
(1994) 01 AHC CK 0066
In the Allahabad High Court
Case No : Writ Petition No. 757 (S/S) of 1993

Rajjan Lal Srivastava

APPELLANT

Vs

STATE OF, U.P. and others

RESPONDENT

Date of Decision : 21-01-1994

Acts Referred:

Citation : (1994) 01 AHC CK 0066

Hon'ble Judges : Virendra Saran, J

Final Decision : Allowed

Judgement

Virendra Saran, J.—Heard the learned counsel for the petitioner and the learned standing counsel.

2. Rajjan Lal Srivastava has challenged the order of his compulsory retirement dated 811993 which was communicated to him on 1111993. It is stated in the writ petition that initially the petitioner was appointed as Junior Grade Clerk in Regional Food Controller's Office and he joined services on 611959. He was confirmed on 141959 on the said post. In the year 1964 the petitioner was confirmed on the post of Senior Accounts Clerk under R. F. C. On 1531973 the petitioner was promoted as Senior Clerk under the Commissioner, Food and Civil Supplies, Lucknow and vide order dated 2841981 of the Additional Commissioner, the petitioner was confirmed on the post of Senior Grade Clerk. The petitioner's work was considered satisfactory. He crossed efficiency bar in the pay scale of Senior Clerk vide order dated 12121986. After completing his ten years service, the petitioner was considered for selection grade in the scale of Senior Clerk on 16101986 and he was promoted to Selection Grade vide order dated 12121986. After completing 16 years service the petitioner was found fit for Selection Grade on 681991 vide Annexure 6 to the writ petition. It is further stated in the writ petition that the petitioner completed 50 years of age in the year 1986 and thereafter he was promoted in Selection Grade and Super Time scale in the year 1991. The record shows that in the year 198991 the case of the petitioner was considered by two successive screening committees and each time

the case was deferred. However, Sri P. L. Punia, Commissioner on 811993 ordered the compulsory retirement of the petitioner.

3. As far back as on 2311993, the learned standing counsel took time to file counter affidavit but no counter affidavit has been filed. The allegations made in the writ petition have thus remained un rebutted.

4. It has been submitted by the learned counsel for the petitioner that the petitioner has been made to retire on the ground of a solitary adverse entry, a copy of which has been filed as Annexure 5 to the writ petition. It is noted in the entry:

5. At the very threshold it may be observed that the basic consideration for compulsory retirement is public interest. Its object is to weed out those who are inefficient, dead wood or corrupt and dishonest.

6. The learned counsel for the petitioner has submitted that the adverse entry (quoted in the preceding paragraphs) could not have been made the foundation of the compulsory retirement of the petitioner in as much as the petitioner had made a representation against the said entry but the representation has not been considered. In reply the learned standing counsel has referred to the case of Baikunth Nath Das v. Chief Medical Officer, AIR 1992 SC 1020, in which the Supreme Court observed that even an uncommunicated entry can be taken into consideration while passing an order of compulsory retirement.

7. It has not been denied that the representation made by the petitioner has not been taken into account. In my opinion the law in this state is different from the law in the state of Orissa which was under consideration before the Supreme Court in the case of Baikunth Nath Das (supra). In a recent decision of this court in the case of Krishanpal Sonkar v. State of (U. P., Vol. II) U. P. Local Bodies and Educational Cases 1049 Hon''ble Markandey Katju, J. has distinguished the case of Baikunth Nath Das (Supra) and has observed :

"The law in Orissa regarding compulsory retirement is different from the law in U. P. In U. P. the law relating to compulsory retirement was amended by the U. P. Fundamental Rule, 56 (Amendment) Act, 1976 which introduced a new Clause (2) to the U. P. Fundamental Rule 56. This clause (2) states :

(2) In order to be satisfied whether it will be in the public interest to require 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) an entry against which a representation is pending provided that the representation is also taken into consideration alongwith the entry ; or

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

(2A) Every such decision shall be deemed to have been taken in the public interest". A perusal of clause (2) shows that the authority which is to pass the order of compulsory retirement must consider the representation which is pending against an adverse entry. Now there can be no representation if the adverse entry is not communicated. Hence, it is implicit in the said clause that the entry must be communicated to the concerned employee so that he has an opportunity, of making a representation against it, and an uncommunicated entry cannot be relied upon for passing an order of compulsory retirement."

8. I respectfully agree with the view expressed in K. P. Sonkar's case (Supra).

9. It may further be noticed here that even in the case Baikunth Nath Das (Supra) the Supreme Court has held that in the matter of compulsory retirement judicial scrutiny is not excluded. The Supreme Court observed :

"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) malafide, 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,"

10. The Supreme Court went on to observe that 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 seniority.

11. The learned counsel for the petitioner has submitted that the order of compulsory retirement is liable to be set aside on yet another ground. Counsel urged that the impugned order is arbitrary and perverse and material considerations have been completely overlooked. There is force in the submission of the learned counsel for the petitioner. It may be mentioned here that after the adverse entry in the year 1989 the petitioner was given selection grade and ultimately he was given super time scale in the year 1991. When the petitioner attained the age of 50 years his case was considered by two earlier screening committees. Thereafter in the year 1991 the petitioner was granted supertime scale. That being so it is not open to direct retirement of the petitioner at any time. If this is allowed to go on then a vast majority of public servants will always be in uncertainty and in fear of compulsory retirement and will not perform their duties in a fearless manner. In the performance of public duties there is always a risk of earning the wrath of others. The learned counsel for the petitioner has also referred to the case of Brij Mohan Singh v. State of Punjab: AIR 1987 SC 948 and has submitted that compulsory retirement should be in public interest and in the present case it has not been found that petitioner is corrupt, dishonest or a deadwood. The report of screening committee on the basis of which compulsory retirement of the petitioner is ordered has been placed

before me by the learned standing counsel. The report does not specifically refer to any entry and is of an omnibus nature. The learned counsel for the petitioner has also referred to the case of R. P. Malhotra v. Chief Commissioner of Income Tax : AIR 1990 SC 2055 in which the Supreme Court has held that for directing compulsory retirement the screening committee should be of the opinion that the petitioner has lost his utility in service. The screening committee had not recorded such a finding in respect of the petitioner.

12. There is yet another ground on which the order of compulsory retirement cannot be sustained. Adverse entry dated 781992 goes to show that it was in the form of minor punishment and the petitioner was reprimanded (HkrZluk fd tkrh gSA). On the basis of this very entry the petitioner cannot be punished twice. In writ petition No. 6277 of 1990 decided on 2521992, Chhotey Lal v. Collector Allahabad, this court has recognised the principle that if a minor punishment has been given the same entry cannot be utilised in a second punishment. In the present case the compulsory retirement of the petitioner amounts to double jeopardy and is liable to be quashed.

13. Lastly learned counsel for petitioner submitted that the order of compulsory retirement is malafide. Learned counsel for petitioner referred to para 10 of the writ petition, in which it is stated that respondent no. 3 Sri S. N. Ravi has a bias towards upper caste Hindus and he victimised several upper castes Hindus including Sri S. P. Awasthi, Senior Assistant and Smt. Niroo Dixit. Cast bias and caste prejudices are not unknown in our country but in view of my other conclusions it is not necessary to go into these questions in the present writ petition.

14. In the result the writ petition is allowed with costs. The order of compulsory retirement dated 1111993 of Sri P. L. Punia, Commissioner, Civil Supplies, U. P., Lucknow (Annexure No. 1 to the writ petition) is quashed. The respondents are directed to reinstate the petitioner in the post and pay him due salary, allowances and other consequential benefits with effect from 1111993.