

(2015) 03 AHC CK 0099

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 64023 of 2012

Sarwanand Mishra

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 19-03-2015

Acts Referred:

Constitution of India, 1950 — Article 166, 226

Citation : (2015) 3 ADJ 558 : (2015) 4 ALJ 694 : (2015) 3 AWC 2738 : (2015) 2 ESC 1119 : (2015) 2 UPLBEC 1563

Hon'ble Judges : Yashwant Varma, J

Bench : Single Bench

Advocate : P.K. Ganguly and Ashok Khare, for the Appellant; Samir Sharma, Advocates for the Respondent

Final Decision : Allowed

Judgement

Yashwant Varma, J.—Heard Sri P.K. Ganguly in support of the writ petition and Sri Samir Sharma on behalf of the respondents. This petition lays challenge to an order dated 11.7.2006 compulsorily retiring the petitioner from service at a time when he was posted as Civil Amin in the District Judgeship of Ballia and the order of the appellate authority dated 1.10.2012, rejecting the appeal/representation of the petitioner.

2. The salient facts which are necessary for disposal of the present writ petition are not really in dispute.

3. From the records it appears that the petitioner was initially appointed on 10.1.1977 and upon successful completion of his probation period was confirmed on the post of Amin. He continued to function as such and spent almost 29 years in the Judgeship.

4. In 2004, the case of the petitioner for compulsory retirement was considered by a Screening Committee constituted for the said purpose. The Screening Committee upon considering the service records did not recommend his

compulsory retirement. In 2006, his case appears to have been again forwarded for consideration of the Screening Committee constituted by the District Judge, Ballia and pursuant to the exercise undertaken this time around, the Screening Committee recommended the compulsory retirement of the Petitioner. Pursuant to the said report of the Committee, the District Judge by an order dated 11.7.2006 compulsorily retired the Petitioner.

5. It appears that on the basis of the Report of this very Screening Committee and by similar orders dated 11.7.2006, orders of compulsory retirement were passed against various other employees of the Judgeship also, including one Sri Syed Imam Raza who was at that time working as the Senior Administrative Officer. Sri Syed Imam Raza appears to have preferred an appeal before the Administrative Judge, Ballia who by his order dated 28.11.2006, set aside the order of compulsory retirement. It appears that the Administrative Judge formed an opinion that the Screening Committee constituted by the District Judge was not appropriately manned by the Senior Officers of the Judgeship and consequently he came to the conclusion that the orders passed by the District Judge on the basis of the so called report of the said Screening Committee could not have formed the basis for formation of an opinion by the District Judge. It was in this view of the matter that the Administrative Judge proceeded to set aside the order of compulsory retirement of Sri Syed Imam Raza.

6. Emboldened by the above, other employees who had also been compulsorily retired appear to have approached this Court challenging their orders of compulsory retirement. One such challenge traveled up to a Division Bench of this Court in Dwarika Singh Vs. State of U.P. and Another, (2010) 126 FLR 335 whereby the order of the District Judge compulsorily retiring the appellant was set aside. While allowing the Special Appeal, the Division Bench has recorded as follows:

"5. We have summoned the record of the High Court contains the decision of the Administrative Judge in the matter of Syed Imam Raza, the then Senior Administrative Officer (SAO) of Ballia Judgeship. We have perused the decision of the Administrative Judge in the matter of Syed Imam Raza, the then Senior Administrative Officer (SAO), who had been ordered to be compulsorily retired and whose departmental appeal had been allowed by the then Administrative Judge. The Administrative Judge in para of the order has made the following observations about the constitution of screening committee, which is being extracted below:

"In the matter of compulsory retirement the screening committee should have been constituted comprising some senior most judicial officers, but the District Judge constituted the screening committee consisting of an Additional District Judge and a Civil Judge (Junior Division). It also does not appeal to reason as to why senior most officers were not inducted in the screening committee. A Civil Judge (Junior Division) who has no administrative experience, not well versed with Government Orders etc may fall in the line of the District Judge and might

have not gone against wishes of the District Judge, otherwise such a glaring error would not have been committed."

6. The Administrative Judge had found that the committee had committed glaring mistake while taking decision of compulsory retirement of Syed Imam Raza. If the constitution of committee was not proper as against Syed Imam Raza then how it could be treated to be proper as against the appellant-petitioner. Since the appeal of Raza has been allowed by the Administrative Judge inter alia on the ground that the formation of the committee by the District Judge, Ballia was not proper, therefore, the recommendation of the committee for compulsory retirement of the employees cannot be said to be proper. The Special Appeal, therefore, deserves to be allowed on this score alone and the impugned order dated 11.7.2006 passed by the District Judge, Ballia regarding compulsory retirement of the appellant-petitioner on the recommendation of the screening committee and the order of the learned Single Judge dated 29.8.2006 deserve to be set aside.

7. The Special Appeal is allowed and the impugned judgment and order of the learned Single Judge dated 29.8.2006 passed in Civil Misc. Writ Petition No. 41874 of 2006 (Dwarika Singh v. State of U.P. and others) is set aside and the civil misc. writ petition detailed above, is allowed and the order of the learned District Judge, Ballia dated 11.7.2006 retiring the appellant-petitioner compulsorily from his service is set aside and the appellant-petitioner will be reinstated in service with all consequential service benefits forthwith."

7. Following the above, yet another appeal filed by an employee who had been compulsorily retired on the basis of the recommendation of the same Screening Committee concerned being Special Appeal No. 1558 of 2006 (Awadh Bihari Tiwari v. State of U.P. and others) came to be allowed on 14.7.2010 with the following observations:

"Learned counsel for the appellant submitted that the same Screening Committee which had recommended the compulsorily retirement of the appellant, in another case has been held to be an invalidly constituted Committee and, therefore, any recommendation by the Committee which has been pronounced by this Court not to have been validly constituted, would be void ab-initio. Learned counsel has relied upon a Division Bench judgment of this Court dated 21.4.2010 passed in Special Appeal No. 1223 of 2006 (Dwarika Singh v. State of U.P. and another).

That being the case, we are of the considered opinion that the appellant the present case would also be entran to the same benefit as that of the appellant in Special Appeal No. 1223 of 2006 (Dwarika Singh v. State of U.P. and another).

Learned counsel for the respondents Sri S.P. Singh does not dispute the aforesaid fact as has in fact submitted that he we was also heard by the said Division Benefit before passing the aforesaid judgment dated 21.4.2010.

Therefore, in view of the judgment Dwarika Singh Vs. State of U.P. and Another, (2010) 126 FLR 335 the order of the learned Single Judge impugned in the present appeal cannot be sustained and is, accordingly, set-aside and the order of the District Judge dated 11.7.2006 which has been passed on the recommendation of the Screening Committee is hereby quashed and the appeal is, thus, allowed."

8. The petitioner had also challenged the order of compulsory retirement by filing a Writ Petition No. 44878 of 2006 which remained pending right up to 2011 and ultimately came to be disposed of by a Single Judge of this Court on 2.5.2011 requiring the petitioner to file an appeal before the Administrative Judge. The Administrative Judge, dismissed the appeal by his order dated 1.10.2012 which was communicated to the petitioner under cover of letter dated 16.11.2012, with the following observations:

"From the facts of the case, it transpires that the appellant has preferred to approach this Court by means of Civil Misc. Writ Petition No. 44878 of 2006 (Sarvanand Mishra v. State of U.P. and others) by surpassing the statutory remedy of appeal. The writ petition has been pending since the year 2006 and has been disposed of on 2.5.2012. Pursuant to which the appellant has filed the present appeal challenging the order dated 11.7.2006 whereby he was compulsorily retired from service on the basis of report of the screening committee dated 6.7.2006. The appellant was given opportunity to contradict the charges leveled against him in the report of the screening committee dated 6.7.2006. The appellant instead of making any submission in rebuttal of the charges leveled against him in the report of screening committee has merely placed reliance upon the judgment of this Court decided in the matter of Dwarika Singh and Sarvanand Mishra (Supra). Since the appellant has failed to controvert the report of the Screening Committee on the basis of which he was compulsorily retired by the District Judge, Ballia vide order dated 11.7.2006, the verdict given in the judgment of this Court in the matter of Dwarika Singh and Sarvanand will not apply in the case of the petitioner as the charges leveled upon those employees were quite distinct.

After examining the documents placed by the appellant and also the report of the screening committee I do not find any illegality or perversity in the order dated 11.7.2006 passed by the District Judge, Ballia whereby the appellant was compulsorily retired. This appeal has no substance and is accordingly dismissed."

9. It is in the above backdrop that this petition came to be filed before this Court.

10. Sri Ganguly appearing for the petitioner has submitted that the impugned order of compulsory retirement is clearly unsustainable in light of what had been held by this Court on its judicial side while adjudicating upon the litigation instituted by the other employees of the Judgeship. He submitted that the employees who, like the petitioner, had been compulsorily retired on 11.7.2006 based on the recommendations of the same Screening Committee had continued

in the Judgeship consequent to the order of compulsory retirement passed against them having been set aside. He submitted, therefore, that there existed no ground, which may warrant the petitioner not being granted similar relief.

11. Sri Ganguly has further submitted that the impugned order dated 11.7.2006 does not disclose any reason which may have weighed with the District Judge, Ballia or which may have been taken into consideration by him while forming his opinion that the petitioner was liable to be compulsorily retired. He further submitted that admittedly the Screening committee had scrutinized his records in 2004 when it chose not to recommend his compulsory retirement. He contended that in the absence of any further adverse material existing between 2004-06, the action of the District Judge, Ballia was clearly unsustainable.

12. Countering the submissions advanced on behalf of the petitioner, Sri Samir Sharma, on the other hand submitted that the Administrative Judge while passing the order in respect of Sri Syed Imam Raza had clearly exceeded the jurisdiction conferred upon him and had wrongly interfered with the order of compulsory retirement made in respect of the said employee. He submitted that a Division Bench of this very Court in Special Appeal No. 1559 of 2006 (Jamaluddin Khan v. State of U.P. and others) had considered the validity of compulsory retirement made against another employee based on the recommendation of the same Screening Committee. The Division Bench deciding the aforesaid appeal by its judgment and order dated 8.12.2006 had held that the compulsory retirement made on the recommendation of the Screening Committee did not warrant any interference and had accordingly proceed to uphold the judgment rendered by the learned Single Judge. He further submitted that the aforesaid judgment rendered by Division Bench in Appeal was sought to be reopened in review proceedings by the appellant therein and the said review application also came to be rejected on 18.2.2011.

13. Elaborating his submissions, Sri Sharma pointed out that the judgments relied upon by Sri Ganguly were brought to the attention of the Division Bench considering the review application preferred in Jamaluddin Khan (supra) and yet it proceeded to dismiss the same. The Division Bench considering the Review Application proceeded to hold that the order passed by the Administrative Judge, Ballia was without jurisdiction. The Bench observed that the Administrative Judge was not imbued with appellate powers in respect of the orders passed by the District Judge in terms of the Rules of the Court. However it recorded that considering the limited and narrow window of review proceedings, there existed no ground warranting the judgment to be reviewed.

14. Sri Sharma further submitted that the Screening Committee had taken into consideration the entire service record of the petitioner before proceeding to recommend his compulsory retirement. He submitted that the order of compulsory retirement based upon the subjective satisfaction of the employer is not liable to be interfered with except on limited grounds. He submitted that in the absence of the petitioner having alleged malice or perversity, the order did

not warrant interference by this Court under Article 226 of the Constitution of India.

15. By the order of this Court dated 16.1.2015, the relevant records pertaining to the compulsory retirement of the petitioner and other employees were called for. This Court had an occasion to go through the records on 11.2.2015 and 23.2.2015 whereafter after hearing parties, orders on this petition were reserved on 25.2.2015.

16. The order of compulsory retirement made against the petitioner was liable to be judged primarily and in the opinion of this Court in light of what was recorded by the Screening Committee and the order of the District Judge, Ballia passed as a consequence thereto. The records establish that the Screening Committee comprising of a Civil Judge (Junior Division) and Additional District Judge submitted a report dated 6.7.2006. This Committee while considering the case of the petitioner recorded that a censure entry had been entered against him on 23.9.1996; an adverse entry on 18.9.1995; a warning issued on 21.5.2001 and a serious warning issued on 25.5.2001. It is on the strength of the above material that the Screening Committee recommended the compulsory retirement of the petitioner. The records however do not indicate any independent application of mind by the District Judge to the service record of the petitioner. In fact, the Screening Committee Report also does not carry any note, comment or endorsement of the District Judge, which may have established or indicated any application of mind by him to the action proposed to be taken against the petitioner.

17. On a pointed query of the Court, Sri Sharma learned counsel appearing for the respondents submitted that the records produced before this Court constituted the entire record and was complete in all respects.

18. Having noticed the rival submissions, this Court now proceeds to consider the challenge on its merits.

19. An ostensibly simple issue however appears to have been overshadowed on account of the seeming conflict arising out of the judgments rendered by this Court. As noticed hereinabove, the Court in Dwarika Singh (Supra) as well as Awadh Bihari Tiwari (Supra) proceeded to quash the orders of compulsory retirement based upon the orders passed by the Administrative Judge, Ballia. On the other hand, the Division Bench of this very Court in Special Appeal No. 1559 of 2006 Jamalluddin Khan (Supra) had upheld the order of compulsory retirement made against the said employee based upon the recommendation of the same Screening Committee. The judgment of the Division Bench in Jamalluddin Khan (Supra) delivered on 8.12.2006 does not appear to have been brought to the attention of the Division Benches which came to decide the matter of Dwarika Singh (Supra) and Awadh Bihari Tiwari (Supra) inasmuch as both these judgments were rendered subsequently on 22.4.2010 and 14.7.2010. This Court is therefore constrained to record that both the District Judge as well as

counsel failed in their duty to bring these facts to the notice of the Court.

20. In fact the respondents failed to bring to the attention of the Court the anomalous situation created by the above even when the writ petition of Ajab Narain Singh (another employee compulsorily retired on 11.7.2006) came to be decided on 24.8.2012. This petition being Writ Petition No. 56400 of 2006 came to be decided on 24.8.2012 by a learned Single Judge of this Court following what was held in Dwarika Singh (Supra) and Awadh Bihari Tiwari (Supra)

21. Before proceeding further it would be apposite to then refer to what the Division Bench of this Court came to record upon the review application filed by Jamalluddin Khan (Supra):

"5. The Administrative Judges, in making orders on the matters enumerated above, do not exercise judicial powers. They do not have powers to set aside the orders of compulsory retirement of the employees of the subordinate Court. The review of judicial work, perusal of returns, evaluation of inspection reports, considerations and decisions on the adverse remarks given by the District Judge, grant of earned leave and casual leave and disposal of appeals against the orders of punishment do not authorize the Administrative Judges, to sit over to decide and reverse the decision in the matter of compulsory retirement.

6. The orders of compulsory retirement are not passed by way of punishment. The object to compulsorily retire a public servant, is to remove the dead wood under Rule 56(c) of the U.P. Financial Handbook, Volume II, Part-II to IV.

7. The order of Hon'ble D.V. Sharma, J. the then Administrative Judge, in setting aside the order of compulsory retirement, was thus without jurisdiction. The same however cannot be said to be true about the orders in Special Appeal No. 1223 of 2006 (Dwarika Singh v. State of U.P. and others) decided on 21.4.2010, and Special Appeal No. 1558 of 2006 (Awadh Bihari Tiwari v. State of U.P. and another) 14.7.2010."

(emphasis supplied)

22. A careful consideration of the observations made by the Division Bench in the review application of Jamaluddin Khan (supra) show that while it recorded that the order of the Administrative Judge was without jurisdiction it significantly refrained from either explaining away or disagreeing with the judgments handed down in Dwarika Singh and Awadh Bihari Tiwari (supra). This perhaps as it was only considering the issue in review proceedings. However in the opinion of this Court, the Petitioner is entitled to relief not on account of any order made by the Administrative Judge but on the following score.

23. It was the pointed submission of the learned counsel for the Petitioner that his case was considered by the Screening Committee in 2004 which chose not to recommend his name for compulsory retirement. This fact was not disputed by the learned counsel appearing for the respondents. The record further does not reveal any new adverse material which may have come into existence between

2004-06 which justified the change of opinion/recommendation made by the Screening Committee. Although it is the entire service record which is liable to be considered by the Screening Committee, there should have, in the opinion of this Court, existed some material which justified the change of opinion of the Screening Committee. An order of compulsory retirement is based upon the subjective satisfaction of the employer. However the same must necessarily be exercised based upon material existing on record. The Report of the Screening Committee shows that the last adverse material which was taken into consideration was of 2001, vintage. This adverse material existed even in 2004 when the case of the Petitioner was considered. In the opinion of this Court, the recommendation of the Screening Committee therefore clearly suffered from the vice of arbitrariness.

24. The second count on which the impugned order must then be tested is this can the formation of subjective satisfaction of the District Judge be a subject which could be abdicated/delegated to a Screening Committee?

25. As noticed hereinabove, the impugned order passed by the District Judge did not record any reasons for compulsorily retiring the Petitioner. This Court then delved through the records to ascertain whether the reasons existed on record. Upon such an exercise being undertaken, this Court found no endorsement, note or approval of the Report of the Screening Committee by the District Judge. No such endorsement or like indicator of application of mind by the District Judge to the report of the Screening Committee was either pointed out to the Court or brought to its attention by the learned counsel for the Respondent. This Court holds that while there cannot be any objection per se to the constitution of a Screening Committee to assist the District Judge in formation of opinion to compulsorily retire an employee, however, before exercising the power to compulsorily retire the employee, the District Judge would be clearly obliged in law to independently apply his mind to the service record of the employee and the Report of the Screening Committee. The rule empowering the District Judge to compulsorily retire the employee stands vested in the District Judge and not the Screening Committee. The subjective satisfaction on the subject has to be that of the District Judge and not the Screening Committee.

26. As noticed above, the records produced before this Court are totally silent, the records carry no opinion penned by the District Judge accepting the recommendations made by the Screening Committee. More fundamentally the records fail to prove an independent application of mind by the District Judge to the issue at hand. This Court is therefore constrained to record that this was a case where there was a total abdication of function required by statute and consequently the impugned order cannot be sustained.

27. Considering a similar controversy in the case of Naresh Chandra Sharma Vs. State of U.P., (2006) 3 AWC 2743 , a learned Single Judge of this Court was pleased to hold as under:

"12. Lastly the District Magistrate on the same page has recorded as follows:

"Anumodit"

and has signed the same in the month of February, 2004.

13. From the records of the proceedings as aforesaid this Court is satisfied that there has been non application of mind by the District Magistrate with regards to the character roll entries of the petitioner as well as to the fact as to whether the nature of entries in the character roll was such so as to come to the conclusion that the petitioner was a fit person to be compulsorily retired. The District Magistrate has only approved the proposal of the Screening Committee to the effect that the petitioner may be compulsorily retired. The recommendation of the Screening Committee is only an opinion. It is the satisfaction of the appointing authority which should determine as to whether powers under Section 56(C) of the fundamental rules are to be exercised. Such a satisfaction must be arrived at after due application of mind to the service records of concerned Government servant. The appointing authority has to decide that the employee has become a dead wood and it is in public interest to retire him compulsorily. Mere acceptance of the report of Screening Committee in the facts of the case by endorsement of the word "Anumodit" by the appointing authority (District Magistrate) cannot be held to a decision to compulsorily retire the petitioner after due application of mind as required under Fundamental Rule 56(c). The aforesaid conclusion is further supported by the reason that the Screening Committee did not refer to (i) all the entries recorded into the character roll of the petitioner in the previous years (specifically of recent part), (ii) the relevant period for which such adverse entries have been recorded, (iii) the nature of adverse entries, (iv) the effect of other entries which were good/outstanding available on the service records of the petitioner.

14. Division Bench of this Court in the case of Shri Narain Saxena Vs. Principal Secretary (Tax and Registration), U.P. Government and Others, (2005) 4 ESC 2431 , after referring to various judgments of the Hon"ble Supreme Court in paragraph 20 of the judgment has held as follows:

"Paragraph 20 - In view of the above, there is no bar for the Competent Authority to appoint a Screening Committee and consider its recommendations by application of his mind. This view stands fortified by the judgment relied upon by Shri K. Ajit in Kamta Singh v. State of U.P. and another, 1993 (2) HVD 131 (All), wherein it had been held that the Appointing Authority has to apply his mind independently on the recommendation made by the Screening Committee, failing which the order impugned would stand vitiated."

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16. Reference may also be made to the Division Bench judgment of this Court in the case of Kamta Singh v. State of U.P., 1993 (II) HVD 131 (All), Paragraph 6 whereof reads as follows:

"F.R. 56(c) empowers the appointing authority, the State Government in this case, to require the petitioner to retire after attaining the age of fifty years "if it appears to the said authority to be in the public interest." This provision supposes that the State Government has formed the opinion that it is in the public interest to retire the petitioner compulsorily. If the decision of the State Government is based merely on the opinion of an extraneous body like the Screening Committee, it cannot be said that the State Government has exercised its jurisdiction in accordance with the said rule. It is not shown that the Screening Committee is a committee of the Government which has been constituted under the Rules of Business made under Article 166 of the Constitution. The I.G. Prisons who is not part of the organization known as Government, was also a member of the Screening Committee. The Screening Committee cannot be regarded as an instrumentality of the Government. The role of Screening Committee is to assist the State Government and after a careful examination of the relevant materials to report whether there is a prima facie case to require the Government servant concerned to retire compulsorily in public interest. The function to do so is that of the Government to do so is that of the Government and the order is passed on the subjective satisfaction of the Government. Subjective satisfaction cannot be a matter of delegation and the satisfaction of the Screening Committee cannot be the satisfaction of the Government. This is not to say that the law requires a second examination of the materials by the Government, as apprehended by the learned Standing Counsel. But, circumstances must exist which would indicate that the State Government (or the appointing authority) has itself applied its mind to all the relevant materials and was satisfied that the concerned Government servant has become a dead wood and public interest would suffer more by allowing him to continue to perform the duties and functions of his office till superannuation in the normal course and that it is in public interest to order compulsory retirement and that in taking such action it has not merely acted on the basis of the report of the Screening Committee. We have come to the conclusion after giving out most thoughtful consideration to the facts and circumstances of the present case that the impugned order of compulsory retirement has not been passed by the State Government after applying its mind to all the relevant materials on record. The impugned order is, therefore, clearly arbitrary, the requisite opinion having not been formed in the requisite manner as required by law, and it is liable to be quashed."

28. On the administrative appeal preferred by the Petitioner too, this Court finds that there is non consideration of the above aspects of the matter. Accordingly the said order must also necessarily fall.

29. Insofar as Jamalluddin Khan (Supra) is concerned, the Division Bench as a matter of fact found that his service between 1979-2002 was replete with warnings, censure entries, adverse entries, fines. It also noticed that at the time when the order of compulsory retirement was passed, a disciplinary proceeding was pending against him. His case was therefore clearly distinguishable. For all

the aforesaid reasons, this Court finds that the impugned order cannot be sustained. Accordingly this writ petition stands allowed. A writ of certiorari shall issue quashing the order dated 1.10.2012 of the Administrative Judge, Ballia and order 11.7.2006 of the District and Sessions Judge, Ballia. The Petitioner shall be entitled to all consequential reliefs.