

(2006) 05 DEL CK 0110
In the Delhi High Court
Case No : WP (C) No. 12 of 1993

Shri B.S. Yaduvanshi

APPELLANT

Vs

National Seeds Corporation Ltd.

RESPONDENT

Date of Decision : 01-05-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 311
Fundamental Rules — Rule 56

Citation : (2006) 89 DRJ 342 : (2007) 1 SLJ 332

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : S.K. Jain, for the Appellant; Sudhir Kulshreshta, for the Respondent

Final Decision : Dismissed

Judgement

S.Ravindra Bhat, J.—The writ petitioner in these proceedings under Article 226, questions an order dated 3.4.1992 compulsorily retiring him from the services of the first respondent National Seeds Corporation Ltd. (hereafter called "the Corporation").

2. The undisputed facts of this case are that the petitioner joined the corporation as Assistant (Accounts) on 19.11.1966. He was promoted as accountant in November 1969; later he was promoted to the post of Accounts officer in January 1978. He claims to have been efficient and diligent in the performance of his duties. Whilst in service, he was permitted to cross the Efficiency Bar in the year 1988.

3. The corporation follows the Central Government pattern of staffing and service conditions. By the order dated 3.4.1992, the Review committee, pursuant to an order dated 3.4.1992, the respondent in exercise of powers under Rule 56 (j) (i) of the Fundamental Rules as applicable to employees of the corporation, retired the petitioner with immediate effect. The impugned order reads as follows:

OFFICE ORDER No. 67

WHEREAS the Chairperson-cum-Managing Director, National Seeds Corporation Limited is of the opinion that it is in the public interest to do so; NOW Therefore, in exercise of the powers conferred by Clause (j) (i) of the Rule 56 of the Fundamental Rules as made applicable to the employees of this Corporation, the Chairperson-cum-Managing Director hereby retires Shri B.S. Yaduvanshi, Accounts Officer, NSC, Hqrs. With immediate effect, he having already attained the age of 50 years on 02.04.1992. The Chairperson-cum- Managing Director also directs that Shri B.S. Yaduvanshi shall be paid a sum equivalent to the amount of his pay plus allowances for a period of three months calculated at the same rate at which he was drawing then immediately before his retirement.

4. The petitioner questions the impugned order as arbitrary and illegal. It is alleged that as per the guidelines formulated on 5.1.1978, by the Central government, to determine who has to be compulsorily retired in exercise of power under FR 56(j), the parameters prescribed were that public servants whose integrity is doubtful or those found to be ineffective and inefficient, only could be retired. The guidelines have also stipulated that no employee should be retired on grounds of ineffectiveness if during the preceding five years he was promoted to higher posts and his services have been found to be satisfactory. In any case, the entire service records have to be considered.

5. The petitioner also alleges that the guidelines required that compulsory retirement ought not to be taken recourse to, as a measure of reducing surplus staff. It is alleged that the petitioner did not fall within the description of one found to be inefficient. He was promoted to officiate as Accounts Officer over the claims of other Senior Officers. He had also been allowed to cross Efficiency Bar and Therefore, resort to compulsory retirement was unfair and arbitrary.

6. It is also alleged that the review committee which considered the issue, acted in a mechanical manner without proper application of mind.

7. The respondent in its return, has denied that the impugned order is arbitrary or illegal. It is stated that the petitioner's service records were reviewed, as a result of which it was decided not to continue with his service, in public interest. The respondent has stated that the petitioner had been communicated with adverse remarks, and that his service records were not of such brilliance or merit, as to conclude that services ought to be continued. He had a poor record, and had been communicated with adverse remarks. His claim to be an official of merit, has been disputed.

8. It has also been averred in the counter affidavit that the determination of the respondent not to continue with the petitioner's services is not punitive in nature, and does not result in adverse civil consequences.

9. Mr. S.K. Jain, learned counsel, submitted that the petitioner had a consistently good record, and was even granted selection grade. It was contended that the guidelines of the government, as applicable to the respondent bound it to take into account the most recent ACRs and the performance of the petitioner. He had

always been a merited official, and that during his career, the respondent had found him to be exceptional to the extent that he was given officiating charge over the claims of his seniors.

10. It was submitted that the guidelines laid down for compulsory retirement have not been followed in as much as (i) petitioner's integrity is not doubtful, (ii) petitioner is not found to be ineffective and he is not found to be unfit or incompetent to continue in the post of Accounts officer, which is had been holding since 1978 i.e. for the last 14 years, (iii) assuming that he was not found fit to continue in his present post, his fitness to continue in the lower post i.e. of an account had not been considered, (iv) petitioner had been promoted to the said post 14 years back (v) further, within 5 years of his promotion to the said post, his service had not been found unsatisfactory, (vi) the entire record of the officer, should be considered at the time of review. The entire service record of the petitioner shows good and meritorious service. The two adverse entries do not show any inefficiency ,ineffectiveness or unfitness for the post held by him

11. Counsel relied upon the judgments reported as J. D. Srivastav V. State of MP 1984 II.C 337 ; S. Ramachandra Raju V. State of Orissa 1994 (69) FLR 833; Union of India and Ors. V. R.C. Mishra : (2003)9SCC217 Ram Iqbal Sharma V. State of Bihar and Anr. 1990 L I.C. 1188 and Swami Saran Saksena V. State of UP 1980 L I.C. 219 . It was argued that the respondents were bound to consider all the records fairly, and also take into account the fact as to whether the petitioner could be continued in another post. Inasmuch as the respondents did not see any of these factors, but merely used the opportunity to ease out the petitioner, the impugned order was vitiated. It was also arbitrary.

12. Mr. Sudhir Kulshreshta, counsel for the respondent on the other hand submitted that in the present case no malafides are attributed. The Review Committee consisting of high officials i.e. Chairperson-cum-Managing director Smt. Padma Ramachandran and the General Manager (Finance) recommended in its meeting held on 27.12.1991 after going through the character rolls and related papers as well as instructions of the Central Government felt that he is not fit to be retained in service for the reasons given in the recommendations. It is on this recommendations, the impugned order of compulsory retirement was been passed by the competent authority, which is based on its subjective satisfaction. It is well settled legal position that the competent authority/ government/employer empowered and would be entitled to compulsorily retired a government employee or servant in public interest to weed out the inefficient, corrupt, the dishonest, or dead wood from government services. But the entire service record including the latest confidential reports have to be considered before taking such decisions. It is submitted that the impugned order is in accordance with the settled legal position is not available for interference by this Court.

13. It was urged that the petitioner was promoted in routine firstly on the post of Accountant in November 1969 and this promotion was purely based on inter-se-

seniority in the grade of Assistant. The next and the second promotion of the petitioner was also in routine and purely on the basis of inter-se seniority on the grade of Accounts Officer in February 1978 and this promotion was also purely on the basis of inter-se seniority of the grade of Accountant. Both these promotions were routine promotions and not based on selection. During the period of the year 1968 and 1971, while the petitioner was on the grade of Accountant, he was awarded the following adverse entries by the Deputy Chief Accountant Officer:

The accountant is professionally weak and needs much improvement and also has been delaying the submission of returns etc. and should put in hard work.

The entry was communicated, but accepted. It shows that the performance of the petitioner was unsatisfactory. Counsel disputes the petitioner's contention that he was transferred to Regional Office, Jaipur, Solan, Pune, Patna, Agra for his efficiency, hard work and ability and capability are wrong. These transfers were made in the exigency of service.

14. Counsel submitted that adverse remarks were communicated to the petitioner in the year 1985, and his representation was rejected by the competent authority keeping in view the comments of the General manager (Finance). No appeal against the decision was preferred. It was also contended that for the work for the year 1989, the petitioner was again communicated adverse entry, by memo dated 10.09.1990 and the representation was made against this entry was rejected. It was urged that the petitioner was scheduled to cross the efficiency bar but he was allowed to cross the efficiency bar only in the year 1988 on 13.06.1988 with effect from 01.02.1987. Counsel submitted that it is well settled that withholding of the efficiency bar and the integrity certificate for some years is sufficient material for pre-mature retirement. The character roll from 1982 onwards were as follows:

- (1) 1982 - Average
- (2) 1983 - Very poor,
- (4) 1984 - good,
- (5) 1985 - Adverse remarks communicated Representation rejected
- (6) 1986 - Satisfactory,
- (7) 1987 - Good,
- (8) 1988 - Very Good
- (9) 1989 - Adverse remarks communicated Representation rejected.

15. Counsel submitted that all the relevant circulars and guidelines were considered by the competent authority, which concluded that the petitioner's services were not required to be continued, in public interest, on an overall assessment of the records.

16. The proceedings of the review committee, held on 27-12-1991, inter alia, read as follows:

...The information for the review in respect of Shri B.S. Yaduvanshi, Accounts Officer was placed before the Review Committee as Annexure-I of the Agenda notes.

The Committee after going through the Character rolls and related papers as well as the instructions of the Govt. of India contained in Deptt. Of Personnel a) memo No. 25013/14/77-Estt(A) dated 5th January 1978 b) OM No. 25013/30/85-Estt (A) dated 7/9th August, 1985 and c) OM No. 25013/38/85-Estt (A) dated 7th March 1986 reviewed the case of Shri B.S. Yaduvanshi. The Committee felt that he is not fit to be retained in service and he should be retired as per Rule 56(j) in the public interest because of the following:

- i. He is unable to be current in his work.
- ii. He lacks initiative. iii. He lacks professional competence.

17. The Supreme Court has consistently held that the foundation of every order or decision to invoke the power to retire an employee prematurely is public interest. A three-Judge Bench of the Court, in Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, : laid down five principles, to be considered in judicial review, while determining validity of orders of compulsory retirement .Those principles have been followed, in later decisions. The judgment and formulation of law was affirmed, by another three-Judge Bench of the Supreme Court, in Posts and Telegraphs Board and others Vs. C.S.N. Murthy, In K. Kandaswamy Vs. Union of India, , the Court, after reiterating the law laid down in the previous judgments, also added that the opinion (to issue an order of compulsory retirement) should be based on materials on record; or else, the order would amount to arbitrary or colourable exercise of power. It was also held that the decision to compulsorily retire an employee can, Therefore, be challenged on the ground that requisite opinion was based on no evidence or had not been formed on collateral grounds or that it was arbitrary. In M.S. Bindra Vs. Union of India and Others, it was held as follows:

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. It was further held that:

13. While viewing this case from the next angle for judicial scrutiny, i.e., want of evidence or material to reach such a conclusion, we may add that want of any material is almost equivalent to the next situation that from the available materials, no reasonable man would reach such a conclusion.

18. In *State of Gujarat Vs. Umedbhai M. Patel*, the Supreme Court re-stated the law on the point as follows:

11. The law relating to compulsory retirement has now crystallised into definite principles, which could be broadly summarised thus:

(i) Whenever 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 was given a promotion despite adverse entries made in the confidential record, that is a fact in favor of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure.

19. To determine whether a public servant has outlived his utility and is to be compulsorily retired in public interest for maintaining an efficient administration, an objective view of overall performance of that government servant has to be taken while deciding, (after he has attained the age of 50 years), either to retain him further in service or to dispense with his services in public interest. The scope of judicial review is limited, to satisfying that the parameters indicated in *Baikuntnath Das's* case and *Umedbhai Patel's* case (*supra*) are satisfied. The court has to, wherever occasion warrants, consider the original records and see that the review committee, or the competent authority took note of the relevant records, and materials, while concluding that the public servant outlived his utility.

20. The facts of this case show that the petitioner was employed in 1966; he was subsequently promoted in 1969 and later, in 1978. Though the petitioner asserted that the promotions were due to his merit, this has been refuted; the respondents have stated that the promotions were based on seniority. The petitioner's assertion that he was meritorious too has been denied. The respondents have shown that his record was not consistent, and that on occasions, adverse remarks had been communicated, the latest being in 1990. It

is Therefore, not possible to hold that the impugned order was not based on any material, or was issued overlooking material facts. The reliance placed on the grant of selection grade, in my considered opinion, cannot be a ground to invalidate the impugned order, since that was not granted in time, as per the allegations of the respondent; the selection grade itself was not granted on consideration of merit.

21. The review committee which had to decide the suitability of the petitioner took into consideration all relevant facts, including the notifications and circulars of the Central Government, relied upon by the petitioner, and concluded that it was not in public interest to continue his services.

22. The law on the subject, as discussed above, is well settled. An order of compulsory retirement, is not punitive, and should be based on an objective consideration of the entire records, of course with emphasis on the recent entries in the annual confidential reports. In this case, the petitioner's assertions that the determination was without application of mind, are, to my mind, unfounded. The last nine years' ACRs showed four average/ below average ratings, and two adverse remarks. The petitioner's records were good in respect of two years, and he had one "very good" rating. These, as well as the overall career profile were considered by the committee, which decided that public interest would be sub-served in retiring the petitioner upon his attaining 50 years of age. Although the determination led to hardship, that subjective circumstance cannot outweigh the objective consideration of the employer, who exercised the power in a bona fide manner. I am Therefore, of the opinion that the petitioner's allegations that the impugned order is illegal or arbitrary, are without basis.

23. In view of the foregoing reasons, the petition has to fail. It is accordingly dismissed. Rule discharged. No costs.