

HIGH COURT OF JAMMU & KASHMIR
AT JAMMU

SWP No.1940/2015, MP No.1/2015

Date of order: 22.12.2016

Baj Singh

vs.

State and ors.

Coram:

Hon'ble Mr. Justice Alok Aradhe, Judge

Appearing counsel:

For the petitioner/appellant(s) : Mr. A P Singh, Advocate
Mr. Ajay Bakshi, Advocate.

For the respondents : Mrs. Seema Shekher, Sr. AAG.

1) Whether to be reported in Press, Media : Yes/No.

2) Whether to be reported in Digest/Journal : Yes/No.

In this writ petition preferred under Article 226 of the Constitution of India read with Section 103 of the Constitution of the State of Jammu and Kashmir, the petitioner who was posted as In-charge Naib Tehsildar inter alia has assailed the validity of the order dated 30.06.2015 by which respondents in purported exercise of powers under Article 226(2) of the Jammu and Kashmir Civil Services Regulations (hereinafter referred to as 'Regulations') have compulsory retired the petitioner in public interest. The petitioner also seeks a direction to the respondents to permit the petitioner to continue as In-charge Naib Tehsildar and to accord him all consequential benefits.

2. The facts leading to filing of the writ petition briefly stated are that the petitioner was served with the impugned order dated 30.06.2015 by which the petitioner was compulsory retired in public interest with effect from 01.07.2015. The State Government with a view to weed out the dead wood and in order to maintain a high standard of efficiency in the State services, constituted a

Committee to consider the cases of the officers/ employees for premature retirement. The sanction to the aforesaid Committee was granted on 20.05.2015 by the State Government. The Committee held its meeting on 21.05.2015 in which the Committee in the backdrop of Article 226(2) of the Regulations considered the records of the employees as well as the records regarding involvement of government employees in corrupt services. In addition, the cases in which First Information Reports have been registered and investigation is either under way or has been completed were also placed before the Committee. The Committee thereafter again met on 25.05.2015 and Administrative Secretaries of concerned Departments were co-opted as members with regard to cases pertaining to the department.

3. The Committee decided the cases of each department separately. Inputs with regard to services particulars were obtained from the Administrative Department, as it was found by the Committee that in some cases, the details are incomplete. The Committee also observed that Annual Performance Reports (for short 'APRs') of the officers/employees are also required to be examined. The meeting of the Committee was adjourned to 11.06.2015 and on the said date, the Committee examined the available APRs which were incomplete. The Committee finally met on 26.06.2015 and considered the cases of officers/employees including that of the petitioner. The Secretary to the Government, Department of Rural Development and Panchayati Raj participated in the meeting as co-opted member. The Committee on consideration of the record of the petitioner concluded that the petitioner does not enjoy good reputation in public due to consistent conduct over a period of time

The Committee thereupon came to the conclusion that the petitioner has outlived his utility for the public and has bad reputation and has indulged in corrupt practices. Accordingly an order dated 30.06.2015 was passed by which the petitioner was compulsorily retired in public interest. In the aforesaid backdrop, the petitioner has approached this Court.

4. Learned Senior Counsel for the petitioner submitted that the impugned order is a result of non application of mind inasmuch as the entire service record of the petitioner as well as APRs of the petitioner have not been examined and the impugned order has been passed merely in view of the fact that First Information Report has been registered against the petitioner.
5. On the other hand, learned Senior Additional Advocate General for respondents has submitted that the State Government from time to time reviews the performance of its officers/officials on completion of either 22 years of service or on completion of 48 years of service in exercise of powers under Article 226(2) of the Civil Services Regulations. It is further submitted that a Committee was constituted which has considered the case of the petitioner individually. The petitioner was involved in the case of disproportionate assets and the First Information Report was lodged against him by the Vigilance Organization which is a limb of the State Government. It is also pointed out that First Information Report was lodged against the petitioner after the enquiry. It is further submitted that order of compulsory retirement is not penal in nature inasmuch as the petitioner shall be entitled to all service benefits. It is further submitted that the First Information Report

was lodged against the petitioner after sanction was accorded by the State Government after examining the entire material which was produced by the State Government and the charge sheet against the petitioner has been filed. It is also submitted that on the basis of material available on record, the Committee has formed an opinion that petitioner has amassed wealth beyond his known source of income and information with regard to his integrity was formed with regard to inputs received from various sources. It is also submitted that powers under Article 226(2) of the Regulations flow from Article 310 of the Constitution of India i.e. Doctrine of Pleasure and the petitioner has no legal right to continue in employment up to the age of superannuation.

6. It is further submitted that it is within the domain of the State Government to compulsory retire an employee in public interest in exercise of powers under Article 226(2) of the Regulations and the employee has no vested right to continue. It is also submitted that the decision in question has been taken bona fide and no mala fide has been alleged in this case. It is further submitted that the scope of judicial review with regard to the decision of an employer to compulsory retire an employee in public interest is limited and is confined to cases where the order is passed on either no evidence or suffers from the vice of non application of mind or is totally perverse. It is further submitted that decision of the Committee is not required to be thesis. Learned Senior Additional Advocate General has invited the attention of this Court to the Government Instructions appended to Article 226(2) of the Civil Services Regulations as well as order dated bearing No. OM GAD (VIJ) 19-Adm-2010 dated 25.10.2010 and has submitted that the aforesaid

instructions provided that the level at which screening should be conducted for Non-Gazetted Employees as well as norms to be followed by the Screening Committee in case of Non-Gazetted employees. It is pointed out, with reference to the aforesaid Government Instructions that APRs are not the only source of forming the opinion with regard to integrity of employee. It is further submitted that the APRs of the employee would only reflect his performance primarily. It is also submitted that besides APRs, other material which was placed before the committee was also considered and there cannot be any concrete material with regard to integrity of an employee. It is further submitted that opinion to compulsory retire the petitioner has been formed bona fide. In support of her submissions, learned Senior Additional Advocate General has placed reliance on decisions of the Supreme Court in the case of **Dinesh Chandra Sangma vs. State of Assam and ors, 1978 AIR 17, Posts and Telegraphs Board and others vs. C S N Murthy, (1992) 2 Supreme Court Cases 317, Jugal Chandra Saikia vs. State of Assam and another, (2003) 4 Supreme Court Cases 59, Rajasthan State Road Transport Corp. and others vs. Babu Lal Jangir, Union of India v. J. N. Sinha and another, AIR 1971 SC 40, AIR 2014 Supreme Court 142 and Shakti Kumar Gupta vs. State of Jammu and Kashmir, AIR 2016 SC 832.**

7. I have considered the submissions made by learned counsel for the parties and have perused the record. Article 226(2) of the Regulations reads as under:

“226(2). Notwithstanding anything contained in these Regulations Government may, if it is of the opinion that it is in the public interest to do so, require any Government servant other than the one working on a post which is included in

Schedule II of these Rules, to retire at any time after he has completed 22 years/ 44 completed six monthly periods of qualifying service or on attaining 48 years of age; provided that the appropriate authority shall give in this behalf a notice (in one of the forms prescribed in annexures A and B hereto as the case may be), to the Government servant at least 3 months before the date on which he is required to retire or 3 months of pay and allowance in lieu of such notice. Such a Government servant shall be granted pensionary benefits admissible under these rules on the basis of qualifying service put in by him on the date of such retirement.”

Government Instruction- Levels at which screening should be conducted for Non-Gazetted Employees:

1. At the Non-Gazetted level, a Screening Committee comprising of the Head of the Department and two other Senior Officers of the Department to be nominated by the concerned Administrative Department should conduct the review. The Screening Committee should screen the cases of all concerned persons and forward its recommendations to the Administrative Department for further follow-up action in terms of Art.226(2) of J&K CSR. This review should be done regularly, preferably twice every year in the months of January and July each. The review should be conducted by the cadre controlling administrative department which controls the service to which the concerned Government Servant belongs, irrespective of where he may be working at the relevant time. However, if the employee is working in a different department, then the Screening Committee should consist of at least one Senior Officer from the department in which the Government servant is/was working at the relevant time.
2. The review should, normally be initiated around six months before the officer/official attains the prescribed age or completes the prescribed service. A separate register can be maintained for keeping a watch on the time schedule for such review.
3. The final decision in the matter for Non-Gazetted staff should rest with the Administrative Department, which should take a final decision based upon the report of the Screening Committee. This should be done within a period of three months of receipt of report from the Screening Committee. The gist of the final decision can be recorded in the service book of the employee.
4. The decision of the Administrative Department implies a decision by the concerned Minister of the Deptt. on file. Hence he can review his own decision in the form of considering representations made by the concerned

employees against the initial decision pertaining to premature retirement in the interest of natural justice.”

8. Before proceeding to deal with the matter on merits, at this stage it is apposite to take notice of well settled legal principles with regard to compulsory retirement in public interest. The Supreme Court while dealing with scope of Judicial Review in such cases has held that when an order of compulsory retirement in public interest is challenged before the Court, its validity depends upon its being supported by public interest. The State must disclose the material so that the Court may be satisfied that the order is not bad for want of any material whatever which to a reasonable man may reasonably instructed in law is sufficient to sustain, the ground of public interest. The Court is confined to examination of the material merely to see whether a rational mind may conceivably be satisfied that compulsory retirement of the officer concerned is necessary in public interest. **(See Baldev Raj Chadha vs. Union of India and others, (1980) 4 SCC 321)**. In the case of **Baikuntha Nath Dass and another vs. Chief District Medical Officer, Baripada and another, (1992) 2 SCC 299**, it was held that opinion of the authority regarding compulsory retirement is subjective satisfaction of the authority which has to be formed on the basis of entire record of service and the order of compulsory retirement does not amount to punishment. The principles of natural justice are not required to be observed while passing an order of compulsory retirement. The order of compulsory retirement is subject to judicial review only on the ground of mala fides, arbitrariness and perversity. The Supreme Court after detailed deliberations summarized the following legal principles:

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

9. The Supreme Court once again in the case of **State of Gujarat vs. Umedbhai M. Patel, (2001) 3 SCC 314**, crystallized the legal principles as follows:

- (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 deal 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 favour of the officer.
- (viii) Compulsory retirement shall not be imposed as a punitive measure.

10. The Supreme Court in the case of **Madhya Pradesh State Cooperative Dairy Federation Limited and another vs. Rajnesh Kumar Jamindar and others, (2009) 15 SCC 221** held that law relating to compulsory retirement in public interest is no longer *Res Integra*. The provision has been made principally for weeding out the dead wood and an order of compulsory retirement in public interest can be made subject matter of judicial review on the grounds namely when it is based on no material, when it is arbitrary, when it suffers from the vice of non application of mind and when there is no evidence to support the case. It is well settled legal principle that verbal complaints or enquiries would constitute relevant material on the basis of which APRs indicating the integrity of the officer is doubtful can be recorded. (See **Rajendra Prasad Verma and others vs. Lieutenant Governor (NCT of Delhi) and others, (2011) 10 SCC 1.**) An order of compulsory retirement is neither punitive nor stigmatic. It is based on subjective satisfaction of the employer and is amenable to interference if it suffers from mala fide, perversity, arbitrary. (See, **Rajasthan State Road**

Transport Corporation and others vs. Babu Lal Jangir, (2013) 10 SCC 551). It is equally well settled legal proposition that entire service record of an employee is required to be scrutinized for adjudging his justification of continuance in service. (See **Punjab State Power Corpn. Ltd. Vs. Hari Kishan Verma, (2015) 13 SCC 156**).

11. The Supreme Court in the case of **State of Gujarat and another vs. Suryakant Chunilal Shah, (1999) 1 SCC 529** has held that services of dishonest and corrupt officers should be dispensed with in public interest. It has further been held that efficiency and honesty of an officer has to be assessed on the basis of material for which confidential reports are an important input. Mere involvement of an employee in criminal case or pendency of criminal case in itself does not sufficient to compulsory retire an employee in public interest. It has further been held that 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. The aforesaid decision was considered and was explained by the Supreme Court in the case of **Jugal Chandra Saikia vs. State of Assam and anr, (2003) 4 SCC 59**, in which it was held that in the case of **Suryakant Chuni Lal Shah (supra)**, there was no material before the Review Committee inasmuch as there were no adverse remarks in the Character Roll entries, the integrity was not doubtful at any time and the Character Roll entries subsequent to respondents promotion to the post of Assistant Food Controller (Class-II) were not available. In the aforesaid circumstance, it was held that the compulsory retirement in the case of Suryakant Chunilal Shah (Supra) was bad. A Division

Bench of this Court in State of Jammu and Kashmir and others vs. Janak Singh, 2010 (4) JKJ 89 (HC) in paragraph 7 has held thus:-

“7. 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.”

12. The aforesaid decision has been followed by another Division Bench of this Court in the case of **State of Jammu and Kashmir and another vs. Satish Chander Khajuria vide order dated 07.10.2016 passed in LPASW No.122/2016**. Thus from the aforesaid enunciation of law by the Division Bench of this Court, it is evident that Registration of First Information Report against an employee is not part of his service record and mere probe of certain alleged irregularities cannot be made a ground to retire a person compulsorily when his APRs entries are good and integrity is reflected in the APRs as beyond doubt.
13. On the touchstone of aforesaid well settled legal principles, the facts of the case in hand may be examined. Admittedly in the instant case, APRs of the petitioner are not available. A stoic silence has been maintained in the preliminary objections with regard to attempts made to ascertain the availability of APRs for the period

referred. No attempt has been made to ensure that even incomplete APRs are made available to the Committee, complete in all respects. It is worth mentioning here that it is the duty of the respondents to maintain the APRs in view of Government Order dated 19.11.2001 and 29.08.2014. In the instant case admittedly the APRs were not placed for consideration before the Committee, therefore, the question of their consideration does not arise. It is also pertinent to mention here that the petitioner has been adjudged as deadwood on the basis of formulation of an opinion that he is a corrupt employee. In other words, the petitioner has not been assessed to be an inefficient or non performing employee. Similarly the formation of opinion about the integrity of the petitioner is based in view of the fact that First Information Report has been lodged against the petitioner, which is not the part of service record of the petitioner. The impugned order has been passed in contravention of law laid down by the Supreme Court in the case of **State of Gujarat and another supra**. It is pertinent to mention here that there is no material on record except registration of First Information Report, even to prima facie indicate that integrity of the petitioner is doubtful. Thus the committee has clearly exceeded its jurisdiction in arriving at the conclusion about the petitioner. The formation of opinion in the instant case that petitioner is a deadwood, leading to passing of impugned order is not only arbitrary but suffers from the vice of non application of mind and is based on no material.

14. It is apposite to reproduce the Norms for the facility of reference:

“Norms to be followed by the Screening Committee in cases of Non-Gazetted Employees.

1. The Annual Performance Report of the Non-Gazetted Employees are neither normally written very carefully nor are they fully available in a large number of cases. The Screening Committee should, therefore, consider the entire service record including all material and relevant information available on record about the employees before coming to any conclusion.

2. The Government employees whose integrity is doubtful should be retired. For the purpose of establishing that the integrity of the Government servant is doubtful the following information/records could be considered:

- * Number and nature of complaints received, if any, against the Government servant pertaining to doubtful integrity or corruption.

- * Number and nature of various audit paras pending, if any, against the Government servant in which concerned Government servant is found to be involved.

- * Number and nature of vigilance cases pending inquiry, if any, against the Government servant.

- * Adverse entries in the APRs concerning doubtful integrity, if any.

- * Number and nature of departmental inquiries/preliminary inquiries, if any, which are going on against the concerned Government servant.

- * Number and nature of administrative censure/warning/punishment pertaining to corruption/doubtful integrity against the Government servant, if any.

- * General reputation of the employees.

3. Government employee who is found to be ineffective should be retired. The basic consideration in identifying such employees should be fitness/competence of the employee to continue in the post, which he is holding. If he is not found fit to continue in his present post then his fitness/competence to continue in the lower post from where he had been previously promoted should be considered.

4. The specific norms for efficiency/effectiveness cannot be really laid down since they pertain to the nature of work in each particular department would vary from department to department. However, these norms should be similar to norms laid down in the APRs of the employees concerned relating to his performance and efficiency/effectiveness. Specific norms on two

to three parameters should be laid down for specific jobs. An illustrative list of norms is given below:-

* For Teachers, the pass percentage achieved by their students.

* For Revenue Staff, norms relating to revenue work, such as mutations attested, Jamabandies completed, revenue pass books issued etc.

* For Engineering staff, norms relating to timely project implementations without time and cost overruns, etc.

The Concerned Administrative Department should, for each specific category of employees under its control, identify two to three key result areas/norms against which the efficiency/effectiveness of the Government employees should be considered. These norms should be communicated to the Screening Committee by the Administrative Department in advance.

5. While the entire record of the employees should be considered at the time of review, no employee should ordinarily be retired on grounds of ineffectiveness, if his services during the preceding 5 years, or where he has been promoted on higher post during 5 years his service in the higher post have been found satisfactory.
6. No employee should ordinarily be retired on grounds of ineffectiveness; if in any event, he would be retiring on superannuation within a period of one year from the date of considering of his case.
7. This provision of Rule for premature retirement should not be used for reduction of surplus staff or an economy measure. Similarly, it should not be used to retire a Government servant on grounds of specific act of misconduct, as a shortcut to initiating formal disciplinary proceedings against him. The appropriate authority shall not, however, be precluded to take action against a Government servant to retire him prematurely at the relevant time, even at that time, a specific act of misconduct has come to notice.
8. Once a decision has been taken under the relevant service rule to retain a Government servant in service beyond the prescribed age or beyond the prescribed length of service, he shall ordinarily continue in service till he attains the age of superannuation."

In order to ascertain the factum of integrity of a Government servant, following facts are required to be considered.

- * Number and nature of complaints received, if any, against the Government servant pertaining to doubtful integrity or corruption.

- * Number and nature of various audit paras pending, if any, against the Government servant in which concerned Government servant is found to be involved.

- * Number and nature of vigilance cases pending inquiry, if any, against the Government servant.

- * Adverse entries in the APRs concerning doubtful integrity, if any.

- * Number and nature of departmental inquiries/preliminary inquiries, if any, which are going on against the concerned Government servant.

- * Number and nature of administrative censure/warning/punishment pertaining to corruption/doubtful integrity against the Government servant, if any.

- * General reputation of the employees.

In the instant case, from perusal of the aforesaid Norms, it is evident that the aforesaid Norms also provide that the Screening Committee should consider the entire service record including all material and relevant information available on the record about the employees before coming to any conclusion. In the instant case, the opinion about the integrity of the petitioner has been formed merely on account of the fact that the petitioner was caught in a trap accepting a bribe and after enquiry the Vigilance Department of the State Government had accorded sanction for prosecution of the petitioner. In other words, all other relevant factors which are mentioned even in the Norms have not been followed in the instant case. Besides that it is well settled law that if the statute prescribes

to do certain thing in a certain way, that thing must be done in that way or not at all. (See **Ramachandra Keshav Adke v. Govind Joti Chavare**, AIR 1975 SC 915, **Commissioner of Income Tax, Mumbai vs. Anjum M. H. Ghaswala and others**, (2002) 1 SCC 633).

15. The decisions relied upon by learned Senior Additional Advocate General are of no assistance to her as in the case of **Dinesh Chander Sangma (supra)**, the Supreme Court was dealing with the case where the employee had sought the voluntary retirement and the government refused to accept the application of the employee for seeking voluntary retirement. In the aforesaid context, the observations with regard to Doctrine of Pleasure as contained in Article 310 of the Constitution of India were made which do not apply to the fact situation of the case. Similarly the decision relied upon by learned Senior Additional Advocate General in case of **Posts and Telegraphs Board and others (supra)** has no application to the fact situation of the case as in the aforesaid case, conclusion to compulsorily retire an employee in public interest was based on two adverse APRs. It is pertinent to reiterate that in the instant case, the APRs have not been taken into consideration at all. Therefore, the aforesaid decision is also of no assistance of the petitioner. Similarly, the decision in the case of **Rajasthan State Road Transport Corp. and others (supra)** is an authority for the proposition that the decision to compulsorily retire an employee has to be arrived at after considering the entire service record of an employee and 'Washed Off theory' relating to adverse entries does not apply to compulsory retirement. The aforesaid decision has also

no application to the obtaining factual matrix of the case. Similarly, the decision in the case of **Jugal Chander Saikia (supra)** does not apply to the fact situation of the case as in the aforesaid case, decision to compulsorily retire an employee was taken on the recommendations of screening committee which took into account the entire records including the report of one man committee constituted to enquire into a scandal in which the appellant in the aforesaid case is involved. In the instant case, the decision therefore does not apply to the obtaining factual matrix of the case. The reliance placed by learned Senior Additional Advocate General in the case of **Union of India vs. J N Sinha and another (supra)** is an authority for the proposition that under Rule 56(j), the appropriate authority has the absolute right to retire a Government servant if it is of the opinion that it is in public interest to do so. However it has been held that power can be exercised subjective to the conditions mentioned in the rule. In the instant case, the criteria itself has been mentioned which is appended to Article 226(2) of the J&K CSR which has not been followed by the respondents while taking the decision to prematurely retire the petitioner in public interest. Therefore, the aforesaid decision is of no assistance to respondents in the instant case. Similarly, in the case of **Shakti Kumar Gupta (supra)**, the Supreme Court has held that evaluation of performance of a Judicial Officer can be done on the basis of record accessible and available to the High Court and credible complaints with regard to conduct of the petitioner/judicial officer received periodically can also be made the basis. In the instant case, only on the basis of lodging of the First Information Report, and in view of sanction granted by the State Government for prosecution of the

petitioner, the decision to compulsory retire the petitioner in public interest is taken. Therefore, the aforesaid decision is also of no assistance to the respondents in the fact situation of the case.

- 16.** In view of preceding analysis, the inevitable conclusion is that the impugned order cannot be sustained in the eyes of law. It is accordingly quashed. The petitioner shall be reinstated in service with all consequential benefits within one month from today. Accordingly, the writ petition is allowed.

(Alok Aradhe)
Judge

Jammu
22.12.2016
Raj Kumar