

(1985) 03 MP CK 0027

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1091 of 1984

S.C. Vaish, Bhopal

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 25-03-1985

Acts Referred:

All India Services (Death-Cum-Retirement Benefits) Rules, 1958 — Rule 16(3)
All India Services (Discipline and Appeal) Rules, 1969 — Rule 25(1)

Citation : (1986) MPLJ 430

Hon'ble Judges : Gulab C. Gupta, J

Bench : Single Bench

Advocate : N.C. Nihlani with S.K. Seth, for the Appellant; A.P. Tare for Respondent No. 1 and R.K. Thakur, for the Respondent

Final Decision : Allowed

Judgement

Gulab C. Gupta, J.

Petitioner, an I.A.S. Officer in Super Time Scale, feels aggrieved by the order of his compulsory retirement dated 9th April, 1984 purporting to be under Rule 16(3) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 (Annexure P-1) (hereinafter referred to as "the Rules") and seeks a writ of certiorari for quashing the same in this petition filed under Article 226 of the Constitution of India.

The petitioner was appointed in the I.A.S. grade in the year 1955 and was promoted in the Senior Time Scale in November, 1961. He was however, reverted to the Junior Scale of I.A.S. in August, 1962. Thereafter, the petitioner was again promoted and subsequently confirmed in the Senior Scale w.e.f. 10-8-1963. He was, in due course, promoted to the Selection Grade on 1-10-1976 by order dated 16-5-1977 (Annexure "R"). The petitioner was further promoted to the Super Time Scale of I.A.S. with effect from 1-7-1980. This promotion was admittedly given after the joint Screening Committee in its meeting dated 9-4-1980 found the petitioner fit for the promotion. After his promotion to the

Super Time Scale, the petitioner was posted to work as a Commissioner for Departmental Enquiries in M.P. Vigilance Commission. After working for about 2 years on the aforesaid post, he was appointed as the Managing Director of M.P. State Industries Corporation w.e.f. 3-3-1983 from where he was retired compulsorily by the impugned order.

The impugned order is challenged by the petitioner on the ground that the same is not passed in public interest and is otherwise arbitrary and unjustified violating not only the Rules but also Articles 14 and 16 of the Constitution of India. The petition has been opposed by the respondent Union of India and respondent State of Madhya Pradesh by filing their separate returns. The impugned order is said to have been passed by the respondent Union of India in consultation with the respondent State of Madhya Pradesh. According to the respondent Union of India the order has been passed in public interest and in accordance with the Rule and is neither dismissal nor removal from service. It is also submitted that before retiring the petitioner a Review Committee presided over by the Chief Secretary of the State of Madhya Pradesh considered (he service record of the petitioner and submitted its recommendations to the State Government. The State Government forwarded the representation to the Central Government with its own recommendations. It is the Central Government which takes the final decision whether the officer should be retained in service or should be retired from service in public interest. The respondent Central Government claims, that "the existence of public interest for retiring a member of an All India Service is a matter solely for the satisfaction of the Central Govt. and for that purpose the Central Government takes into account an over all assessment of the work and performance of the officers on the basis of available material." (para 4). From the statement it appears that it is the case of the Central Government that the decision whether the compulsory retirement of the petitioner was in public interest is their exclusive concern and that appears to be the reason why the respondent Central Government have not produced any material whatsoever to enable this Court to ascertain if their conclusion was justified. It also appears to be their case that, the petitioner was retired from service in public interest, not because of any complaint against him but was retired from service on the basis of certain adverse remarks recorded in his character rolls after his promotion to the Super Time Scale of I.A.S. (para 17). It, therefore, appears that the respondent Central Government has not considered the petitioner's character rolls prior to his promotion to the Super Time Scale of I.A.S. but has reached the conclusion on the basis of his record after his promotion on 1-7-1980.

The stand taken by the respondent State Government is somewhat contrary to the stand taken by the respondent Union of India. It is their case that the entire service record of the petitioner from the date of his appointment in 1955 was taken into consideration to make recommendations about his compulsory retirement. They alleged that, the petitioner was generally graded as "average" or "ordinary" I.A.S. Officer. According to them, the petitioner has earned as many as 14 adverse remarks in the past years which were communicated to him.

Their case, therefore, is that the entire service record of the petitioner was taken into consideration before recommending his compulsory retirement. The respondent State also submitted that since the petitioner has a right of submitting a memorial to the President under Rule 25(1) of the All India Services (Discipline and Appeal Rules, 1969 which is an alternative efficacious remedy. the present petition under Article 226 is not maintainable.

Before examining the submission as aforesaid, service record of the petitioner as disclosed by the respondent State Government in their return may be noted. The petitioner was admittedly appointed in I.A.S. Grade in the year 1955. His annual confidential reports for the years 1957-58 and 1960-61 are said to be adverse. In spite of it, he was promoted in the Senior Time Scale of I.A.S. in November, 1961. It would be reasonable to assume that in case the reports were really adverse or sufficient to condemn him, the petitioner would not have been promoted in the Senior Scale of I.A.S. in November, 1961. Be that as it may, he worked in the Senior Time Scale and again earned an adverse report for the year 1960-61 and was consequently reverted to Junior Scale in August, 1962. In spite of the aforesaid adverse report, he was promoted in the Senior Time Scale of I.A.S. again on 9th August, 1963 and subsequently confirmed in the said scale on 10-8-1963. His promotion and confirmation in the Senior Time Scale sufficiently indicate that his service record was considered not only at the time of his promotion but also at the time of confirmation in the Senior Time Scale and was not found to be of the type as to deny him the promotion or confirmation. As an I.A.S. Officer in the Senior Time Scale the petitioner's annual confidential reports for the years 1963-64, 1964-65 and 1965-66 were adverse (annexures R-12, R-13 and R-14). After 1966 and upto 1971 there is nothing adverse in his record. However, his annual confidential reports for the years 1971-72 (Annexure R-16) and 1972-73 (Annexure R-15) and 1974-75 (Annexure R-17) are again said to be adverse. In spite of these adverse confidential reports, the petitioner was again promoted in the Selection Grade of I.A.S. w.e.f. 1-10-1976 (Annexure R-1). This promotion, according to the petitioner, sufficiently indicates that his annual confidential reports for the year 1971-72, 1972-73 and 1974-75 were not treated as adverse. The record of the petitioner after 1974-75 contains nothing adverse and hence he was promoted again in the Super Time Scale of I.A.S. w.e.f. 1-7-1980. It is common ground that before recommending this promotion a Joint Screening Committee headed by the Chief Secretary has considered his service record and found him fit for promotion to the Super Time Scale. From the return of the respondent State, (sic) however appears that the Joint Screening Committee was of the view that the petitioner should not be considered fit for holding Joint Secretary level post at the Centre. After his promotion in the Super Time Scale on 1-7-1980, the petitioner is said to have earned adverse remarks for the year 1981-82 and 1982-83. There is nothing except these two reports for the period after 1-7-1980 in the Service record of the petitioner.

We may also consider the exact nature of annual confidential reports of the petitioner for the years 1981-82 and 1982-83. His report for the year 1981-82

(Annexure R-4) reads as under:-

He was only, under nominal administrative control of the Vigilance Commissioner under some pressure on my part, he has disposed of all the old cases except one which was pending from the time of his predecessors. Apart from that case, he had only five other cases which are of 1981. I have, however, noted that he is accustomed to enjoy administrative powers and he was unhappy in his present job.

A bare reading of these remarks leave one to guess whether it was remark in appreciation of the work or was a remark to condemn the petitioner. That the petitioner disposed of all old cases except one cannot be a remark adverse to him. Similarly, if only 5 cases remained pending with him after disposal of old cases, the same cannot be accepted as a remark adverse to his work or conduct. This part of the remark speaks, if at all, of the fact that the petitioner put hard labour and disposed of old pending cases, It is difficult to find any thing adverse in this comment. A person who has taken pains to dispose of old pending cases cannot be normally accepted as a "dead-wood" needing compulsory retirement. The second part of the remark does not relate to his work and conduct but deals with his state of mind. The remark is in fact natural. A Super Time Scale I.A.S. Officer is a Senior Officer having worked in all administrative capacities and would naturally be accustomed to enjoy administrative powers. This is, however, not peculiar to the petitioner alone as almost all officers of the category can be said to have become accustomed to enjoy administrative powers. His becoming unhappy with his present job will be the natural consequence as almost every I.A.S. Officer of his grade would feel (sic) the job where he enjoys no administrative powers. This report, therefore, cannot be accepted as adverse to the petitioner. Indeed, it does not relate to the petitioner's work or conduct nor does it indicate that the petitioner's efficiency or utility in the work assigned to him in any way diminished.

The report for 1982-83 may also be noticed. This report read as under:-

He was only nominally under the Vigilance Commissioner for administrative purpose.

As to his general behaviour, I may say that he is one of those officers who always remain unsatisfied and are prone to make complaints regarding various facilities being denied to them.

These remarks are nothing but an honest commentary about the petitioner placed in adverse circumstances. As a Commissioner for Departmental Enquiries the petitioner was not enjoying all those facilities which he had enjoyed as a regular I.A.S. Officer and was unsatisfied about it. This again is not an adverse commentary on the work, conduct or efficiency of the petitioner but is a commentary against the state and the unfair deals which it had given to the petitioner and others like him working in ex-cadre post. While there can be no objection to a senior working in ex-cadre post it is certainly objectionable to deny

him facilities which he is entitled to enjoy otherwise. A complaint against the unfair deal given to such an officer by the State if treated to the adverse comment, on his work, conduct or efficiency would perpetuate injustice and encourage victimization of responsible officers. This is not the purpose of writing adverse confidential reports. This report, therefore, is not adverse and cannot be accepted as sufficient to treat the petitioner as a "dead-wood" needing compulsory retirement.

We may now consider the law on the subject. Admittedly, the petitioner has been retired compulsorily in public interest under Rule 16(3) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958. The rule is analogous to Rule 56-J Fundamental Rules and has been interpreted by the Supreme Court in *State of Uttar Pradesh Vs. Chandra Mohan Nigam and Others*, . According to the Supreme Court this Rule being a rigorous Rule vis-a-vis a Government servant not himself willing to retire has to be invoked in a fair and reasonable manner. It was the view of the Supreme Court that two safeguards are available to the petitioner subjected to this Rule viz., (1) the procedural safeguard that is prescribed by various instructions viz. screening by the Review Committee and (2) consideration in a fair and reasonable manner. The Supreme Court was also of the view that in cases where an order of compulsory retirement is challenged as arbitrary or mala fide it is for the Government to rebut such plea to satisfy the Courts by voluntarily producing such documents as will be a complete answer to the plea. This law is the same as applicable to the Government servants in other categories. It may therefore, be taken to be the settled law that the power to retire a Government servant compulsorily in public interest in terms of Service Rules is absolute provided the competent authority forms a bona fide opinion in the manner prescribed that it was necessary to pass such an order in public interest. It is also settled that if such a decision is based on collateral grounds or is otherwise arbitrary or mala fide the Court should interfere with the same by issuing an appropriate writ for the purpose. *J.D. Srivastava Vs. State of M.P. and Others*, . It is also settled that such a power is exercised only in public interest. In *Swami Saran Saksena Vs. State of Uttar Pradesh*, , the Supreme Court considered this expression and held that a perusal of personal file and character roll should normally lead one to the conclusion that continuance of Government servant was not in public interest. In *Union of India vs. M.E. Reddy* (AIR 1980 SC (sic) was the view of the Supreme Court that, "it is not an entry here (sic) entry there which has to be taken into consideration by the Government but the overall picture of the officer during the long years of service that he puts in from the point of achieving higher standard of efficiency and dedication so as to be retained even after the officer has put in (sic) requisite number of years of service." In *B.B.L. Agarwal vs. High Court* (AIR 1981 SC (sic)) the Supreme Court further clarified the law by holding that while it is desirable to make overall assessment of the Government servant record more than ordinary value should be attached to the confidential reports pertaining to the years immediately preceding such consideration Reliance on old and State confidential reports was

held unjustified. This view was further reiterated in *D. Ramaswami Vs. State of Tamil Nadu*, and *J.D. Shrivastava vs. State of M.P.* (AIR 1981 SC 630). In *J.D. Shrivastava case* (supra) the Supreme Court observed that, "it would be an act bordering on perversity to dig out old files to find out some material to make an order against an officer." In this case the Supreme Court confined its scrutiny to (he reports made in respect of the appellant for about 10 years prior to date the action was taken against him to retire him compulsorily. This appears to be the view of this Court also as would be clear from its judgment in *Laxminarain vs. State of M.P.* (1982 J.L.J. 37) and *V.S. (sic) vs. State of M.P.* (M.P. No. 2159 of 84, decided on 23-1-1985) and *Prem Nath Mishra vs. State of M.P.* (M.P. No. 2824, decided on 8-1-1985). In *Chandra Mohan Nigam's* (supra) where the Supreme Court considered the Rule in question the view of the Supreme Court was that. "Rule 16(3) is a constant reminder to the sleeper, the sluggish and the inefficient, not to speak of those who may be dishonest or unscrupulous by reputation beyond redemption. "The words in italics indicate the stage to which a sleeper, the sluggish, inefficient or dishonest Government servant should have reached.

In *D. Ramaswami's* case (supra) the Supreme Court was considering the question whether adverse entries prior to the promotion of the Government servant could be relied upon to subsequently order his compulsory retirement and the answer was a emphatic no. According to the Supreme Court facts should show the inaptitude or inefficiency of the Government servant after his promotion so that the decision to compulsorily retire him should be sustained. This view has been followed in *J.S. Shrivastava's* case (supra). Even in an earlier decision of in *The Regional Manager and Another Vs. Pawan Kumar Dubey*, the view taken by the Supreme Court was that subsequent promotion of the Government Servant washes off the earlier adverse entries so is the view taken in *A.S. Ananthasubramanian vs. State of Kerala* (1978 (1) S.L.R. 72) and *M.M. Valand vs. State of Gujarat* (1978 (1) S.L.R. 489). Not only the promotion but even the permission to cross Efficiency Bar has been held sufficient to wash off the earlier adverse entries, *The State of Punjab Vs. Dewan Chuni Lal*, and *Swami Saran Saxena Vs. State of Uttar Pradesh*, . Clearly, therefore, the law is that if a Government servant has been promoted in spite of some adverse entries in his service record no value whatsoever can be attached to those adverse entries to deny him further promotion and these entries cannot be called in aid to justify the order of his compulsory retirement.

We may now consider the facts of the case in the context of the aforesaid law. Such consideration clearly brings out the following 3 glaring illegalities in the procedure adopted by the respondents in passing the impugned order and in the order itself, viz. (1) the Review Committee which according to the instructions issued by the Central Government to work out Rule 16, does not seem to have applied its mind and has not recommended petitioner's compulsory retirement. (2) The State Government has placed reliance on old and state adverse confidential reports with a view to justify the impugned order and (1) the Central

Government did not apply its mind to consider whether reports subsequent to the petitioner's promotion in the Super Time Scale were in any way adverse and sufficient to justify the order of compulsory retirement. In Chandra Mohan's case (supra) the Supreme Court upheld the rule even if it was widely worded and provided no guideline for exercise of powers only because the Central Government has issued necessary instructions to all the State Governments channelizing the exercise of the said power. From para 4 of the return of the Central Government, it is clear that such instructions still exist. According to these instructions, the cases of all officers coming within the purview of the rule have to be reviewed by the Review Committee presided over by the Chief Secretary of the State in order to adjudge their fitness or otherwise for further retention in service. Case of an officer who is a member of the Review Committee is required to be reviewed by the Chief Minister alone or in consultation with the Minister concerned. This review is necessary to constitutionalize the Rules and to make it free from the potential for mischief which the Supreme Court stated in Baldev Raj Chadha Vs. Union of India (UOI) and Others, . Though in the return of the respondent Central Government it is stated that Review Committee was set up by the Government of Madhya Pradesh and it recommended the petitioner's retirement, there is no such averment or statement in the return of the State Government. The State Government's return contains a reference to the Joint Screening Committee's meeting held on 19-4-1980 but the said Committee is not the Committee concerned with the compulsory retirement. The said Committee was concerned with the promotion of the petitioner to the Super Time Scale. The minutes of the so-called Review Committee has not been produced as it should have been produced for perusal of the Court. In Haldev Raj's case (supra) the Supreme Court has placed the burden on the respondent to disclose the material on which its decision is founded so that the Court is satisfied that the order is not bad for want of 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. Clearly, therefore, the procedural safeguard intended to ensure fair and reasonable exercise of power conferred on the respondents by the Rules have not been followed in the instant case. This by itself would be sufficient to set aside the impugned order in view of the Supreme Court's decision in Chandra Mohan Nigam's case (supra).

It is equally clear that the decision of the respondent State Government is based on old and (sic) entries in the service record of the petitioner which has lost all efficacy and force because of his subsequent promotion. From the facts stated earlier, it is clear that the petitioner's last promotion was given to him on 1-7-1980. Any thing prior to this period should not have been taken seriously. Then there is nothing against the petitioner after 1-10-1976 when he was appointed to the Selection Grade. Entry prior to 1974 would be considered state in view of the decision of the Supreme Court in J.D. Shrivastava's case (supra) and could not form the basis of petitioner's retirement. Between 1975 and the

date of retirement, the petitioner has been promoted twice i.e. in Selection Grade on 1-10-1976 and Super Time Scale on 1-7-1980. Nothing adverse in the petitioner's record before his promotion in 1976 could be considered against him having lost its efficacy, meaning thereby that adverse confidential report for 1974-75 (R-17) could not be considered as sufficient to form the opinion of public interest. Entries after his promotion on 1-7-1980 have been scrutinized by this Court earlier and found not adverse to the petitioner. Under the circumstances, the last 10 years' record of the petitioner does not justify a bona fide conclusion to compulsorily retire him in public interest. Reliance on old and state entries in the service record of the petitioner is nothing but, "an act bordering on perversity to dig out old files to find out some material to make an order against the Officer" which has been condemned by the Supreme Court in J.D. Shrivastava's case (supra).

We may also examine the validity of the impugned order on the basis of justification shown by the respondent Central Government. The claim of the respondent Central Government that, matter is solely for the satisfaction of the Central Government (para 4) should not detain us long. It is too late in the day now to claim such an enviable position of deciding the fate of the Government servant without subjecting themselves to the (sic) of this Court. The position of law has been stated by the Supreme Court, in Baldev Raj's case (supra) and hence they are bound to disclose the material so that this court may be satisfied that the order is not bad in any manner and is sufficient to sustain (the grounds of public interest justifying the forced retirement. In para 17 of their return the Central Government has denied that the petitioner was retired from the service on the basis of adverse remarks recorded in his confidential reports before his promotion to the Super Time Scale of the I.A.S. meaning thereby that they have only considered the petitioner's record after his aforesaid promotion. The two reports in the year 1981-82 and 1982-83 which are said to be adverse have noticed and commented upon earlier. It cannot be accepted as the matter of law that every report communicated to a Government servant should be treated as adverse sufficient to justify a conclusion against the Government servant. Indeed, these reports would be the material which the competent authority will be required to consider in order to arrive at its conclusions. There is nothing on record to indicate that any one either in the State Government or in the Central Government applied its mind to these reports and appreciated the same in proper perspective. The reports do not relate to the work, conduct or efficiency of the petitioner. The report for the year 1981-82 on the contrary, indicates that the petitioner has been able to dispose of old pending cases. In case these reports had been considered by the competent authority in a fair and reasonable manner they could not have been held to be adverse. In such a situation the respondent Central Government acted mechanically on the communication of the respondent State Government and passed the impugned order little realizing that the Rule, fix the primary respondent State Government is only limited to its being consulted. Clearly, therefore, the impugned order has been passed ignoring

the true legal position and acting on material which is wholly irrelevant.

The aforesaid conclusions are sufficient to hold that the impugned order is not only arbitrary but also violative of Rule 16(3) of All India Services (Death-cum-Retirement Benefits) Rules, 1958. In spite of it, an objection raised by the respondent State Government about the existence of an alternative efficacious remedy may be examined. It is submitted that Rule 25(1) of All Indian Services (Discipline and Appeal) Rules, 1969 empower the petitioner to submit a memorial to the President, which he can do even now. A similar objection was raised in *V. Vellaswamy Vs. Inspector General of Police, Tamil Nadu, Madras and Another*, and was rejected by the Supreme Court. This remedy of representation to the President is not a remedy which should be considered efficacious enough as to deny access to the petitioner to this High Court. The submission must, therefore, be rejected.

As a result of the discussion aforesaid, the petition succeeds and is allowed. The impugned order of the petitioner's compulsory retirement dated 9-1-1984 (Annexure P-1) is quashed. As a necessary consequence the petitioner would be deemed to be continuing as a member of I.A.S. in Super Time Scale borne in the State Cadre of Madhya Pradesh and entitled to all benefits including the benefits of salary and etc. on the assumption that he had not been retired. The petitioner shall also be entitled to the costs of the petition which shall be shared equally between the respondents 1 and 2. Counsel's fee Rs. 500/-. The outstanding amount of security deposit, if any, shall be refunded to the petitioner.