

D. RAMASWAMI

v.

STATE OF TAMIL NADU

January 28, 1982

[O. CHINNAPPA REDDY AND A. P. SEN, JJ.]

Service matter—Fundamental Rule 56 (d)—Government Servant earned quick promotions solely on merit—One adverse entry in confidential file—Exonerated after full enquiry—Promoted to selection post—No adverse entry since then—Compulsorily retired under F. R. 56 (d) within a few months thereafter—Validity of.

Starting as a Lower Division Clerk in 1953, by quick successive promotions the appellant rose to the prestigious position of a member of the Sales Tax Appellate Tribunal in less than 25 years of service. His service book showed that he had an excellent record of service, earned several encomiums, commendations and appreciations. But a solitary entry made in 1969 in his confidential file stated that his reputation was "not at all good" in that he was in the habit of threatening dealers and taking money from them. An enquiry was conducted by the Directorate of Vigilance and Anti-Corruption. After framing charges and obtaining his explanation the full Board of Revenue reported that the charges "could not be pursued and proved" and suggested that "the charges be dropped". In November 1974 the Government dropped the charges. A few months later in May 1975 he was promoted to the selection post of Deputy Commissioner of Commercial Taxes and posted as Member of the Sales Tax Appellate Tribunal. Immediately thereafter in September 1975, invoking F. R. 56 (d), he was compulsorily retired from service.

Allowing the appeal to this Court,

HELD : In the face of the appellant's promotion a few months before his compulsory retirement under F. R. 56 (d) and nothing even mildly suggestive of ineptitude or inefficiency after his promotion, it is impossible to sustain the order of the Government retiring him from service. [79 G]

When the Government exonerated him of the charges levelled against him, the basis of the adverse entry in his confidential file was knocked out. By reason of the promotion of the selection post of Deputy Commissioner and posting as a Member of the Sales Tax Appellate Tribunal, the effect of the entry was further blotted out. Since then, there was no adverse entry in his service record to discredit him or hinting even remotely that he had outlived his utility as a Government servant. Had there been another adverse entry after his promotion it would have been possible to read them all in conjunction and say that it was time for him to quit Government service. But that was not so. It was therefore odd that he was retired a few months after his promotion. [79 A-C]

A All this is not to say that previous history of a Government servant should be completely ignored once he is promoted. Sometimes past events might help to assess the present conduct, but when there was nothing in the present conduct casting any doubt on the wisdom of the promotion there was no justification for needless digging into the past. [80 A-B]

B *Swami Saran Saksena v. State of U.P.*, [1980] 1 SCR 923; *Baldev Raj Chadha v. Union of India & Ors.*, [1981] 1 SCR 430; *State of Punjab v. Dewan Chuni Lal*, [1970] 3 SCR 694; and *Union of India etc. v. M. E. Reddy & Anr.*, [1980] 1 SCR 736; referred to.

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3436 of 1979.

From the Judgment and Order dated the 19th April, 1978 of the Madras High Court in Writ Appeal No. 224/78.

D *M.K. Ramamurthi*, and *C.S. Vaidyanathan* for the Appellant.
Dr. Y.S. Chitale and *A.V. Rangam* for the Respondents.

E The Judgment of the Court was delivered by

F CHINNAPPA REDDY, J. An order of pre-mature retirement following close upon the heels of promotion and appointment to a coveted Selection post is bound to perplex any right thinking man and make him wonder whether the right hand knows what the left hand has done. If in the month of May a Government servant is found to possess such high merit and ability, which naturally includes integrity, as to entitle him not merely to be promoted to a selection post but to be appointed to a very responsible and much desired post in that cadre, what could have happened between May and September to merit his being weeded out altogether from service in September under the rule which enables the Government to retire a Government servant in the public interest after he has attained the age of 50 years or after he has completed 25 years of qualifying service. One would expect that some grave and grim situation had developed in the interregnum to warrant the pursuit of such a drastic course. But surprisingly, we found nothing whatsoever had happened in this case during that period. Let us look at the totality of the facts.

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The appellant appears to have had quite a noteworthy career. Starting at the lowest rung as a Lower Division Clerk in 1953, he was promoted as an Assistant Commercial Tax Officer in 1954, next as a Deputy Commercial Tax Officer in 1957, then as a Joint Commercial Tax Officer in 1962, thereafter as a Commercial Tax Officer in 1966, later as an Assistant Commissioner of Commercial Taxes in 1972 and finally as Deputy Commissioner of Commercial Taxes on 7-5-1975. On promotion as Deputy Commissioner of Commercial Taxes he was posted as Member of the Sales Tax Appellate Tribunal in the same cadre. On September 28, 1975, he was retired under Fundamental Rule 56(d). His Service Book shows that he had an excellent record of service. He had earned several encomiums, commendations and appreciations. The several promotions gained by him reflect his good record of service. But there was one dark spot. In 1969 when he was working as Commercial Tax Officer it was noted in his Confidential file by the Deputy Commissioner of Commercial Taxes as follows :

“This Commercial Tax Officer is a very intelligent and capable officer who kept the entire district under his control in perfect discipline. Unfortunately, his reputation is not at all good. There were complaints that he used to threaten dealers and take money. The entire matter is under investigation by the Vigilance and Anti-Corruption Department”.

There was an enquiry by the Directorate of Vigilance and Anti Corruption. Charges were framed against the appellant by the Board of Revenue. The explanation of the appellant was obtained. The Full Board of Revenue then reported that the charges should be dropped. The Government accepted the report of the Full Board and dropped the charges making the following order on 29-11-1974 :

“As the preliminary enquiry disclosed a prima facie case of corruption, a detailed enquiry was taken up by the Directorate of Vigilance and Anti-Corruption. Out of eleven allegations levelled against Thiru D. Ramaswami, seven allegations were not substantiated, in the enquiry made by the Directorate of Vigilance and Anti-Corruption. The Government, examined the report of the Directorate

A and considered that there was a prima facie case in respect of certain allegations and this was sufficient to proceed against Thiru D. Ramaswami. The Board of Revenue (CT) was therefore requested to frame charges straightaway as for a major penalty against Thiru D. Ramaswami on the basis of allegations levelled against him. The Board accordingly framed charges against him in respect of allegations substantiated, obtained his explanation and sent its report thereon. The Full Board considered that all the charges framed against Thiru D. Ramaswami in consequence of the detailed enquiry conducted by the Vigilance Department cannot be pursued and proved. The Full Board has therefore expressed the view that the said charges may be dropped. The Government accept the views of the Full Board and direct that all the charges framed against Thiru D. Ramaswami be dropped".

D The effect of the order of November 29, 1974 of the Government was to grant absolution to the appellant from the repercussions of the note of the Deputy Commissioner of Commercial Taxes, made in 1969. If there was any ambiguity about the effect of the Government Order, it was cleared by the circumstance that, within a few months, on May 7, 1975, he was promoted as Deputy Commissioner of Commercial Taxes and posted as Member, Sales Tax Appellate Tribunal, a prestigious post. It has to be mentioned here that the post of a Deputy Commissioner of Commercial Taxes is a Selection post. Under Rule 36(b) (i) of the Tamil Nadu General Rules for the State and Subordinate Services :

F "Promotions in a service or class to a selection category or to a selection grade shall be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal".

G Under Rule 2(b) of the Tamil Nadu Special Rules for Commercial Taxes Service :

"All promotions shall be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal".

H So, what do we have ? There was an adverse entry in the confidential file of the appellant in 1969. The basis of the entry

was knocked out by the Order dated November 29, 1974 of the Government, and the effect of the entry was blotted out by the promotion of the appellant as Deputy Commissioner. After his promotion as Deputy Commissioner there was no entry in the service Book to his discredit or hinting even remotely that he had outlived his utility as a Govt. servant. If there was some entry, not wholly favourable to the appellant after his promotion, one might hark back to similar or like entries in the past, read them all in conjunction and conclude that the time had arrived for the Government servant to quit Government service. But, with nothing of the sort, it is indeed odd to retire a Government servant a few months after promoting him to a Selection post. In the present case, we made a vain search in Service record of the appellant to find something adverse to the appellant apart from the 1969 entry. All that we could find was some stray mildly deprecating entries such as the one in 1964 which said :

"He is sincere and hardworking. He manages his office very well. He exercises adequate control over subordinates. He maintains a cordial relationship with public.

Because of his stiff attitude some of the assesseees complain about him stating that he is rude in his behaviour. This perhaps is due to his unbending attitude. With a little more tact he will be an asset to the Department".

One curious feature of the case is that while the 1969 entry noted that an enquiry was pending with the Vigilance and Anti-Corruption Department in regard to the allegations against the appellant, the ultimate result of the enquiry which was that the charges should be dropped was nowhere noted in the personal file of the appellant. One wonders whether the failure to note the result of the enquiry in the personal file led to the impugned order !

In the face of the promotion of the appellant just a few months earlier and nothing even mildly suggestive of ineptitude or inefficiency thereafter, it is impossible to sustain the order of the Government retiring the appellant from service. The learned Counsel for the State of Tamil Nadu argued that the Government was entitled to take into consideration the entire history of the appellant including that part of it which was prior to his promotion.

A We do not say that the previous history of a Government servant should be completely ignored, once he is promoted. Sometimes, past events may help to assess present conduct. But when there is nothing in the present conduct casting any doubt on the wisdom of the promotion, we see no justification for needless digging into the past.

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The learned Counsel for the appellant relied on the decisions in *Swami Saran Saksena v. State of U.P.*, ⁽¹⁾ *Baldev Raj Chadha v. Union of India & Ors.*, ⁽²⁾ *State of Punjab v. Dewan Chuni Lal*, ⁽³⁾ while the learned counsel for respondent relied on the decision in *Union of India etc. v. M.E. Reddy & Anr.* ⁽⁴⁾ All the decisions have been considered by us in reaching our conclusion. The appeal is allowed. G. O. Ms. No. 1112 dated September 19, 1975, Commercial Taxes Religious Endowments Department, Government of Tamil Nadu is quashed. The appellant will be reinstated in service and paid the arrears of salary due to him under the rules. He is entitled to his costs.

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Appeal allowed.

P.B.R.

(1) [1980] 1 SCR 923.

(2) [1981] 1 S.C.R. 430.

(3) [1970] 3 S.C.R. 694.

(4) [1980] 1 S.C.R. 736.