggest that the entries up to the date of meeting of the Selection Committee or the date when the actual order of selection grade was passed, ought to be treated to be weeded out. After 1997,

again as already observed, the petitioner did not show any improvement and again has been awarded adverse entries for same reasons.

29. D. Ramaswami (supra) was not a case where a similar provision like FR 56(2), as applicable in U.P., was available, yet referring to FR 56(d) as applicable in the State of Tamilnadu, the Court observed that entry awarded in 1969 is no doubt culled out by promotion of the appellant made in 1974 but further observed " if there was some entry, not wholly favourable to the officer after his promotion, one might hark back to similar or like entries in the past, read them all in conjunction and conclude that the time had arrived for the Government servant to quit Government service." Moreover, in the said case promotion was to be allowed on the criteria of merit and ability only and seniority was to be considered only where merit and ability were approximately equal. However, in respect to the petitioner, criteria for selection grade is prescribed in Government Order dated 4th August 2003 being merit and seniority therefore, a seniormost person who fulfils minimum level of merit, would be entitled for selection grade. The aforesaid judgment, therefore, in our view does not support the petitioner at all and on the contrary fortifies the view which we have taken. The said judgment clearly says that if an unfavourable entry has been given even after promotion, one would be justified to look back in the entries to find out similar or like remarks and to read them all in conjunction to form a particular opinion. Mere fact that some entries are satisfactory or good, that would not be sufficient for this Court to say that the decision of the competent authority to retire the petitioner compulsorily, is arbitrary and based on no material. On the contrary, we are satisfied that the respondents were justified in drawing the inference from an overall perusal of the service record of the petitioner that he has outlived his utility and it would no more be useful to continue him in service, having become a dead wood and, therefore, should be retired compulsorily in public interest.

30. Other decisions cited by the learned Counsel for the petitioner have also been perused by us and we are of the opinion that the same are not applicable in the facts and circumstances of the present case.

31. In the result, the order of the competent authority does not require any interference. The writ petition lacks merit and is dismissed. No costs.