BRIJ BIHARI LAL AGARWAL

v.

HIGH COURT OF MADHYA PRADESH & ORS.

November 26, 1980

[R. S. PATHAK AND O. CHINNAPPA REDDY, JJ.]

Compulsory retirement—Fundamental Rule 56(3) *of the Madhya Pradesh Shashikya Sewak (Adhiwarshikya Ayu) Sanshodhan Adhiniyam—Compulsory retirement made on the confidential reports from the early years of service and also those not communicated at all to the employee, order of compulsory retirement is invalid—Value of confidential report, further explained.*

Allowing the appeal by special leave, the Court

HELD : (1) The recommendation by the High Court regarding its satisfaction that the appellant should be compulsorily retired, and the consequent order of the State Government, acting on that recommendation is invalid. The copy of an order-sheet dated 24th January, 1978 in Criminal Appeal No. 1021 of 1972 containing serious criticism of the manner in which the appellant had disposed of the sessions case was not communicated to him at all, although placed on the personal confidential file of the appellant. Further the two confidential reports made by two successive Chief Justices in respect of the appellant for overlapping periods *ex facie* do not agree with each other. One report dated 24th February, 1978 pertains to the year ending February, 1978 and contains general observations favourable to the appellant or other dated 12th July, 1978 pertains to the period 4th November, 1977 to March, 1978—a good part of which period is covered by the first report—and the detailed evaluation shows that the appellant was an undesirable officer. [300E-H, 301A-D]

(2) The power to compulsory retire a Government servant is a power which may be exercised in various contingencies. [299B-C]

Union of India v. *Col. J. N. Sinha,* [1971] 1 S.C.R. 791 and *State of Uttar Pradesh* v. *Chandra Mohan Nigam* [1978] 1 S.C.R. 521, referred to.

(3) When considering the question of compulsory retirement, while it is no doubt desirable to make an overall assessment of the Government servant's record, more than ordinary value should be attached to the confidential reports pertaining to the years immediately preceding such consideration. It is possible that a Government servant may possess a somewhat erratic record in the early years of service, but with the passage of time he may have so greatly improved that it would be of advantage to continue him in service up to the statutory age of superannuation. Whatever value the confidential reports of earlier years may possess, those pertaining to the later years are not only of direct relevance but also of utmost importance. [300C-E]

R. L. Butail v. *Union of India,* [1971] 2 S.C.R. 55; *Gurdial Singh Fiji* v. *State of Punjab,* [1979] 3 S.C.R. p. 518 and *Union of India* v. *M. R. Reddy,* [1980] 1 S.C.R. p. 736, followed.

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3272 of 1979.

Appeal by Special Leave from the Judgment and Order dated 12-10-1979 of the Madhya Pradesh High Court in Misc. Petition No. 227/79.

B *R.K. Garg, Miss Manisha Gupta* and *M.S. Gupta* for the Appellant.

K.K. Venugopal, Mrs. A.K. Verma and *K.J. John* for Respondent No. 1.

S.K. Gambhir for Respondent No. 2.

C The Judgment of the Court was delivered by

PATHAK, J.—This appeal by special leave is directed against the judgment of the High Court of Madhya Pradesh upholding an order compulsorily retiring the appellant from the post of District and Sessions Judge.

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The appellant, a member of the judicial service of Madhya Pradesh, was promoted to the post of District and Sessions Judge in April, 1969. On 6th October, 1977 an order was made appointing him to a Selection Grade post. He was thereafter appointed temporarily as Presiding Judge, State Transport Appellate Tribunal, Madhya Pra-
E desh, Gwalior. On 28th September, 1979 the State Government made an order under Fundamental Rule 56(3) of the M.P. Shashkiya Sewak (Adhiwarshika Ayu) Sanshodhan Adhiniyam, 1976 purporting to retire the appellant in the public interest.

F The appellant filed a writ petition in the High Court of Madhya Pradesh against the retirement order, but the writ petition was dismissed by the High Court on 12th October, 1979. Before the High Court the appellant did not dispute that there was power to compulsorily retire him under Fundamental Rule 56(3) but he contended that there was no material before the High Court to lead to the con-
G clusion that his retirement would be in the public interest and he described the order as mala fide and arbitrary. The High Court noted that the petitioner had attained the age of 55 years and held that his retirement was in accordance with the terms and conditions of service and in consonance with Fundamental Rule 56, and rejected the contention that the impugned order was mala fide or arbitrary.

H The appellant contends that the High Court was not justified in relying on adverse confidential reports which had not been communicated to him and respecting which, therefore, he had had no opportunity to

make his representation. Now the counter-affidavit filed on behalf of the High Court shows that at the time of deciding whether the appellant should be compulsorily retired the High Court took into account the confidential reports of the petitioner from the year he entered service. It appears further from the counter-affidavit that some only of the confidential reports were communicated to the appellant, the last being for the period ending 31st March, 1966. It does not appear that subsequent confidential reports containing adverse entries were communicated to the appellant.

The power to compulsorily retire a Government servant is a power which may be exercised in various contingencies. Considering a comparable provision, Rule 56(j) of the Fundamental Rules in *Union of India* v. *Col. J. N. Sinha*(1) this Court observed :

> "Various considerations may weigh with the appropriate authority while exercising the power conferred under the rule. In some cases, the government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have a more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organisations and more so in government organisations, there is good deal of dead wood. It is in public interest to chop off the same. Fundamental Rules 56(j) holds the balance between the rights of the individual government servant and the interests of the public. While a minimum service is guaranteed to the government servant, the government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest."

In *State of Uttar Pradesh* v. *Chandra Mohan Nigam*(2) the Court said:

> "Compulsory retirement under rule 16(3) is a salutary safeguard in the armoury of the Government for maintenance of the services in trim and fitness. Rule 16(3) is a constant reminder to the slacker, the sluggish and the inefficient, not to speak of those who may be dishonest or unscrupulous by reputation, beyond redemption. At a reason-

(1) [1971] 1 S.C.R. 791.
(2) [1978] 1 S.C.R. 521

A able point of service a stage is reached when the Government reserves its undoubted right to have a second look at the officers whether their retention in employment would be useful in the public interest. That is the role of rule 16(3). Rule 16(3), with the instructions, is a warning poster for every Government servant to conduct himself properly,
B diligently and efficiently throughout his service career."

The circumstances in which it is necessary to communicate adverse entries made in confidential reports to the Government servant concerned have been considered by this Court in *R. L. Butail* v. *Union of India*(1) in *Gurdial Singh Fijji* v. *State of Punjab*(2) and more
C recently in *Union of India* v. *M. E. Reddy*(3). What we would like to add is that when considering the question of compulsory retirement, while it is no doubt desirable to make an overall assessment of the Government servant's record, more than ordinary value should be attached to the confidential reports pertaining to the years immediately preceding such consideration. It is possible that a Government servant
D may possess a somewhat erratic record in the early years of service, but with the passage of time he may have so greatly improved that it would be of advantage to continue him in service up to the statutory age of superannuation. Whatever value the confidential reports of earlier years may possess, those pertaining to the later years are not only of direct relevance but also of utmost importance.
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The High Court considered several confidential reports, and on the impression gathered from them it concluded that the appellant should be compulsorily retired. The record, however, includes a copy of an order-sheet dated 24th January, 1978 in Criminal Appeal No. 1012 of 1972 *Bipata* v. *State of Madhya Pradesh*. The order-sheet
F contains an order in which while disposing of a criminal appeal a Division Bench of the High Court has recorded serious criticism of the manner in which the appellant had disposed of the sessions case. It does not appear that a copy of the remarks made in the order-sheet, although placed on the personal confidential file of the appellant, was ever communicated to him.
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The record also discloses that two confidential reports were made by two successive Chief Justices in respect of the appellant for overlapping periods. One report dated 24th February, 1978 pertains to the year ending February, 1978 and contains general observations favourable to the appellant. The other dated 12th July, 1978 pertains
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(1) [1971] 2 S.C.R. 55.
(2) [1979] 3 S.C.R. 518
(3) [1980] 1 S.C.R. 736.

to the period 4th November, 1977 to March, 1978—a good part of which period is covered by the first report—and the detailed evaluation shows that the appellant was an undesirable officer. The two reports *ex facie* do not agree with each other. This appears to have escaped the attention of the High Court when it considered the question whether the appellant should be compulsorily retired.

In the circumstances, it seems to us that the recommendation by the High Court recording its satisfaction that the appellant should be compulsorily retired, and the consequent order of the State Government acting on that recommendation, must be regarded as invalid. It will now be for the High Court to consider the case again and take a fresh decision on the question whether it should recommend the compulsory retirement of the appellant, and for the State Government to act on that recommendation if it is made.

We consider it unnecessary to consider the further submission of the appellant that his compulsory retirement was not accompanied by payment of salary for the statutory period of three months.

In the result, the appeal is allowed, the order dated 20th September, 1979 made by the State Government compulsorily retiring the appellant from service, and the recommendation of the High Court on which the order is based, are quashed. It is open to the High Court and the State Government to consider the matter afresh. There is no order as to costs.

S.R. *Appeal allowed.*