

(1980) 01 RAJ CK 0026
In the Rajasthan High Court
Case No : Civil Writ Petition No. 89 of 1980

Sambhu Singh

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 17-01-1980

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1980) RLW 273 : (1980) WLN 324

Hon'ble Judges : S.K. Mal Lodha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Mal Lodha, J.—In this petition under Article 226 of the Constitution of India, the petitioner seeks to quash the order (Ex. 4) dated June 26, 1979 of the Rajasthan Civil Service Appellate Tribunal, Rajasthan Jaipur which will hereinafter, for the sake of brevity, be referred to as "the Tribunal").

2. A few facts, mentioned in the writ petition may be noticed. The petitioner was appointed as Ameen in a temporary capacity on December 18, 1950 vide order (Ex. 4). The service of the petitioner was counted from December 7, 1950 as qualifying service for the purpose of pension and the pension has been calculated on the basis of 22 1/2 years qualifying service. Copy of the statement of pension has been submitted and marked as Ex. 2. Certain adverse entitles were made from 1960 to 1973 which were communicated to him in 1974. He was dismissed from service on August 28, 1975. The dismissal continued upto March 24, 1977, when he was suspended and charge-sheeted Soon after exoneration from the charges, order (Ex. 3) dated August 3, 1978 was passed by which he was compulsorily retired. The petitioner lodged an appeal before the Tribunal. The appeal of the petitioner was dismissed by the impugned order (Ex. 4) dated June 26, 1979. The petitioner has filed this writ petition challenging the legality of the impugned order by which the order of compulsory retirement has been upheld.

3. I have heard Mr. M.L. Shrimalee for the petitioner at some length.

4. It was urged by the learned Counsel for the petitioner that while upholding the order of compulsory retirement, the Tribunal has relied on the adverse entries of ACR about which the petitioner not communicated in time so as to enable him to improve. He, therefore, submitted that the Tribunal should not have relied upon the adverse entries when it upheld the order of compulsory retirement. In support of his contention, he relied on *Gurdial Singh v. State of Punjab* AIR 1979 SC 1662.

5. The Tribunal has stated that the adverse record of the petitioner is as under:

1957

(i) Adverse Remarks "Ill mannered. Indisciplined and unreliable Below average."

(ii) 1961-62 "D" (Indifferent) markings for judgment power of responsibility Initiative, Address and Tact, power of supervising Staff, Zeal and Industry, capacity to note and capacity to draft.

(iii) 1963-64: "D" Markings for, Official conduct (discipline) and Power of taking responsibility Adverse remarks: "Very cunning not trustworthy (Irresponsible).

(iv) 1965-66: "D" Markings for judgment power of taking responsibility, Initiative Accuracy, Zeal and Industry, Official Conduct; Adverse remarks "Careless, and a man not to be believed, shrinks from duty."

(v) 1969-70: "D" Marking for Judgment Power of taking responsibility, Initiative, Accuracy, Address and tact, official conduct, capacity to note capacity to draft, adverse remark : "Careless, indulges in useless politics."

(vi) 1970-71: "D" marking for Personality and force of character Judgment, Power of Supervising Staff-adverse remarks "cannot take responsibility, Indifferent Drunkard."

(vii) 1972-73 "D" (indifferent) and "E" (poor) marking throughout.

The Tribunal took note of the following punishments, which were inflicted on the petitioner:

(i) Censured on 26-6-65 under Rule 17 R.C. Section (Classification, Control and Appeal) Rules remaining on leave without prior permission by order No. F.6) Jan/ S.O. June/65/7184 dated 26-6-65 of the Settlement Officer, Jodhpur.

(ii) Censured on 21-5-75 under the said Rule 17 for not completing allotted work in time by order No. PSO ju/Estt/DB 28/14/3496 Dt. 21-5-75 of the Settlement Officer, Jodhpur.

(iii) Censured on 21-4-75 under, the said Rule 17 for coming to the office drunk by order No. F./74-75/2696 Dt. 21-4-75 of the Settlement Officer, Jodhpur.

(iv) One grade increment stopped under the said Rule 17 for not doing allotted

work in time by order of the Settlement Officer Jodhpur, No. F.B.S.O. Ju/D.E/17/1973|/3184 dt. 21-5-74.

It further stated that as the appellant remained dismissed from 1975 to July 27, 1978, his ACR for the aforesaid period were non-existent. The Tribunal took into consideration the last six or seven years' ACR which were adverse and which were communicated to him in June 1974. It was of the opinion that the petitioner could have made representation in regard to the adverse ACR of the last 2-3 years. Any representation against such ACR after their communication in June 1974, was not made by the petitioner until he remained in service prior to dismissal. It may be mentioned that the petitioner was reinstated in service on July 27, 1978. After considering the material, reference of which has been made in the impugned order, the Tribunal summarised its view as under:

The various punishments awarded to him show that he did not comply with the orders & came to the office drunk and on one occasion remained on leave without prior sanction. So the final picture which emerges from his service record is that the appellant was inefficient and indisciplined. At one time he seems to have suffered from T.B. also. His coming to office drunken goes to show that he did not care for office etiquette. Considering the whole material we are of the view that Shri Shambu Singh was correctly retired under "244 (2) RSR.

In *Gurdial Singh's* case AIR 1979 SC 1662, it was observed as under:

The principle is well settled that in accordance with rules of natural justice, adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified. Unfortunately, for one reason or another, nor arising out of any fault on the part of the appellant, though the adverse report was communicated to him, the Government has not been able to consider his explanation, and decide whether the report was justified. In these circumstances, it is difficult to support the non-issuance of the integrity certificate to the appellant.

It is true that the adverse entries in the confidential roll were not communicated to the petitioner every year soon after they were made. However, the fact remains that all the adverse entries were communicated to him in June 1974. Even thereafter, he did not submit any explanation in that regard. The order of compulsory retirement was upheld on the consideration of the entire material. It was not upheld solely on the ground of the adverse entries. It may be stated that even after the communication of adverse entries to the petitioner in June 1974, no explanation was submitted by him in respect of them. The Tribunal drew the conclusion that the petitioner was indisciplined and inefficient by taking an overall picture of the petitioner on the basis of his service record.

6. In *R.L. Butah Vs. Union of India (UOI) and Others*, Shelat, J. speaking for the Court, observed as under:

These rules abundantly show that a confidential report is intended to be a general assessment of work performed by a Government servant subordinate of the reporting authority, that such report are maintained for the purpose of serving as dates of comparative when questions of promotion, confirmation etc. arise. They also show that such reports are not ordinarily to contain specific incidents upon which assessments are made except in cases where as a result of any specific incident a censure or a warning issued and when such warning is by an order to be Kept in the personal file of the Government servant. In such a case the officer making the order has to give a reasonable opportunity to the Government servant to present his case. The contention therefore that the adverse remarks did not contain specific instances and were, therefore, contrary to the rules, cannot be sustained. Equally unsustainable is the corollary that because of the omission the appellant could not make an adequate representation and that therefore the confidential reports are vitiated... It may well be that inspite of the work of the appellant being satisfactory, as he claimed it was, there may have been other relevant factors such as the history of the appellant's entire service and confidential reports throughout the period of his service, upon which the appropriate authority may still decide to order appellant's retirement under F.R. 56 (j)

It may also here refer to *Union of India v. M.E. Reddy* 1972(2) SLR 792, wherein repelling the contention that if adverse remarks would have been made in confidential report they should have been communicated, it was observed:

In the first place, under the various rules on the subject it is not every adverse entry or remark that has to be communicated to the officer concerned.

Gurdial Singh's case AIR 1979 SC 1662 is not of any assistance. The communication of adverse entries is necessary in one promotion, is denied on their basis, for, without communication, explanation cannot be offered and without consideration of explanation, it cannot be said whether adverse entries were justified. This is, however, not invariably applicable to the case of compulsory retirement. Such a retirement involve no stain or stigma nor does it entail any penalty or civil consequences. The contention that the order of the Tribunal upholding the order of compulsory retirement of the petitioner stands vitiated on account of the fact that it took into consideration the adverse reports, therefore, has no substance and is accordingly, repelled.

7. Rules 244(2) of the Rajasthan Service Rules came up for consideration in *Tara Singh and Others Vs. State of Rajasthan and Others*, wherein it was held that so long as the right is not qualified, the right of the Government retire a Government servant compulsorily must be held to be absolute. It was held in *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, while considering the scope Rule 56(j) of the Fundamental Rules as under:

The rights confirmed on the appropriate authority is on absolute one. That power can be exercised subject to the condition mentioned in the rules, one of which that the concerned authority must be of the opinion that it is in public interest to do so. If that authority bonafide forms that opinion, the correctness of the opinion cannot be challenged before the court. It is open to an aggrieved party contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that decision is arbitrary decision.

In C.L. Pathak v. State of Rajasthan 1976 WLN 1, It was held that the High Court can not sit as a court of appeal over the decision of the Government relating to compulsory retirement, which was arrived at after taking into account over all picture of the officer.

8. Learned Counsel next argued that the order of compulsory retirement passed against the petitioner lacked the independent judgment of the appointing authority and so, it is bad in law. Circular dated April 19, 1972 reads as under:

Attention is Invited to Appointment (A. II CR) Department order dated No. F (55) Appts (4) 57pt. 1 Gr. II/CR dated the 13th January 1965, wherein procedure was laid down for compulsory retirement of Ministerial staff under Rule 244(2) of the RSR, the contents of the above order have been reviewed and in modification of previous instructions of the subject, the following procedure is prescribed for being followed by the various department:

Staff In The District Including Staff Of The Range Level Of ICESIE Dir Dy. Director Etc.

1. Collector of the District concerned Convener
2. Appointing authority if it is other than the Collector, otherwise a senior officer nominated by the Collector Member On receipt of the recommendations of the committee, retirement orders shall be issued immediately by the concerned appointing authority as per specimen enclosed.

According to the learned Counsel, for appointing authority, because of the mandatory character of the aforesaid circular, could not act independently and was bound by the recommendations of the Screening committee. In this connection, be relied on Sitaram v. State of Rajasthan 1970 RLW 256. It was observed:

there is no manner of doubt" that the powers of compulsory retirement under Rule 244(2) of the Rajasthan Service Rules have to be exercised by the State Government or its delegate. This rule vesting a discretion, which is statutory, the powers there under have to be exercised reasonably with the purpose of ensuring security and efficiency in the public services. In the present case, though in the extent of powers delegated it was mentioned that the procedure for the exercise of full powers vested in the appointing authority is to be laid down by the Appointments Department in the case of ministerial staff of the Secretariat, the order for laying down the procedure being an executive order

has to be passed within the frame work of the order of delegation which order has been passed in exercise of the statutory powers of the Government. The executive order to be passed by the Appointment Departments cannot be such as to go against the true intent and purpose of the order of delegation which was to vest the full powers of the Government under Rule 244(2) to the appointing authority. The decision regarding compulsory retirement of a Government servant has to be that of the delegate namely, the appointing and of no other. This provision for laying down procedure by the Appointments Department can only contemplate that the order to be issued can indicate the various steps in the process of decision making, but in very nature of things it will not be open while laying down such a procedure to erode the rule or notification itself by virtually substituting one decision making authority, namely the appointing authority by another decision making authority. What cannot be permitted to be done is what is indicated in the later part of the order that on receipt of the recommendation of the Committee retirement order shall be issued immediately by the concerned appointing authority as per specimen enclosed. "This part of the order takes away the discretion vested in the appointing authority as a delegate of the Government and clothes for all intents and purpose the Scrutinising Committee with powers under Rule 244(2). Reading of the order dated 13.1. 64 leaves no room for doubt in my mind that the appointing authority after the stage of scrutiny is over, is reduced to nothing more than a rubber stamping one.

In *Gafoor Mohd v. State of Rajasthan and Ors.* 1977(2) SLR 268, A.P. Sen, J., as he then was, agreed with the view taken by D.P. Gupta, J., in *S.B. Civil Writ Petition No. 252 of 1974 (Manmal v. State of Rajasthan and anr., decided on September 30, 1973)*. wherein it was that where the appointing authority independently applies his mind to the question of compulsory retirement of a public servant under Rule 244(2) of the Rajasthan Service Rules, 1961, the order of compulsory retirement cannot be held be invalid. In *Shri Bansilal v. State of Raj. and ors.* 1978 (2) SLR 218 Joshi, J., also distinguished *Sitaram's case* 1970 RLW 256. The contention raised was that on the receipt of recommendation of the screening committee the appointing authority shall issue immediately order of compulsory retirement and that the discretion of the appointing authority was totally fettered and there was room left in the appointing authority to exercise its judgment in independent manner. The contention was repelled. It was field that the Committee was only to recommend and the circular no where laid down that the appointing authority should issue orders is terms of the recommendations and that the mere fact that the appointing authority shall pass the orders immediately does not imply that it was not open to the appointing authority to exercise its independent judgment and come to a decision of its own. I respectfully agree with the view taken in *Manmals' case (supra)*, *Gafoorkhan's case* 1977 (2) SLR 268 and *Bansilal's case* 1978 (2) SLR 218.

9. The Committed consisted of only two members one is the Collector and the other is the appointing authority. From the circular, it cannot be said that in case of difference of opinion between the two persons, whose opinion shall prevail.

The appointing authority is the member of the Screening member, Until and unless the appointing authority agrees with the other member, no recommendation can be made. Having regard to the circular, I am unable to agree with the learned Counsel that the appointing authority has not applied its mind or that the Collector being the member of the Committee, it was prevented to exercise its own view. A perusal of the order dated August 2, 1978 shows that the appointing authority has stated that in pursuance of the delegation made under Sub-rule (2) of Rule 244 of the Rajasthan. Service Rules vide Government order No. F.1 (43, FD/Gr2/75 dated September 19, 1975, the authority retires the petitioner from the service from the date of the receipt of the order (Ex. 3) I, therefore, hold that in the circumstances of this case, it cannot be said that the authority has not taken the decision of its own and as such, the order of compulsory retirement cannot be impugned on the ground that the appointing authority did not exercise its independent judgment. In Sitaram's case 1970 RLW 256, three persons constituted the screening committee, one Secretary to Government and two Deputy Secretaries in the Appointments Department. The Secretary to the Government was the convener of the Committee. The motor recorded on the Secretary's, files were brought on the record From paras 35 & 36 of the Secretary's notes brought on the record the learned Judge came to the conclusion that the committee recommended the compulsory retirement of the petitioner and the Special Secretary (Appointment) noted in para 36 that retirement order in respect of two persons one being the petitioner be issued in accordance with the order dated January 13, 1964. It was on this basis that the learned Judge came to the conclusion that the order of compulsory retirement was misleading as the real author of the decisions was the screening committee and that the appointing authority had not come to an independent conclusion after scrutinising the recommendations of the screening committee. Sitaram's case 1970 RLW 256, is, therefore, clearly distinguishable.

10. The third contention raised by the learned Counsel for the petitioner has not completed 25 years of qualifying service as his service before attaining the age of 18 years could not be counted as qualifying service as per Rule 177(a) of the Rajasthan Service Rules. On the basis of Ex. 2, learned Counsel for the petitioner submitted that qualifying service for pension has been counted as 22 years 8 months 11 days and, therefore, 25 years service cannot be counted for compulsory retirement. It is admitted by the learned Counsel that the point was not taken before the Tribunal, as the petitioner came to know about the fact that in the pension case, his service has been counted from the date he attained 18 years of age, after the decision of the Tribunal. The petitioner seeks to quash the order (Ex. 4) of the Tribunal. It was held by a Division Bench of this Court in State of Rajasthan v. Smt. Lahar Kunwar (10), that before a writ of certiorari could be is sued, an error apparent on the face of the record must be shown to exist when the questions of jurisdiction or malafide are not involved, It was observed as under:

Obviously, there cannot be any error on the face the record because this point

was neither raised nor considered by the Board of Revenue and we do not have the benefit of examining the view of the Tribunal whose order is under attack

Apart from this, according to Rule 244(2) the Government may, after giving three months previous notice in writing require a Government servant to retire from the service on the date on which he completes 25 years of qualifying service. According to Rule 177(a), except for compensation gratuity, a Government servant's service does not qualify till he has completed eighteen years age. Sub-rule (3) thereof says that unless it be otherwise provided by special rule or contract, the service of every Government servant begins when he takes charge of the office to which he is first appointed. In Ex. 2. the date of beginning of service is mentioned as December 7, 1950 and date of ending of service is mentioned as August 3, 1978. The petitioner in para 3 of the writ petition has stated that his service was counted from December 7, 1950. Office order Ex. 1 dated December 18, 1950 shows that he was appointed from December 7, 1950. He was compulsorily retired from August 3 1978. It is, therefore, clear that he has completed 25 years of qualifying service within the meaning of the Rajasthan Service Rules.

11. No other point was argued by the learned Counsel for the petitioner.

12. The writ petition has no merit and it is, accordingly, dismissed summarily.