

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

**LPA(SWP) no. 43/2009
CMP no. 64/2009**

Date of Decision: 22.10.2010

State of J&K and Ors Vs. **Janak Singh**

Coram:

**HON'BLE MR. JUSTICE VIRENDER SINGH, JUDGE.
HON'BLE MR. JUSTICE SUNIL HALI, JUDGE.**

Appearing Counsel:

For the Petitioner(s): Mr. Sanjay Kakkar, Advocate.
For the Respondent(s) Mr. U. K. Jalali, Sr. Advocate with Ms. Shivani
Jalali, Advocate.

- i) Whether to be reported in
Press, Journal/Media : Yes
ii/ Whether to be reported in
Digest/Journal : Yes
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Per- Sunil Hali-J

For making the administration efficient, periodical review of all its officers is taken by the State Governments to weed out the in-efficient and corrupt officers from the services. This is an exercise conducted in public interest. A government servant, during his service career, is required to conduct himself honestly, do his job in accordance with rules and maintain a level of honesty and integrity to sustain his reputation. There are two modes by which the conduct of a government servant is appreciated; one is recording of Annual APR's by superior officers, which is the character roll of his service record and the other mode is his general reputation in the public at large under whose gaze he remains.

For purposes of assessing character roll of a government servant, as reflected in his APRs, the same is documented. Regarding his reputation in the eyes of general public, it is not documented but can be gathered from the circumstances. It is in this area where the role of the government servant is judged by various factors, like; (a) if there are specific complaints against his conduct, which is subject matter of enquiry in a criminal charge or by a departmental enquiry; (b) if the allegations are not specific but general in nature, which are not subject matter of any enquiry or investigation before the competent authority;

Regarding specific allegations, which are subject matter of investigation or enquiry, the outcome of such enquiry or investigation will determine the fate of such a complaint. The officer will have a right to face such an enquiry and rebut the charges before the Criminal court or the Enquiry Officer. The complaints, which are general in nature but are not subject matter of any enquiry or trial and are relatable to the general reputation of the officer, regarding his honesty, efficiency and integrity, is an area where the scope of invoking the provisions for compulsorily retiring him are required to be examined. This, in essence, is an area where the State Government can form its subjective opinion, based on material for ordering the compulsory retirement of an officer.

In exercise of its powers under Article 226 (2) of the Civil

Service Regulations, the State Government can, in public interest, retire a government servant after completion of qualifying service of 22 years or his crossing the upper age limit of 48 years.

A Committee was set up by the State Government to consider the cases of the officers and officials for pre-mature retirement, consisting of the Chief Secretary, Financial Commissioner Home, Commissioner-Secretary General Administration Department, Commissioner-Secretary Law Department, Additional Director General, CID and Commissioner of Vigilance. A decision is stated to have been taken by this Committee, which culminated in the pre-mature retirement of various government officers, which included the present respondent also. The Committee recommended the pre-mature retirement of the respondent, by recommending as under:-

“ Shri Janak Singh is an officer of Kashmir Accounts (Accounts) Service of 1984 batch and has worked as Chief Accounts Officer in a number of Government departments in civil Secretariat and outside. The officer came to the adverse notice of State Vigilance Organization during the investigation of case FIR No. 69/99 P/S VOJ pertaining to purchase of jute matting for Education Department in the year 1997-98. The officer was then posted as FA/CAO of Education Department and was member of the State Level Purchase Committee headed by Shri Ajit Kumar, IAS.

The investigations conducted have revealed that the accused including Shri Janak Singh have caused huge loss to the State exchequer on account of purchase of jute matting on exorbitant rates. To facilitate the purchase of jute matting on exorbitant rates, out of the 9 tenders received, 6 tenders were rejected on a non-existing stipulation that purchase of only Birla Make Jute matting will

be made. Out of the remaining three tenders, the lowest offer was not considered and rates were negotiated with the 2nd lowest tenderer and supply order was ultimately placed @ Rs. 55.50 per meter with supplier M/S Commercial Corporation. It also transpired that all the three competitors left in final fray belonged to one and the same party i.e. Shri Abdul Rehman Bhat Proprietor M/S Commercial Corporation Srinagar. The investigation also revealed that Shri Janak Singh, the then FA/ CAO, Education Department rubbished the objection raised by one of the SLPC member Shri A. K. Mehta stating that there is no need to doubt the reasonability of the price of the material as it has been ascertained through competition and therefore there is no need to verify it from the original manufacturer. The investigation of the case has been finalized as proved and the State Government has already accorded sanction to prosecute the officer.

In the course of a preliminary verification of another case relating to purchase of Digital Toe Aligner by Technical Education Department in the year 1997-98 taken up under the modernization programme of Industrial Training Institutes in the Country, a World Bank funded project, 16 such machines were found to have been purchased @ Rs. 1.70 lacs per unit as against Rs. 90,000.00 per unit, thereby causing loss of about Rs. 12.80 lacs to the State exchequer. The Vigilance Organization has registered a case under FIR No. 23/2005 P/S VOK and investigation has been taken in hand. Shri Janak Singh was a member of the purchase Committee in the capacity of FA/CAO Education Department at the time these purchases were approved. The purchase committee placed orders @ Rs. 1.70 lacs per unit from a Ludhiana Firm namely Vee Kay Industries whereas the manufacturer of the equipment, a Pondicherry firm, was selling it @ Rs. 90,000.00 per unit.

The general reputation of the officer as gathered from a cross section of the people is not good.

The committee recommends pre mature retirement of the officer from Government service.”

Perusal of the recommendations reveal that two FIR's have been registered against the respondent, which are subject matter of investigation before the State Vigilance Organization. The culmination of the investigation would either result in putting the accused to trial or to close the case as not proved.

In both the eventualities, it has to be seen that the conclusion of the investigation in the said two criminal cases, has to await the decision of the court. The respondent will have sufficient occasion to defend the allegations in case the matter is put to trial before the Court , which may again, result in his conviction or acquittal. This is an area where the fate of the respondent will be determined by result of trial or investigation. The State may not have any discretion in this behalf to formulate a subjective opinion at this stage. Needless to say that in case the respondent is acquitted, the complaint falls to the ground and if he is convicted, than he is liable to be dismissed from service.

Whether registration of an FIR, based upon specific complaint, can be made basis for formulation of an opinion for pre-mature retirement, is an issue which is no longer res integra. As already stated above, formulation of subjective opinion on the basis of the record of the respondent, will be a determinative factor to prematurely retire him. Registration of 2 FIRs is not part of the service record of the respondent on the basis of which opinion can be formulated by the Review Committee. These are merely allegations which are subject matter of investigation/trial and cannot become the basis for formulation of such an opinion, as rightly observed herein supra that the fate of these complaints has to be determined by the agency which is not a part of the Committee. We, accordingly,

hold that learned Single Judge was correct in rejecting the contention of the appellants in this behalf.

The second ground taken was that the reputation of the respondent gathered from general public was not good.

At the out set it may be important to mention that State has not produced the record on the basis of which the Review Committee has formulated its opinion. The report of the Committee only reveals the conclusions and not the basis on which such conclusions have been made.

As already discussed herein above, for purposes of analyzing the general reputation of the respondent, his character roll in the shape of APRs is one of the relevant considerations, which reveals the performance of the officer over a period of time as assessed by his superior officers under whose direct supervision the officer has been working. Nothing has been brought on record to suggest that there was any adverse entry against the respondent. It is pertinent to note that respondent has earned promotion in the shape of selection grade in the year 2004. The circumstance dealing with the registration of two FIRs against the respondent dates back to the year 1997-98, which is remote in point of time and could not become the basis for his pre-mature retirement. Subsequent promotion of the respondent dilutes the allegations leveled against him.

The other aspect on the basis of which the opinion could

have been formulated was that the reputation of the respondent in the general public was not good. This is an area where no documents of his service profile regarding his reputation have been maintained by his superiors. Otherwise also no specific material has been brought before the Court except for the fact that two criminal cases have been registered against the respondent. This is an area which is purely based on hearsay. We could not look for some specific material regarding the adverse reports on the general reputation claimed to have been gathered from cross section of people. Since the Review Committee, with its given texture, was not a fact finding or investigating machinery, it could not be expected to directly gather the reports. Nothing has been reflected, regarding the contents of the complaints received from the general public on the basis of which opinion has been formulated. On records therefore, there is no such report or even a mention thereof, in absence whereof the observations of the Committee as aforesaid, only appear to reflect certain loose impressions, attributable to hearsay which appears to have been at the back of their mind while recommending the pre-mature retirement of the respondent.

We are fortified in our view by a judgment of the Apex Court delivered in case titled *State of Gujarat and anr vs. Suryakant Chunilal Shah*, reported as **(1999)1 SCC, 529**, where their lordships have held as under:-

“ Service Law – Compulsory Retirement – Public interest, held, is the primary consideration – Only honest and efficient persons are to be retained in service while dishonest, corrupt and dead wood, to be dispensed with – Efficiency and honesty to be assessed on the basis of material on record, of which confidential reports are an important input – An employee with doubtful integrity cannot be considered as efficient – No tangible material found against respondent except that he was involved in two criminal cases relating to issue of bogus permits and tampering of official records – Pendency of the cases, held, in itself was not sufficient in the present case to retire respondent compulsorily though it depends upon nature of offence and circumstances of each case to judge whether involvement in a criminal case can be a ground for compulsory retirement – Further held, Review Committee exceeded its jurisdiction in doubting respondent’s integrity on the basis of pending criminal cases when there was no indication of doubtful integrity in the confidential reports – Order of compulsory retirement in the present case, held, was passed for a collateral purpose of removing respondent immediately from service and therefore it was punitive and without any public purpose”

From the aforesaid discussion, it is clearly revealed that there was no sufficient material available with the appellants in ordering the pre mature retirement of the respondent.

As already discussed above, the opinion had to be framed on the basis of the service profile of the respondent. The only material which was available was the APR’s of the respondent where no adverse entry is stated to have been recorded.

For the reasons stated above, there is no merit in this appeal, which is, accordingly, dismissed.

(SUNIL HALI) **(VIRENDER SINGH)**
Judge **Judge**

JAMMU:
22. 10. 2010
Anil Raina, Secy.