

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
J U D G M E N T

D.B. Writ Petition Civil No.783/2011
Bhanwar Lal Lamror Vs. State of Rajasthan & Ors.

Order reserved on 11.12.2013

Order pronounced on 20.12.2013

HON'BLE MR. JUSTICE AJAY RASTOGI
HON'BLE MR. JUSTICE JK RANKA

Mr. Shobhit Tiwari, for petitioner.
Mr. AK Sharma Sr. Adv. with
Mr. VK Sharma, on behalf of respondent-Raj. High Court.
Mr. SN Kumawat, AAG, for State.

REPORTABLE

BY THE COURT(Per Hon'ble Mr. Justice Ajay Rastogi)

By way of instant writ petition, the petitioner has impugned order of the Govt. of Rajasthan dt.31.3.2010 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.

During the course of arguments, on instructions, counsel for Petitioner did not press the validity of Rule 53(1) of the Rules, 1996 and made submissions on merits assailing order of pre mature retirement.

The facts that culled out are that the petitioner was initially appointed after his selection through Rajasthan Public Service Commission in the cadre of Rajasthan Judicial Service in the year 1988 and appointed as Munsif Cum Judicial

Magistrate, First Class vide order dt.4.4.1988. He was promoted as Additional Chief Judicial Magistrate vide order dt.7.7.1997 and vide order dt.26.4.2003 as Additional District & Sessions Judge (Fast Track) w.e.f. 16.08.2002, the date on which his juniors were promoted.

While the petitioner was working as ADJ (Fast Track) Head Quarter at Suratgarh, a screening committee was constituted by Hon'ble the Chief Justice to scrutinize the cases of judicial officers who have completed 15 years of qualifying service or has attained the age of 50 years, who has lost its utility or their retention in service is not in public interest whichever is earlier to compulsorily retire such officers from service.

The Committee scrutinized the service record of the officers including that of the petitioner and upon overall appraisal of work performance, the Committee in its meeting held on 2.3.2010 recommended the names of judicial officers for compulsory retirement in public interest and the petitioner was one amongst them who was recommended for compulsory retirement in public interest. The report of the Committee dt.2.3.2010 was placed before the Full Court on 20.3.2010 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.31.3.2010, the petitioner was compulsorily retired under R.53 (1) of Rules 1996.

The main thrust of counsel for the petitioner is that the respondent was under obligation to consider and evaluate the entire record of service of the petitioner before taking the decision impugned of compulsory retirement and attach more importance to record and performance in the later years and the record to be so considered would naturally include the annual confidential report, character rolls both favourable and adverse but in the instant case the order of compulsorily retirement has been passed as a punitive measure to get rid of departmental enquiry which was initiated against the petitioner under R.16 of CCA Rules, 1958 and was almost at final stage and awaiting outcome of the enquiry, method adopted by the respondent in taking decision of his compulsorily retirement is wholly arbitrary and abuse of power exercised by the authorities in passing order of compulsory retirement under R.53 (1) of Rules 1996.

Counsel further submits that in annual confidential report for the year 1988 till 2009, he was rated as average or good officer and on some occasion was graded as a very good

officer. However, in the ACR for the year 1990 there was a remark recorded that he is bad officer, having submitted false statistics about his disposal, however, the fact is that the petitioner submitted representation after representation but it was never pointed out to him as to how the statement of disposal submitted by him was in any manner a false statistics and that was the period when he was in probation from 4.4.88 to 4.4.90 and in learning process but as regards statistics regarding work disposal is concerned, no clarification was ever made to him but his representation was rejected and thereafter the only solitary adverse remark which was recorded and remain part of the record was of the year 2003 Part-II from May to December 2003, however, in the earlier part 1.1.2003 to 30.4.02003, he was rated as good officer by the reporting officer and endorsed by Hon'ble Inspecting Judge and Hon'ble Administarative Judge, however, for later part of May to December 2003, he was rated as average officer by the reporting officer and endorsed by Hon'ble Inspecting Judge and the same Hon'ble Administarative Judge without there being any change in the record of service or smacked of his record/judgments the Hon'ble Administarative Judge doubted integrity of the petitioner against which he submitted initial representation and requested the respondent to at least supply

him the record on the basis of which remark was recorded and reserved his right to submit his representation after the record is made available to him but, at the same time also prayed for expunction of remark, however, the fact is that the record was not supplied to him and his representation was rejected against which he submitted 2nd representation after collecting record from his own but that representation was not considered and rejected on the premise that the review of rejection of representaiton is not maintainable.

Counsel submits that it is true that while taking decision of compulsory retirement if there is adverse remark that can always be looked into but in the instant case from the year 1988 to 2009 there was no adversity in his record except of the year 1990 which was of the period when he was in probation and thereafter of 2003 later part and for which there was no material ever made available to the petitioner but to his dismay representation was rejected that certainly remains part of the record and on these two solitary remarks in his total service period of 22 years from 1988 to 2009 he stood compulsorily retired and this what being reflected from the minutes of the Committee and approved by the Full Court without there being any tangible evidence on record.

Counsel submits that the respondent took decision of

his compulsory retirement as a short cut method to avoid departmental enquiry which was almost at the final stage and as punitive measure the decision was taken by the respondent impugned of compulsory retirement exercising power under R.53(1) of the Rules 1996.

Reply to the writ petition has been filed and counsel for respondent while supporting the order impugned submits that overall record of service was placed before the Committee constituted by Hon'ble the Chief Justice and as mentioned in para 3 of reply there was adverse remark in the ACR of 1990 that "Bad officer, having submitted false statistics about his disposal" and in para 6 there was adverse remark for the ACR of 2003 that "integrity is not beyond doubt" and his representations were also rejected and several complaints received against conduct of the officer and there were serious allegations, based on the total record of service the Committee was of the view that he has proved himself to be liability upon judicial service and recommended for his compulsory retirement in public interest and the report of the Committee dt.2.3.2010 was accepted by the Full Court in its meeting dt.20.3.2010 and on recommendation of the High Court and considered by the Govt. Vide order dt.31.3.2010, the petitioner was compulsorily retired.

Counsel further submits that the order of compulsory retirement is not punishment and implies no stigma nor any suggestion of mis behaviour 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 does not require interference.

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

At the very outset, we would like to refer R. 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.

“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".

It would be seen from R.53(1) which gives right to the competent 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 pre mature retire an officer from service.

Before adverting 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 three Hon'ble Judges who examined service record of the petitioner in its meeting held on 2.3.2010. The report reads ad infra-

"He was born on 20.04.1957 and entered in the service in the year 1988 in the cadre of Rajasthan Judicial Services. Presently he is posted as Additional District Judge (Fast Track),

Anoopgarh, Headquarter at Suratgarh.

From the beginning, in the year 1988 he has been rated as an average officer and up to 1997 i.e. for almost 9 years continuously. During this period, in the year 1990 Hon'ble the Chief Justice observed that he is bad officer and he has submitted false statistics about his disposal. Against this remark, representation was received which was considered and rejected.

In I part of 2000, the District Judge concerned reported that the integrity of the officer is positively bad. He was unfair and partial in dealing with public and the Bar. His reputation as to his integrity was widely bad and his judgments were not well reasoned and not expressed in good language. He recommended for withholding of interest certificate for the period January, 2000 to July, 2000 and rated as an average officer. Hon'ble the Inspecting Judge rated him as below average and found report about the officer's integrity and conduct as disturbing, to which the Hon'ble Administrative Judge agreed and he also recorded that the officer is below average. However, the adverse remarks of District Judge and the Hon'ble Inspecting Judge were communicated as per the order of the Hon'ble Administrative Judge and against that, representation was received from the officer and the remarks of district Judge and the Hon'ble Inspecting Judge were expunged. However, he is an average officer in view of the

remark of the Hon'ble Chief Justice.

In the year 2003, the officer was rated as an average officer and his integrity was found not beyond doubt, against this adverse remark a representation was submitted by the officer which was considered and rejected.

Presently, one complaint of taking bribe for delivering judgment in favour of one party is pending in an enquiry under r.16 of CCA Rules for major penalty.

Several complaints have been brought to our notice about the conduct of the officer wherein there are allegations of taking bribe, collecting movable/immovable properties by corruption etc. The officer is not holding good reputation about his integrity.

In view of overall assessment of the service record including personal and other files of Shri Bhanwar Lal Lamror, he has proved himself to be a liability upon the judicial service and, therefore, in the public interest such judicial officer may be compulsorily retired immediately. It is further recommended that enquiry, if any, pending against him under R.16 and 17 of the CCA Rules, may be dropped. It is further recommended that the officer may be given a bank draft to the amount equivalent to three month's pay and allowances in lieu of notice period along with order of retirement".

At the same time, the ACR Chart of Shri Bhanwar Lal Lamror made available to us reads ad infra-

1988	1989	1990	1991	1992
Average	I-Average II-Average*	I-Average II- *	Average	Average
1993	1994	1995	1996	1997
Average	I-Good II-Average	I-Average II-Average*	I-Very Good II-Average III-Average	I-Average II-Good
1998	1999	2000	2001	2002
I- Good II-Very Good	Good	I-Average* II-Good	Good	I-Average II-Good III-Good
2003	2004	2005	2006	2007
I-Good II-Average*	I-Good II-Good	Good	I-Good II-Good	Good
2008	2009			
Good	I-Average II- *			

As per schedule guidelines issued by the High Court where the percentage of work disposal between 95% to 125% is graded as average and from 125% to 150%, it is graded as good and disposal between 150-200% it is graded very good.

The work disposal statement of the officer from 1988 till 2010 was placed before us & referred by the petitioner in para (vi) of the writ petition that indicates that his work disposal for the period from 1990 to 2010 barring few years remain in between 125% to 150% and which according to the norms laid down by the High Court, the work disposal of the officer is rated as good.

It is indeed settled that the order of compulsory retirement is not a punishment, it implies no stigma nor any suggestion of misbehaviour and is based on subjective satisfaction of the authority and this principle has been consistently followed by Apex Court that the authority is under obligation to consider the entire record of service before taking a decision of compulsory retirement of course attaching more importance of service record of later 5-10 years but it goes without saying that as regards the honesty and integrity of judicial officer is concerned, even a solitary instance could be considered to be sufficient and there shall be zero tolerance as regard honesty and integrity of a judicial officer is concerned

The principles which emerge and laid down for consideration for testing the validity of order of compulsory retirement have been considered in the case of Baikuntha Nath Das and Anr. V. Chief District Medical Officer, Baripada and Anr. AIR 1992 SC 1020 laying down certain guiding principles for the Courts, on which it can interfere in the order of compulsory retirement and that include mala fides, if the order is based on no evidence, or if the order is arbitrary in the sense that no reasonable person with ordinary prudence 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".

The above settled principles as regards judicial service

came to be examined by the Apex Court in Nawal Singh Vs. State of U.P. And Anr. Reported in (2003) 8 SCC 117 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".

Similar view has been taken by the Apex Court in Rajendra Singh Verma (Dead) through LR's. And Others Vs. Lieutenant Governor (NCT of Delhi) And Others (2011) 10 Supreme Court Cases 1 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."

From the analysis of the judgments of the Apex Court the salient factors which emerges for consideration that judicial service is not a service in the sense of employment and as is commonly understood Judges are discharging their functions exercising the sovereign judicial power of the State and as regard honesty and integrity that is expected to be beyond doubt and it is also settled by the consistent view of the Apex Court that the order of compulsory retirement does not have adverse consequence and the principles of natural justice has no role to play and uncommunicated ACR on record

can be taken into consideration while taking decision regarding compulsory retirement of the incumbent/officer and there is also consistent view that there is limited scope of judicial review of the order of premature retirement from service and as observed by the Apex Court in **Registrar, High Court of Madras V. R. Rajiah (1988) 3 SCC 211** that adequacy or sufficiency of such materials on which decision has been taken of compulsory retirement cannot be questioned, unless materials were absolutely irrelevant for the purpose of compulsory retirement, but at the same time, when the order of compulsory retirement is challenged in a Court of law even when limited scope of judicial review, the Court has right to examine whether some ground or material germane to issue exists or not.

It is also settled that formation of opinion for compulsory retirement is based on subjective satisfaction of concerned authority but such satisfaction must be based on valid material and it is open for the Court to ascertain whether such valid material exists or otherwise on which subjective satisfaction of the authority is based.

In the instant case, the respondent has referred the record of service which was considered and examined by the committee constituted by Hon'ble the Chief Justice in its

meeting held on 2.3.2010 and the record clearly indicates that part of the track record and service record of the petitioner was referred to the committee while noting extracts of the contents of the ACRs and for the ACR of 2000 where adverse remark was recorded and on representation it was expunged but still detail reference was made by the Committee in its report and after the remark stood expunged that could not be treated as adverse record but the committee selectively referred to in its report and that apart for the year 1990 the remark was based on his disposal statistics being not satisfactory while he was on probation but as alleged by the petitioner in his representation that alleged false work disposal statistics was never made known to him and as regards reference of several complaints, it has come on record that in his total service carrier, 20 complaints at different point of time are received; out of which 19 were filed at initial stage itself and in one of the alleged complaint dt.6.8.2003, departmental enquiry under R.16 of the CCA Rules was initiated on 21.5.2008 and reply was filed by the petitioner on 23.7.2008 and two departmental witnesses were produced by the Department PW 1 & PW 2 on 10.11.2008, the Registrar, (Vigilance) took time to produce further evidence on the next date of enquiry i.e. 19.12.2008 and that remain pending, apart

from it, in earlier part of 2003 when he was posted at Jhunjhunu from 1.1.2003 to 30.4.2003, the reporting officer graded him good officer which was endorsed by Hon'ble Inspecting Judge and Hon'ble Administrative Judge on 5.5.2004 and with due respect the same Hon'ble Administrative Judge on 19.8.2004 in the ACR of the officer of May to December 2003 when he was posted at Dholpur doubted his integrity in a span of three months only whereas the reporting officer and Hon'ble Inspecting Judge graded him average officer.

However, the preliminary explanation as regards adverse remark of 2003 in the absence of record at the initial stage was submitted on 15.12.2005 and demanded documents, at the same time requested that remarks may be expunged but the same was rejected and subsequent representation submitted by him after collecting material from his own sources was turned down by the authority holding that review after rejection of the representation is not maintainable. It is true that solitary remark of integrity may be sufficient for a judicial officer in taking decision for his compulsory retirement and it is always expected from the judicial officer that because of the power he weilds, a judge is being judged with more strictness than others. Judicial

discipline is self-discipline. Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary took utmost care and that what has been observed in **Tarak Singh V. Jyoti Basu (2005) 1 SCC 201**.

Thus, the material on which the decision of compulsory retirement was based as extracted by us in above paras and material furnished by the petitioner would reflect that in totality the material on record was not considered and completely ignored by the Committee and examined selective service record of the officer and as we have noticed that out of 20 complaints registered against him at different times, 19 were filed at the initial stage and the respondent was not inclined to hold even preliminary enquiry or to initiate departmental action against the officer and in one of the complaint found some prima facie substance and initiated enquiry against the officer under R.16 of the CCA Rules but at the stage when statements of two departmental witnesses were recorded, the respondent took decision of compulsory retirement and the allegation of the petitioner is that decision was taken only to circumvent from concluding the departmental enquiry and the short cut method was adopted by the respondent to avoid departmental enquiry and not considered desirable to conclude the departmental enquiry and

took decision of his compulsory retirement.

The annual confidential report of the petitioner also indicates that from 1988-2009 he was rated as average or good officer, some times a very good officer and as long as officer is rated as average officer, which in our opinion cannot be considered as a dead wood or loosing its utility and it leads to only one conclusion that subjective satisfaction of the authority was not based on sufficient or relevant material.

On the material which has come on record we are unable to reconcile with the facts on record and in our view the record of the petitioner is not unsatisfactory which would warrant pre mature retirement from service but be termed as arbitrary in the sense that no reasonable person with ordinary prudence could have come to the conclusion that the petitioner had outlived his utility as a judicial officer and had become a dead wood which had to be chopped of.

Before parting with the judgment we would further like to refer the recent judgment of Hon'ble Apex Court in Registrar General, Patna High Court Vs. Pandey Gajendra Prasad & Ors. in Civil Appeal No.4553/2012 (Arising out of S.L.P.(C) No.1430 of 2011 decided on 11.5.2012 & while examining the procedure being followed in regard to filling of ACRs of judicial officers, has observed as under-

“However, before parting with the judgment, we deem it necessary to make a mention about the recording of the ACRs of judicial officers. We feel that the present system of recording the ACRs leaves much to be desired and needs to be revamped. Experience has shown that it is deficient in several ways, being not comprehensive enough to truly reflect the level of work, conduct and performance of each individual on one hand and unable to check subjectivity on the other. This undoubtedly breeds discontent in a section of the judicial service besides eroding proper and effective superintendence and control of the High Court over subordinate judiciary. The process of evaluation of a judicial officer is intended to contain a balanced information about his performance during the entire evaluation period, but it has been noticed that many a times, the ACRs are recorded casually in a hurry after a long lapse of time (in some cases even after the expiry of one year from the period to which it relates), indicating only the grading in the final column. It needs no elaboration that such hurried Assessment cannot but, be either on the basis of the Assessment/grading of the preceding year(s) or on personal subjective views of the Inspecting Judge(s), which is unfair to the judicial officer. Undoubtedly, ACRs play a vital and significant role in the Assessment, evaluation and formulation of opinion on the profile of a judicial

officer, particularly, in matters relating to disciplinary action against a judicial officer. The ACRs of such officer hold supreme importance in ascertaining his conduct, and therefore, the same have to be reported carefully with due diligence and caution. We feel that there is an urgent need for reforms on this subject, not only to bring about uniformity but also to infuse objectivity and standardization.

The power to make such entries, which have the potential for shaping the future career of a subordinate officer, casts an obligation on the High Courts to keep a watch and vigil over the performance of the members of the subordinate judiciary. This Court also stressed on the need for the Assessment to be made as an ongoing process continued round the year and the record to be made in an objective manner. We are constrained to note that these observations have not yet engaged the attention of most of the High Courts in the country".

It is being noticed by us that only for the reason that a solitary entry in the ACR of the petitioner for the second part from May to December 2003 with regard to his integrity was considered as the adverse factor but it reveals to us and we may still repeat that for the year 2003 ACR in the first quarter from January to April 2003 while he was posted at

Jhunjhunu, the reporting officer has rated him good and that was endorsed by Hon'ble Inspecting Judge and Administrative Judge on 20.3.2004 and 5.5.2004 respectively but the ACR of the officer for later part of 2003 from May 2003 to December 2003 while he was posted at Dholpur, the reporting officer graded him as average officer and that was endorsed by the Inspecting Judge on 7.8.2004 but the same Hon'ble Administrative Judge who has rated him good officer on 5.5.2004 for the first quarter of 2003 from 1.1.2003 to 30.4.2003 recorded the entry on 19.8.2004 that "integrity not beyond doubt" for the second part of 2003 from May to December 2003, it is true that his representation was rejected but there is no material on record by which inference can be drawn supported by any tangible evidence and the officer who is working since 1988 till 2010 with solitary remark of adversity and in the manner it was recorded certainly required to be noticed by the High Court and the order impugned in these facts & circumstances certainly needed interference in the light of what is being observed by us supra.

Consequently, the writ petition succeeds and the order of compulsory retirement dt.31.3.2010 passed by the state govt. impugned in the instant proceedings is accordingly quashed and set aside.

(Ajay Rastogi), J.

"All corrections made in the judgment/order have been incorporated in the judgment/order being emailed"

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