

B.P.DAS, J & S.K.MISHRA, J.

W.P.(C) NO.189 OF 2002 (Decided on 25.11.2011)

**APARUP MOHAN DAS (DEAD) & AFTER HIM
SURANDAN DAS & ORS.**

.....Petitioners.

.Vrs.

STATE OF ORISSA & ORS.

.....Opp.Parties.

CONSTITUTION OF INDIA, 1950 – ART. 311.

For Petitioner - M/s. Jagannath Patnaik, A.A.Das, R.Rath,
B.Mohanty, T.K.Patnaik, S.Das & P.K.Nayak.
For Opp.Party No.4- M/s. R.N.Acharya & B.Barik.

The petitioner- Aparup Mohan Das having died during pendency of the writ petition has been substituted by his legal heirs. The petitioner filed this writ petition being aggrieved by order No.127 dated 4.6.2002 passed by the Managing Director, North Eastern Electricity Supply Company Ltd., Balasore, opposite party no.4, in Annexure-4 compulsorily retiring him from service by invoking Clause 17(2) of the GRIDCO Officers' Service Regulations adopted by the North Eastern Electricity Supply Company of Orissa Ltd. (in short "NESCO").

2. Briefly stated the case of the petitioner is as follows:

The petitioner-Aparup Mohan Das initially joined the Energy Department of the Government of Orissa as a Junior Engineer on 19.3.1970. On being promoted to the rank of Asst. Engineer on 05.2.1972, he was deputed to work under the Orissa State Electricity Board(OSEB) and his promotion was concurred by the Orissa Public Service Commission(OPSC). While so working he was allowed to cross the Efficiency Bar with effect from 1.2.1976. and then on 19.9.1988 with effect from 1.2.1981. This was so done after verification of the annual C.C.Rs of the petitioner. In 1973 the petitioner was posted as the Sub-Divisional Officer (Elect) under the Rourkela Electrical Sub-Division. By notification dated 13.11.1991 issued by the Energy Department, the petitioner was promoted as Executive Engineer and after his services were placed under the disposal of the O.S.E.B., he was posted as Ex-Engineer(Planning-II) in the headquarters of the OSEB vide order dt.14.2.1992. In due course he was promoted to the rank of Superintending Engineer and was ultimately posted as the Superintending Engineer Commercial-D in the Corporate Office of NESCO at Balasore.

It is worthwhile to mention here that on enactment of the Orissa Electricity Reforms Act 1995, a new Corporation being Grid Corporation of Orissa Ltd.(GRIDCO) came into existence and all the assets and liabilities and the personnel of the OSEB were

transferred to the newly formed GRIDCO. Subsequently, in the year 1999 the Government after consulting the GRIDCO decided to form four new Companies for distribution of electricity in the State. On formation of four such new companies, the State Government asked all its employees on deputation to exercise option whether they are willing to continue under the newly created companies in the State of Orissa. The petitioner- Aparup Mohan Das initially opted to remain under the State Government, but on 12.7.2000 the State Government in the Energy Department vide its Notification No.8117 dated 12.7.2000 directed the petitioner to retire from Government service w.e.f. 31.3.1997. By another notification dated 19.3.1997 the Energy Department notified that the services of the petitioner will be absorbed permanently in the GRIDCO w.e.f. 1.4.1997. Thereafter the services of the petitioner were transferred to the newly formed Company, i.e. NESCO where he was working till the impugned order of compulsory retirement was passed.

3. As stated above, the grievance of the petitioner is against the order dated 4.6.2002 passed by opposite party no.4-Managing Director, NESCO compulsorily retiring him from service w.e.f. 4.6.2002 under the Regulations as indicated above. The petitioner was due to retire from service on 30.9.2004 on attaining the age of 58 years. Before the impugned order in Annexure-4 was passed, it is stated that opposite party no.4 communicated a letter dated 3.6.2002 to the petitioner inter alia intimating that during his incumbency as Superintending Engineer (Commercial-1) in the Corporate Office, his performance was found unsatisfactory. The said letter is annexed as Annexure-4 to the writ petition.

After the notice of compulsory retirement in Annexure-4 was received by him on 4.6.2002, the petitioner made a representation before the appellate authority, but the same yielded no result. Hence the writ application. In the writ application though notices were issued on 20.8.2002, the opposite parties filed their counter affidavit only today in Court. We have perused the counter affidavit filed by opposite parties 2 and 3. Pursuant to the direction of this Court, records of the proceedings of the Review Committee was produced so also the C.C.R. records of the petitioner-Aparup Mohan Das.

4. In the counter affidavit a stand has been taken that as per Clause 17(2) of the GRIDCO Officers' Service Regulations and basing upon the recommendations of the Review Committee the competent authority has taken the decision to retire the petitioner from service in the interest of the Company and to safeguard the greater interest of the public/consumers for which it is not mandatory on the part of the opposite parties to give opportunity of hearing to the petitioner to defend his case since the retirement is not inflicted by way of any punishment. In paragraph-10 of the counter affidavit, a stand has been taken that while the petitioner was serving in the capacity of Superintendent Engineer(Comm.) for certain span, his efficiency was totally adverse and not conducive to the interest of the organization as well as to the public/consumers. The opposite parties have relied upon the recommendation made by the Review Committee on 4.6.2002 in Annexure-B/2, which is reproduced herein below:-

“Review of Performance of Superintend Engineers and Executive Engineers who have completed 50 years and above.

On review of the performance of Sr. Executives of NESCO, it is observed that the following Officers need to be given compulsory retirement for the well being of NESCO.

1. Er. Bata Krushna Mohanty S.E. (Elect.)
2. Er. Sahnkar Krushna Dey, S.E. (Elect.)
3. Er. Aparup Mohan Das, S.E. (Elect.)
4. Er. Chakradhara Behera, S.E. (Elect)
5. Er. S.N. Sahoo (Elect.), Manager (Revenue), Jajpur Road Electrical Division.

All the above are more than 55 years of age. They have been found to be ineffective and are of doubtful integrity. In view of this, it is proposed that they may be given compulsory retirement as their continuation will be detrimental to NESCO.”

The aforesaid shows that the Committee found the petitioner ineffective and was of doubtful integrity.

In the character roll of the petitioner for the year 2000-2001, annexed under Annexure-E/2 series, the reporting authority in Col.6 in regard to integrity has indicated “Nothing adverse has come to my notice”.

5. In this regard, our attention was drawn to Clause 17(2) of the GRIDCO Officers Service Regulations, which is extracted herein below:-

“17(2) Any Officer may at the discretion of the committee of the Board, be retired from the Company's service after he has attained 50 years by giving him three months notice in writing or emolument's in lieu thereof. In such an event the Officer shall be entitled to the applicable terminal benefits for the period of service rendered.”

According to learned counsel for the petitioner, at no point of time the petitioner was communicated with any adverse remark entered in his C.C.R. and that apart the entry in the C.C.R. for the year 2000-2001 is not adverse in nature. He relies upon the judgment of the apex Court in the case of **Baikuntha Nath Das and another v. Chief District Medical Officer, Baripada and another**: AIR 1992 SUPREME COURT 1020, wherein it was held that the order of compulsory retirement 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. The Government or the Review Committee 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.

6. Learned counsel for the petitioner submits that on two occasions the petitioner was posted as Asst. Managing Director of NESCO solely basing upon his merit and integrity as higher responsibility is attached to the said post. According to learned counsel for the petitioner, the conduct and remarks awarded in the C.C.Rs. were taken into consideration before posting him as Asst. Managing Director and now on the basis of same set of C.C.Rs. the petitioner could not have been made to retire compulsorily.

7. Learned counsel for the opposite parties relying upon the judgment of the apex Court in **PYARE MOHAN LAL V. STATE OF JHARKHAND AND OTHERS**: (2011) 1 Supreme Court Cases (L & S) 550, submits that a single adverse entry regarding integrity even in remote past is sufficient to award compulsory retirement. In the said case the officer was a judicial officer. In the aforesaid decision it was held that the washed-off theory does not have universal application and it may have relevance while considering the case of Government servant for further promotion but not in case where employee is being assessed for retention in service or compulsorily retirement, as suitability is to be assessed taking into consideration his "entire service record".

So let us see whether the contention of the learned counsel for the petitioner that the petitioner has not been communicated with any adverse remark at any point of time is correct. The entire C.C.R. record from the year 1972-73 onwards were produced before this Court. On perusal of the same, we find that the petitioner had been awarded with good remarks consistently such as good and very good. The entries made in the C.C.Rs of the petitioner from 1994 to 1997 are as follows:

- (i) 1994-95 – Very good.
- (ii) 1995-96 – Very good and integrity beyond doubt.
- (iii) 1996-97 – Very good and integrity beyond doubt.

8. In 1997-98 no entry has been made in the C.C.R. From the C.C.R. of 2000-2001, we find that the petitioner was awarded with the remark 'average', but so far as integrity is concerned, Col.6 contains "nothing adverse has come to my notice". It bears a signature, but does not contain the designation of the signatory nor does it countersigned. The ratio disidendi of the decision in **PYARE MOHAN LAL** is not applicable to the case of the petitioner as there is not a single adverse entry touching his integrity, save and except rating the performance of the petitioner as average in the C.C.R. of the year 2000-2001.

9. In our considered opinion, the ratio disidendi of the case of **Baikuntha Nath Das** is squarely applicable to the facts and circumstance of the present case. In the aforesaid case it was held that the order of compulsory retirement can be interfered with if the same is, tainted with malafide, based on no evidence or if the order is arbitrary in the sense that no reasonable person would form the requisite opinion on the given materials.

10. In Annexure-B/2, i.e. the Review Committee report on performance of the Superintending Engineers and Executive Engineers, who had completed fifty years and above, it has been observed that the petitioner and others have been found ineffective and are of doubtful integrity for which proposal has been given for their compulsory retirement. So far as remark of doubtful integrity is concerned, from the record produced before us by the NESCO authorities, we do not find anything on record to that effect. The impugned order dated 4.6.2002 compulsorily retiring the petitioner from service, is based upon the decision of the Review Committee and the Review Committee is totally silent about the material particulars basing upon which they came to a conclusion that the petitioner's integrity is doubtful. It would not be out of place to reiterate that the report of the Review of the Committee in Annexure-B/2 does not show anything that they have taken into consideration the entire service records of the petitioner including the entry made in the confidential record and C.C.R. In view of such, in our considered opinion, the order of compulsory retirement dated 4.6.2002 vide Annexure-4 passed basing upon the report of the Review Committee is an outcome of non-application of mind as well as want of material particulars based upon the evidence. Resultantly, the order dated 4.6.2002 under Annexure-4 is hereby quashed. Consequently, the petitioner-Aparup Mohan Das, is entitled to get all arrear salary from the date of such order till the date on which he would have retired on superannuation. Since the petitioner has died during pendency of the writ petition, arrear dues be paid to his legal heirs within three months from today deducting three months' salary, which has already been paid to the petitioner. The records produced before this Court are returned to learned counsel for opposite party no.4.

The writ petition is, accordingly, allowed. There will be no order as to cost.

Writ petition allowed.