

(2010) 12 AHC CK 0002

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 65815 of 2008

Ram Ratan Agnihotri

APPELLANT

Vs

Senior Superintendent Central Jail and Others

RESPONDENT

Date of Decision : 03-12-2010

Acts Referred:

Constitution of India, 1950 — Article 310, 311

Citation : (2011) 2 ADJ 526

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Ram Kirti Singh, for the Appellant;

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard learned counsel for the petitioner and learned Standing Counsel. The order of compulsory retirement is under challenge passed under Fundamental Rule 56(c). It appears that earlier petitioner came up to this Court by means of writ petition No. 34414 of 1999, assailing the aforesaid order of compulsory retirement, which was disposed of on 7.5.2008. This Court observed that order of compulsory retirement was passed as a punishment, hence it is harsh. The matter was remanded for reconsideration. It is pursuant to this observation and direction, the impugned order has been passed by Senior Superintendent, Central Jail, Fatehgarh on 14/15.10.2008 affirming the order of compulsory retirement of the petitioner.

2. Learned counsel for the petitioner submits that in view of sub para 6 only for one year his Annual Confidential Report was found bad and on that basis he could not have been held a dead wood. Reliance is placed on State of Gujarat Vs. Umedbhai M. Patel, .

3. The submission is thoroughly misconceived. Aforesaid order shows that following punishments were imposed upon the petitioner pursuant to disciplinary proceedings held at different times.

4. Besides above, learned counsel for the petitioner admits that compulsory retirement is not a punishment under disciplinary rules but is an order passed in exercise of power under Fundamental Rule 56(c).

5. Compulsory retirement is a facet of "doctrine of pleasure" embodied in Article 310 of the Constitution. The rule holds balance between the rights of individual Government servant and the interest of the public. It is intended to enable the employer to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest. The object is to weed out the dead wood in order to maintain high standard of efficiency and honesty. It does not cast any stigma and cannot be constituted as a punishment to a Government servant when exercised in public interest under F.R. 56.

6. In *Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI)*, , it was held that an officer who has compulsorily retired does not lose any part of the benefit that he has earned and is entitled for pension and other retiral benefits in accordance with Rules. There is no deprivation of the accrued benefits. Though from the point of view of the officer/employee concerned, he may think to have been punished for not being allowed to serve till he attains the age of superannuation prescribed under the Rules, but there is distinction between the loss of benefits already earned and loss of prospects to earn something more. It was held that since compulsory retirement under F.R. 56(c) is not a punishment when resorted to in public interest, Article 311 of the Constitution of India has no application.

7. 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 unworthies. 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 paperlogged 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.

8. In *Allahabad Bank Officers Association and another Vs. Allahabad Bank and others*, , the Apex Court observed as under:

The power to compulsorily retire a Government servant is one of the facets of the

doctrine of pleasure incorporated in Article 310 of the Constitution, 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)

9. In *S. Ramchandra Raju* (supra) the Apex Court held as under:

It is thus settled law that though the order of compulsory retirement is not a punishment and the Government employee is entitled to draw all retiral benefits including pension, the Government must exercise its power only in the public interest to effectuate the efficiency of the service. The dead wood need to be removed to augment efficiency. Integrity in public service need to be maintained. The exercise of power of compulsory retirement must not be a haunt on public servant but must act as a check and reasonable measure to ensure efficiency of service and free from corruption and incompetence. The officer would live by reputation built around him. In an appropriate case, there may not be sufficient evidence to take punitive disciplinary action of removal from service. But his conduct and reputation is such that his continuance in service would be a menace in public service and injurious to public interest.

10. In *Posts and Telegraphs Board and others Vs. C.S.N. Murthy*, , the Hon''ble Apex Court considered the scope of judicial review as under:

An order of compulsory retirement is not an order of punishment. F.R. 56(j) authorizes the Government to review the working of its employee at the end of the point of their service referred to therein and to require the servant to retire from service, if in its opinion, public interest calls for such an order. Whether the conduct of the employee is such as to justify such a conclusion is primarily for the departmental authorities to decide. 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. The Courts will not interfere with the exercise of this power, if arrived at bona fide and on the basis of material available on the record. (para 5)

(emphasis added)

11. In *M.S. Bindra Vs. Union of India and Others*, , the Hon''ble Apex Court held as under:

judicial scrutiny of any order imposing premature compulsory retirement is permissible if the order is either arbitrary or mala fide or if it is based on no evidence. The observation that principles of natural justice have no place in the context of compulsory retirement does not mean that if the version of the delinquent officer is necessary to reach the correct conclusion, the same can be obviated on the assumption that other materials alone need be looked into. (para 11)

12. 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)

13. Thus, compulsory retirement of an employee is actually a prerogative of the Government but it is also true that it should be based on material and on the satisfaction of the authority concerned based on record that the Government servant should not be allowed to continue in public interest and be made to retire.

14. It would be useful to refer certain principles in respect to compulsory retirement, culled out by the Hon"ble Apex Court in Baikunth Nath Das (supra) which have been reiterated in State of Gujarat Vs. Umedbhai M. Patel, , held.

(i) When the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead-wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer is given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

Compulsory retirement shall not be imposed as a punitive measure.

15. In S. Ramachandra Raju Vs. State of Orissa, , the Court held in para 9 of the judgment that the dead wood needs to be removed to augment efficiency. Integrity of public servants needs to be maintained. The exercise of power of compulsory retirement must not be a haunt on public servant but must act as a check and reasonable measure to ensure efficiency of service and free from corruption and incompetence. The officer would live by reputation built around him. In an appropriate case, there may not be sufficient evidence to take punitive disciplinary action of removal from service. But his conduct and reputation is such that his continuance in service would be a menace in public

service and injurious to public interest. This has been followed in *Bishwanath Prasad Singh Vs. State of Bihar and Others*, wherein with respect to the object, purpose and precaution which are to be taken while writing confidential report, the Court emphasized the need of fairness, justness and objectivity in awarding the entries.

16. A similar question came up before the Hon''ble Apex Court in *State of U.P. and Another Vs. Lalsa Ram*, wherein the Hon''ble Apex Court considered Fundamental Rule 56, as applicable in U.P. Lalsa Ram was working as Deputy Collector. At the time when he was compulsorily retired in the year 1998 the screening committee considered adverse entries of 1967-68, 1981-82, 1982-83 and 1991-92 as well as censure dated 18.1.1986. Although there was no adverse entry in the preceding five years yet considering the constant deterioration in the performance of Shri Lalsa Ram, he was recommended for compulsory retirement. The writ petition filed by Lalsa Ram challenging the aforesaid order of compulsory retirement was allowed on the ground that there being no adverse entry in preceding five years and the adverse entries from 1967 to 1982 being old and stale, only on the basis of one adverse entry of the year 1991-92 it was not justified to retire him compulsorily. The Hon''ble Apex Court allowing the appeal of the State Government considering Fundamental Rule 56 held as under:

The Uttar Pradesh Fundamental Rules governing the service conditions of the respondent herein, in particular, Rule 56(c) & Explanation 2(3), (b) specifically provide that nothing in the Rules should be construed to exclude from consideration any entry relating to any efficiency bar or he was promoted to any post in an officiating or a substantive capacity or on an ad hoc basis. The important words used are: nothing herein contained shall be construed to exclude from consideration: the exclusion thus is prohibited in terms of the rule. The authority concerned, by reason wherefor has thus a liberty to consider even entries relating to the period before the government servant was allowed to cross any efficiency bar or before he was promoted. It is true that one of the guiding principles as enunciated above in *Baikuntha Nath* case with regard to performance during the later years ought to be attached more importance but that does not exclude the consideration of the entire record of service. (para 11)

(emphasis added.)

17. Again in para 13 of the judgment, the Hon''ble Apex Court held that Fundamental Rule 56 confers the right absolute to retire an employee on happening of certain event namely, the employee attaining 50 years of age. The only guiding factor is the public interest to retire an employee. It also held that the right being absolute, in the event it is not contrary to the condition, as embodied in Fundamental Rule 56, the question of violation of any legal right of an employee would not arise. It further held where the material is sufficient and conclusion of the authority would have been justified, it cannot be a matter of judicial review, since primarily it is for the departmental authority to decide. The delinquency of the entry and whether it is of such a degree as to reflect on the

efficiency of the employees has to be decided by the authorities and the Courts have no authority or jurisdiction to interfere with such exercise of power, if arrived at bona fide on the basis of the material on record. Usurpation of authority is not only unwarranted but contrary to all norms of service jurisprudence. Showing its agreement with the law laid down in *The State of Punjab Vs. Gurdas Singh*, , the Hon''ble Apex Court in *Lalsa Ram* (supra) further held as follows:

.....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 in the wake of the aforesaid, question of any interference of this Court does not and cannot arise. Interference in these matter by the Courts in exercise of their 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 the 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. (para 16)

(emphasis added.)

18. Considering the entire service record of the petitioner and in particular, the aforesaid adverse entries, it cannot be said that the competent authority has acted arbitrarily and there was no material at all to form an opinion that the petitioner deserved to be compulsorily retired under F.R. Rule 56(c). It is not the case of the petitioner that the above entries have been recorded against him by the various authorities on account of any malice or mala fide nor anyone has been impleaded eo-nomine. There is no challenge by the petitioner to the aforesaid entries. This Court will not sit in appeal over the decision of the competent authority based on over all assessment of service record of a Government servant for taking the decision of compulsory retirement of such an officer unless it is arbitrary ex facie. F.R. 56 as enacted in Uttar Pradesh empowers the competent authority to consider the entire service record and the same having been perused, the competent authority, in my view, has rightly held that the petitioner should be compulsorily retired and I do not find any reason to interfere with the said decision. The contention of the petitioner, thus, that the impugned order has been passed without any material and is arbitrary, is rejected. The writ petition lacks merit and is, accordingly, dismissed. There shall be no order as to costs.