

(1981) 03 SHI CK 0004

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 435 of 1976

Ram Rattan Chauhan

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 27-03-1981

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 48, 56

Citation : (1981) 10 ILR HP 107

Hon'ble Judges : V.D. Misra, C.J

Bench : Single Bench

Advocate : Kedar Ishwar, for the Appellant; Inder Singh, General, for the Respondent

Judgement

V.D. Misra, C.J.—By this Writ Petition the Petitioner challenges his compulsory retirement as a Forest Ranger.

2. Shorn of all unnecessary details, the relevant facts are these. The Petitioner joined service as Forest Guard III grade on 26-9-1940 in the erstwhile Lower Bushahr Forest Division under Punjab Forest Department. After the merger of the State of Rampur Bushahr, the Petitioner was allocated to Himachal Pradesh. On 21st July, 1961, he was made a Forest Ranger. In 1973 the Petitioner was working at Mashobra under Shri Swaran Singh Chahal (Respondent No. 3) Conservator of Forests, Simla Circle, Simla. Respondent No. 3 visited Naldehra forests in connection with a complaint regarding illicit felling of trees. On 13th February, 1974, the Petitioner was charge sheeted along with others for dereliction in the discharge of his duties which resulted in illicit felling of ten trees.

3. In June, 1975, the Government of Himachal Pradesh constituted a Screening Committee in order to retire prematurely those officers who were found unsuitable for Government service. This committee consisted of ten Conservators of Forests. Shri Swaran Singh Chahal (Respondent No. 3) was one of the members of this Committee. This committee recommended the premature retirement of the Petitioner under Rule 48 of the Central Civil Services (Pension)

Rules, 1972. Accordingly the Petitioner by an order dated 28th October, 1975, (Annexure P.G.) was made to retire prematurely with effect from 1st November, 1975.

4. Mr. Kedar Ishwar, learned Counsel for the Petitioner, assails the impugned order of retirement on various grounds. It is submitted that the Petitioner could not be retired before he reached the age of 55 years; the committee was not properly constituted according to the instructions issued by the Government; there was no material on record to justify premature retirement, and that Respondent No. 3 being inimically disposed towards the Petitioner could not have been on the Screening Committee. He further submits that the Petitioner has since been exonerated of the charge of dereliction of duty by an order dated 17th August, 1979.

5. It is not disputed that under Rule 48 of the Central Civil Services (Pension) Rules, 1972, the Petitioner could be retired since he had completed 30 years qualifying service. But the contention is that the committee should have been formed in terms of letter dated 16th October, 1973, (Annexure-PA) issued by the Joint Secretary Personnel, Government of Himachal Pradesh. A perusal of this letter shows that in order to ensure constitution of committees on a uniform pattern, it was decided that "the administrative department may constitute the committee at their own level with the approval of the Minister Incharge on the following patterns." In respect of class III and IV officials, the pattern of the committee was to be (i) appointing authority to be the Chairman, and (ii) two officers who are normally members of the D.P.C.'s committee constituted for recruitment of such posts. It may be noticed that the purpose of the Screening Committee was to "determine the suitability of Government servants for retention in service beyond the age of 50/55 years". It is true that the Screening Committee consisting often Conservators of Forests was not in accordance with the instructions of the Government (Annexure-P.A.) but it must, however, be remembered that this letter was merely a recommendation advising constitution of committees in a particular manner. This was an internal matter relating to the administration of the Government. If the Forest Department decided to have all the Conservators of Forests in the Committee, there was nothing wrong with it. After all the committee was to make recommendations after scrutinising the service records of various officers. The decision to retire was to be taken by the Chief Conservator of Forests. Moreover, even this committee got ex-post-facto sanction of the Governor of Himachal Pradesh, vide notification dated 15th October, 1976.

6. Simply because at one stage Respondent No. 3 had decided to charge sheet the Petitioner for dereliction of duty, it does not follow that he was inimical towards the Petitioner. Indeed if that was so he would not have allowed the Petitioner to cross the efficiency bar as late as September 10, 1974.

7. The service record of the Petitioner which was considered by the Screening Committee has been placed before me. The proceedings of the Screening

Committee reveal that the committee had taken into consideration "character-rolls in the context of vigilance/departmental cases pending against them".

8. The record also reveals that the Petitioner's appeal against the order of his premature retirement was considered by a Review Committee on 19th August, 1978. This committee consisted of Financial Commissioner, Secretary (Forests) and Chief Conservator of Forests. This committee took into consideration the annual confidential reports for the last five years, that is, 1970-71 to 1974-75. It was noticed that for the year 1970-71, the grading of the Petitioner was: "He was considered not upto the mark and adverse remarks were conveyed to him". For the year 1971-72, the grading of the Petitioner was: "A Forest Ranger of average stature, with nothing outstanding about him; at best fit to hold small range charge". For the year 1972-73, the grading was: "Many complaints; fair". For the year 1973-74 the grading was: "Fair; not fit for promotion. His integrity was, however, certified". This Review Committee obviously did not take into consideration the annual confidential report for the year 1974-75 as the grading of this year does not find a mention in the report though, to begin with, it is mentioned that this report is being taken into consideration. The grading of the Petitioner for this year is: "Good".

9. The report further reveals that a serious note was taken by the committee of the departmental proceedings against the Petitioner in respect of dereliction in the performance of duties resulting in the illicit felling of trees.

10. What this Review Committee as well as the Screening Committee did not consider was that the Petitioner had been found fit to cross the efficiency bar vide order dated 10th September, 1974 with effect from 21-7-1973 (Annexure-P.H.).

11. Once the Petitioner had been exonerated of the charge of dereliction of duty for which he was proceeded against departmentally, the exoneration wipes out the charge completely. The result is as if the Petitioner was never charged and was always innocent. The granting of efficiency bar was also an important milestone in the career of the Petitioner. A Government servant does not cross the efficiency bar as a matter of routine. He has to be more than an average worker. His performance should show efficiency in his work and only then he has to be allowed to cross the efficiency bar. The very fact that the Petitioner was allowed to cross the efficiency bar in the year 1974 shows that he was not a dead wood at the time when he was screened, it was perhaps for this reason that the grading for that year given to him as "Good". Why it was not taken into consideration by the Review Committee cannot be fathomed.

12. As far back as 1970, the Supreme Court in *Union of India v. Col. J.N. Sinha and Anr.* 1970 S.L.R. 748, while considering the import of Fundamental Rule 56(j) relating to compulsory retirement, observed that though the correctness of the opinion formed bona fide by the concerned authority to retire a Government servant in the public interest could not be challenged, it was open to the

aggrieved party to contend that the requisite opinion had not been formed or the decision was based on collateral grounds or that it was an arbitrary decision.

13. A Division Bench of the Delhi High Court in *Col. J.N. Sinha v. Union of India* 1970 S.L.R. 213, interpreted the aforementioned observations of the Supreme Court to mean that the decision to retire a Government servant should not be arbitrary, that is, it should be based on some ground or material that is germane to the question whether it is in the public interest to retire the said Government servant.

14. The effect of allowing a Government servant to cross the efficiency bar has been the subject matter of various decisions. The Supreme Court in *State of Punjab v. Dewan Chuni Lal* 1970 S.L.R. 375, observed thus:

It is unthinkable that if the authorities took any serious view of the charge of dishonesty and inefficiency contained in the confidential reports of 1941 and 1942 they could have overlooked the same and recommended the case of the officer as one fit for crossing the efficiency bar in 1944.

15. The Delhi High Court in *Shri J.R. Jain v. Union of India and Ors.* 1973 (2) S.L.R. 309, struck down the order of compulsory retirement on the same ground. In that case the Petitioner was awarded the penalty on 6th July, 1966, of withholding of two increments but was allowed to cross the efficiency bar on 28th September, 1967. It was observed that if the authorities were taking serious note of the punishment they would not have allowed the Petitioner to cross the efficiency bar soon thereafter. In any case, when a Government servant is allowed to cross the efficiency bar it is presumed that he has overcome his deficiency and has improved so much that the earlier drawbacks have become stale.

16. The Supreme Court in *Baldev Raj Chadha Vs. Union of India (UOI) and Others*, , once more decided the import of Fundamental Rule 56(j) relating to compulsory retirement. It was observed thus:

... We must emphatically state that under the guise of "public interest" if unlimited discretion is regarded acceptable for making an order of premature retirement, it will be the surest menace to public interest and must fail for unreasonableness, arbitrariness and disguised dismissal. To constitutionalise the rule, we must so read it as to free it from the potential for the mischiefs we have just projected... When an order is challenged and its validity depends on its being supported by public interest the State must disclose the material so that the Court may be satisfied that the order is not bad for want of any material whatever which, to a reasonable man reasonably instructed in the law, is sufficient to sustain the grounds of "public interest" justifying forced retirement of the public servant. Judges cannot substitute their judgment for that of the Administrator but they are not absolved from the minimal review well settled in administrative law and founded on constitutional obligations. The limitations on judicial power in this area are well known and we are confined to an examination

of the material merely to see whether a rational mind may conceivably be satisfied that the compulsory retirement of the officer concerned is necessary in public interest.

17. In *Swami Saran Saxena Vs. State of Uttar Pradesh*, a Government servant was compulsorily retired even though he had been allowed to cross the second efficiency bar just a few months before. After reviewing the material on record, the Supreme Court observed thus:

Ordinarily, the Court does not interfere with the judgment of the relevant authority on the point whether it is in the public interest to compulsorily retire a Government servant... But on the material before us we are unable to reconcile the apparent contradiction that although for the purpose of crossing the second efficiency bar the Appellant was considered to have worked with distinct ability and with integrity beyond question, yet within a few months thereafter he was found so unfit as to deserve compulsory retirement... There is no evidence to show that suddenly there was such deterioration in the quality of the Appellant's work or integrity that he deserved to be compulsorily retired.

18. As already discussed the service record of the Petitioner shows that he was graded "good" for the year 1974-75 and was allowed to cross the efficiency bar in September, 1974, but these material facts were not taken into consideration by the Screening Committee as well as the Review Committee. What seriously weighed with these two Committees about the fitness of the Petitioner to continue in service was the departmental proceedings pending against him in respect of illicit felling of ten trees. The Petitioner having been subsequently duly exonerated of this charge, the committee should not in law have been affected by this material.

19. The result is that the petition is accepted and the impugned order compulsorily retiring the Petitioner is hereby set aside. The Petitioner will also be entitled to his costs. Lawyer's fee is assessed at Rs. 250/-.