
(2014) 04 RAJ CK 0079
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1997/2001

Siddarth Kumar Jain

APPELLANT

Vs

High Court of Judicature For Rajasthan

RESPONDENT

Date of Decision : 18-04-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2014) 3 WLN 383

Hon'ble Judges : J.K. Ranka, J;Ajay Rastogi, J

Bench : Division Bench

Advocate : R.C. Joshi, Advocate for the Appellant; N.K. Maloo, Sr. Advocate and Bharti Trivedi, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—By way of instant writ petition, the petitioner has impugned the order of the Govt. of Rajasthan dt. 09.11.2000 whereby in pursuance of Rule 53(1) of Raj. Civil Service Pension Rules, 1996 (Rules 1996) he was compulsorily retired on recommendation of the High Court. The facts & circumstances giving rise to this case are that the petitioner was selected in Rajasthan Judicial Service and appointed as Munsif Cum Judicial Magistrate vide order dt. 05.06.1976 and on completion of period of probation was confirmed vide order dt. 09.06.1978 (Ann.2). The candidature of the petitioner was considered for promotion to the post of ACJM by the Full Court in its meeting dt. 31.07.1987, 27.05.1998 & 28.07.1989 in which he was not found fit because of his adverse service record. However, promoted to the post of ACJM vide order dt. 26.05.1990 and was further promoted in the RHJS cadre vide order dt. 26.05.1993.

2. While the petitioner was working as an Officer of Rajasthan Higher Judicial Service, a Committee of four Hon"ble Judges of this Court was constituted by Hon"ble the Chief Justice to consider the cases of such of the Judicial Officers of the State of Rajasthan for compulsory retirement obviously who qualified pre conditions contemplated under Rule 53(1) of Rules 1996 and the committee in its

meeting held on 28/29.08.2000 considered the cases of good number of Judicial Officers including the petitioner and after examining overall assessment of service records, personal and other files of the officer arrived at the conclusion that the petitioner became liability to the judicial service and public interest warrants compulsory retirement of the officer and accordingly recommended for his compulsory retirement which was placed before the Full Court and after due deliberation and discussions and perusing the overall service record/ACRs it was resolved to accept the report of the Committee and recommended petitioner's compulsory retirement and consequently vide Govt. Order dt. 09.11.2000, the petitioner was compulsorily retired under Rule 53(1) of Rules 1996.

3. The main thrust of counsel for the petitioner is that the petitioner was under suspension at the relevant point of time when he was compulsorily retired facing departmental enquiry under Rule 16 of CCA Rules, 1958 and keeping the departmental enquiry pending, a short cut method was adopted by the respondent in taking decision to compulsory retire the petitioner invoking Rule 53(1) of the Rules, 1996 and the action was wholly arbitrary and in violation of Article 14 of the Constitution of India and further submits that in view of Note-9 appended to Rule 53(1), an incumbent who is under suspension is supposed to be served a notice of three months and waiver of notice of three months by making payment of salary in lieu thereof is not permissible under the Scheme of Rules and the decision taken by the respondent in the case of petitioner of making payment of salary in lieu of notice of three months invoking Rule 53(1) in disregard of Note 9 appended thereto is per se bad in law and the order of compulsory retirement deserves to be quashed.

4. Counsel submits that if he would have been served with notice of three months as regard decision being taken for compulsory retirement under Sec. 53(1) of the Rules, 1996, he has an opportunity to avail voluntary retirement from service in place of decision of compulsory retirement.

5. Counsel for petitioner further submits that he was promoted as C.J.M. Vide order dt. 09.01.1992 on the basis of merit and the adverse record prior to January, 1992 stands washed away and could not be used to his detriment for compulsory retirement invoking Rule 53(1) of the Rules, 1996.

6. Petitioner's further grievance is that total record of the incumbent has not been looked into while taking decision as to whether he has become a dead wood or loses its utility to continue in service and that apart from the minutes of the meeting of the committee constituted by Hon'ble Chief Justice who examined the record of the petitioner, the decision of compulsory retirement based on alleged subjective satisfaction is not legally sustainable & deserves to be quashed.

7. Counsel for respondent has filed reply and submits that the Committee examined the overall service record of the petitioner along with other officers and after due application of mind and taking note of the service record and other files arrived at the conclusion that the officer proved to be a liability in the judicial

service and the public interest warrant compulsory retirement and that was examined by the Full Court and after acceptance of the committee's report, order was passed by the State Govt. under Rule 53(1) of Rules 1996 of his compulsory retirement.

8. Counsel further submits that the order of compulsory retirement is not a punishment and implies no stigma nor any suggestion misbehavior and principles of natural justice have no place in the context of order of compulsory retirement and scope of judicial review/scrutiny of order of compulsory retirement is permissible only if order is arbitrary or malafide or is based on no evidence which the petitioner has not been able to make out and in absence whereof the order of compulsory retirement impugned in the instant petition based on subjective satisfaction whereof does not require interference.

9. We have considered the submissions made by the parties and with their assistance examined the material on record.

10. At the very outset, we would like to quote Section 53(1) Rules 1996 under which the petitioner has been compulsorily retired and extract of the rule which is relevant for the purpose reads ad-infra.

(1) "At any time, after a Government servant has completed 15 years qualifying service or has attained the age of 50 years, whichever is earlier, the appointing authority, upon having been satisfied that the concerned Government servant has on account of his indolence or doubtful integrity or incompetence to discharge official duties or inefficiency in due performance of official duties, has lost his utility, may require the concerned Government servant to retire in public interest after following the procedure laid down by the Government in Department of Personnel/Administrative Reforms Department. In case of such retirement, the Government servant shall be entitled to retiring pension.

(2) In such a case, the appointing authority shall give a notice in writing to the Government at least three months before the date on which he is required to retire in the public interest or three months" pay and allowances in lieu of retiring pension".

11. It would be seen from Rule 53(1) which gives right to the appropriate authority to retire any Government servant who have completed 15 years of qualifying service or has attained the age of 50 years whichever is earlier after recording subjective satisfaction of the authority forming opinion that it is in the public interest to compulsorily retire such Government servant and sub Clause-2 of Rule 53(1) mandatorily caste obligation on the appointing authority to give notice in writing to a Government servant at least three months before the date on which he is required to retire in public interest or three months" pay and allowances in lieu of such notice.

12. Before advertng to the question whether the compulsorily retirement order suffers from any legal infirmity, we would consider it appropriate to refer to the

report of the Committee constituted of four Hon''ble Judges who examined entire service record of the petitioner in its meeting held on 28/29.08.2000. The report reads ad-infra:

"10. (106). Shri Sidharth Kumar Jain

Shri S.K. Jain was born on 28.04.1949 and joined Judicial Service on 12.06.1976.

In 1984, he was given adverse entry and he was advised to improve his behavior. His representation against the said adverse entry was rejected. In 1985, it was recorded in his ACR that he did not have good past, therefore, he should be carefully watched. In 1991, he was advised to improve his disposal and the District Judge was asked to have a watch on him. He was found below average officer. His representation against the said adverse entry was rejected. In 1994, his integrity was found doubtful. Hon''ble P.P. Naolekar, J. being Inspecting Judge has mentioned in the inspection note that it is not safer that the officer may be allowed to be continued with NDPS cases, therefore, by the order of the Hon''ble Chief Justice, the learned District and Sessions Judge, Pratapgarh was directed to transfer all the cases under NDPS cases pending in the Court of Shri S.K. Jain to the District Judge himself. In the second part of 1994, it was remarked that there are complaints against him that he was close to some member of the bar and his integrity was found doubtful. His representation against the said adverse entry was rejected. In 1995 and 1996, the Hon''ble Inspecting Judge has remarked that his integrity above Board cannot be certified.

He was not found fit for promotion to the post of ACJM thrice in the Full Court Meetings held on 31.07.1987, 27.05.1988 and 28.07.1989. He also remained superseded from 1992 till 26.05.1993 when he was promoted in RHJS as ADJ. He is also not given the posting as independent DJ.

In an enquiry in 1977, he was warned to be careful in future.

In 1984, in an enquiry under Rule 16 of the CC&A Rules, he was censured. Censure was imposed as the officer had tendered unconditional apology.

At present, he is under suspension w.e.f. 15.02.2000 and he is facing enquiry under Rule 16 of the CC&A Rules for the acts done by him while he was posted as ADJ, Baran.

In view of overall assessment of his service records, including personal or other files, the officer has proved to be a liability to the Judicial Services and public interest warrants compulsory retirement of the aforesaid officer immediately.

The Committee recommends accordingly. It is further recommended that the officer may be given bank draft of the amount equivalent to three months'' pay and allowances in lieu of the notice period along with the order of compulsory retirement.

The Committee also recommends that the enquiry, if any, initiated against the officer either under Rule 16 or 17 of the CC&A Rules may be dropped".

13. It is true that the order of the compulsory retirement is not punishment, it implies no stigma nor any suggestion misbehavior and is based on subjective satisfaction of the authority and the Apex Court has laid down and considered this principle which has consistently been followed that the order is based on subjective satisfaction of the authority, at the same time, the authority is under obligation to consider the entire record of service before taking decision of compulsory retirement of course attaching more importance of service record during later years but it goes without saying that as regards the honesty and integrity of officer is concerned, even a solitary instance could be considered to be a sufficient ground and there cannot be any compromise as regard honesty and integrity of a Judicial Officer. The principles which emerge and laid down for consideration for examining the validity of order of compulsory retirement have been considered in the case of Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, laying down certain criteria for the Courts, to be kept in mind while examining the order of compulsory retirement and that include mala fides, if based on no evidence, or if arbitrary in the sense that no reasonable person would form the requisite opinion on the given material, if it is found to be a perverse order. The Court held as under:

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehavior.

(ii) The order has to be passed by the Government on forming the opinion that it is in the public interest to retire a Government servant compulsorily. The order is passed on the subjective satisfaction of the Government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or the Court would not examine the matter as an appellate Court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary- in the sense that no reasonable person would form the requisite opinion on the given material: in short, if, it is found to be a perverse order.

(iv) The Government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a Government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.

14. Similar view has been reiterated by the Apex Court in *Posts and Telegraphs Board and others Vs. C.S.N. Murthy*, and the Apex Court has observed *ad-infra*:

"There was a very limited scope of judicial review in a case of compulsory retirement and it was permissible only on the grounds of non-application of mind; *mala fides*; or want of material particulars. Power to retire compulsorily a Government servant in terms of Service Rules is absolute, provided the authority concerned forms a *bona fide* opinion that compulsory retirement is in public interest".

15. And taking note of latter decision of the Apex Court, three Judges Bench of Apex Court in *Pyare Mohan Lal Vs. State of Jharkhand and Others*, observed *ad-infra*.

"Thus, the law on the point can be summarized to the effect that an order of compulsory retirement is not a punishment and it does not imply stigma unless such order is passed to impose a punishment for a proved misconduct, as prescribed in the Statutory Rules".

16. The respondent in regard to their submission that service is not a stigmatic one, cites the decision of the Hon"ble Supreme Court in *Nawal Singh Vs. State of U.P. and Another*, which reads *ad infra*-

"The judicial service is not a service in the sense of an employment. Judges are discharging their functions while exercising the sovereign judicial power of the State. Their honesty and integrity is expected to be beyond doubt. It should be reflected in their overall reputation. Further, the nature of judicial service of persons doubtful integrity or persons who have lost their utility. If such evaluation is done by the Committee of the High Court Judges and is affirmed in the writ petition, except in very exceptional circumstances, the Supreme Court would not interfere with the same, particularly because the order of compulsory retirement is based on the subjective satisfaction of the authority. The present appeals are required to be decided on the basis of the said principles".

17. This fact cannot be ruled out that judicial service is not a service in the sense of employment and as is commonly understood Judges are discharging their functions while exercising the sovereign judicial power of the State. Their honesty and integrity is expected to be beyond doubt. It should be reflected in their overall reputation. There is no manner of doubt that the nature of judicial service is such that it cannot afford to suffer continuance in service of persons of doubtful integrity or who have lost their utility.

18. Compulsory retirement is neither dismissal nor removal and differs from both of them, in that it is not a form of punishment prescribed by the rules and involves no penal consequences, inasmuch as the person retired is entitled to retiring pension and other retiral benefits, proportionate to the period of service standing to his credit.

19. It is also settled by the consistent view of the Apex Court that the order of

compulsory retirement is not a punishment and does not have adverse consequence and, therefore, the principles of natural justice has no role to play and uncommunicated ACR can be taken into consideration and an order of compulsory retirement cannot be set aside only for the reason that such uncommunicated entries were taken into consideration. If that be so, if the incumbent has not been afforded an opportunity to represent before the same was taken into consideration for passing the order of compulsory retirement, cannot vitiate the order of compulsory retirement. However, the authority has to take into consideration the entire service record of the officer concerned but more attention to the later 5-10 years of record which would include non-communicated adverse remarks also.

20. Similar view has been taken by the Apex Court in *Rajendra Singh Verma (Dead) through L.Rs Vs. Lt. Governor of NCT of Delhi and Another*, which reads *ad-infra*:

"It is well settled by a catena of decisions of this Court that while considering the case of an officer as to whether he should be continued in service or compulsorily retired, his entire service record up to that date on which consideration is made has to be taken into account. What weight should be attached to earlier entries as compared to recent entries is a matter of evaluation, but there is no manner of doubt that consideration has to be of the entire service record. The fact that an officer, after an earlier adverse entry, was promoted does not wipe out earlier adverse entry at all. It would be wrong to contend that merely for the reason that after an earlier adverse entry an officer was promoted that by itself would preclude the authority from considering the earlier adverse entry. When the law says that the entire service record has to be taken into consideration, the earlier adverse entry, which forms a part of the service record, would also be relevant irrespective of the fact whether the officer concerned was promoted to higher position or whether he was granted certain benefits like increments etc."

21. Instant case has to be examined in the light of aforesaid decisions.

22. In the instant case, the respondent have placed for perusal the complete service record of the officer indicating the adverse/advisory remarks.

23. The record of service was considered by the committee of four Hon"ble Judges constituted by Hon"ble the Chief Justice in its meeting held on 28/29.0.2000 and while examining overall service record took note of his behavior, disposal of work, adverse remarks recorded in various years including integrity which was found to be doubtful in 1994, 1995, 1996 and thrice he was not found fit for promotion to the post of ACJM in the Full Court meeting held on 31.07.1987, 27.05.1988 and 28.07.1989 and he was also superseded from 1992 till 26.05.1993 when he was promoted in RHJS cadre as ADJ. He was also not given the independent posting as D.J. At the same time, the enquiry which was initiated in 1977, he was warned to be careful in future and in 1984 in one of the enquiry under Rule 16 of the CCA Rules, he was punished with the penalty of

censure as he tendered unconditional apology and at the time of his compulsory retirement, being under suspension w.e.f. 15.02.2000 facing departmental enquiry under Rule 16 of CCA Rules, the committee was of the view that the officer has proved to be liability to the judicial service and public interest warrants compulsory retirement and service record of the petitioner along with recommendation of the committee was placed before the Full Court and recommendation of the Committee was approved by the Full Court for his compulsory retirement and order came to be passed by the State Govt. for his compulsory retirement dt. 09.11.2000 in exercise of power conferred under Rule 53(1) of Rules 1996.

24. Upon careful consideration of the record pertaining to the decision of the Committee and approved by the Full Court, upon consideration of entries in service record (including integrity), we are in complete agreement with the view taken by the Committee and endorsed by the Full Court and the order of respondent compulsorily retirement dt. 09.11.2000 (Ann.6) is in public interest and does not require interference.

25. As regard the submission made by counsel for the petitioner that he being under suspension, he was supposed to be offered a notice of three months and the decision of the respondent in making payment of salary of three months in lieu of notice is in violation of Note-9 appended to Rule 53(1) of Rules, 1996 is wholly bereft of merit. Rule 53(2) clearly envisage that while decision being taken of compulsory retirement it is to be served by three months notice or salary in lieu thereof and if an incumbent has been served with the order of compulsory retirement along with salary of three months in lieu of notice, we do not find any error in decision being taken by respondent and it is in conformity with Rule 53(2) of Scheme of Rules and as regard Note-9 is concerned, it is suggestive by the DOP but if not followed will not nullify the impugned action of compulsory retirement under Rule 53(1) of the Rules, 1996.

26. As regard, submission of counsel for petitioner that he was promoted in the year 1992 on the basis of merit and that washed away the previous record of service, in our considered view, the very submission made is wholly without foundation for the reason that he was never promoted on the basis of merit in the year 1992 as ACJM as prayed for by him and at the same time in the light of what is being held by the Apex Court while the incumbent has been considered for compulsory retirement, a total record of service is to be looked into by the appointing authority while taking decision for his compulsory retirement and the principle of washed out theory is not applicable in the case where decision is being taken for compulsory retirement.

27. The last submission made by the counsel for petitioner is that being under suspension and facing departmental enquiry, a short cut method was adopted by the respondent, in our considered view, is wholly without substance for the reason that if an officer facing enquiry that in itself may not preclude the authority from eliminating from consideration for compulsory retirement and the

entire record of the officer being looked into that decision always taken by the authority keeping in view the principles laid down by the Apex Court which in the instant case, the petitioner is unable to justify.

28. In the instant case, the committee duly constituted by Hon''ble the Chief Justice of High Court to examine the entire service record and report of the committee was placed before the Full Court and the Full Court took decision unanimously after due deliberation and there hardly remains any chance of allegation of non application of mind and no where it has been alleged malafide in the process which was adopted by the High Court in taking decision of compulsory retirement.

29. Consequently, in our view, on the material which has come on record, we do not find any error being committed by the respondent in taking decision of retiring the petitioner compulsorily which is based on record of service and further more no stigma of any sort has been attached to the impugned order. In view of above, we do not find any cogent reason to interfere in the matter and the petition lacks merit and accordingly stands dismissed.