

A POSTS AND TELEGRAPH BOARD AND ORS.

v.

C. S. N. MURTHY

MARCH 26, 1992

B [S. RANGANATHAN, V. RAMASWAMI AND YOGESHWAR
DAYAL, JJ.]

Service Law :

C *Fundamental Rules :*

F.R. 56(j)—Compulsory retirement—Posts and Telegraphs Department—Assistant Engineer—Service record—Review of—Standard of work declined and not satisfactory for last two years—No adverse remarks for previous years—Order of compulsory retirement passed on recommendation of high power committee—Validity of : whether courts should interfere with.

The case of the respondent, an Assistant Engineer in Posts and Telegraphs Department, was considered for compulsory retirement under Fundamental Rule 56(j). There were adverse remarks for the financial years 1970-71 and 1971-72 showing that respondent's standard of work had declined and was not satisfactory. There was no material adverse to the respondent up to the year 1969-70. On the recommendation of a high power committee, he was compulsorily retired from service in February, 1973.

Respondent's writ petition challenging his compulsory retirement was dismissed by the High Court; but the Division Bench of the High Court allowed his appeal holding that the order of retirement was not found on any relevant material and was arbitrary and capricious. The Union of India filed the appeal by special leave to this Court.

G *Allowing the appeal, this Court,*

HELD : 1. Notwithstanding the earlier record of the respondent being good, if the record showed that the standard of work of the respondent had declined and was not satisfactory, that was certainly material enabling the department to come to a conclusion under Fundamental Rule 56(j). [p.343 CD]

2. There were adverse entires against the respondent for the financial years 1970-71 and 1971-72. The purport of the confidential reports of these years was placed before this Court and had also been referred to by the High Court. They were objective appraisals of respondent's work. The adverse remarks for the year 1971-72 standing by themselves, can constitute sufficient material for the Department to come to the conclusion. There was material to show that the efficiency of the respondent was slackening in the last two years of the period under review and it is, therefore, not possible to fault the conclusion of the department as being *mala fide*, perverse, arbitrary or unreasonable. [pp.341GH; 342A; 343A-C] A

3. The Division Bench of the High Court erred in setting aside the order of compulsory retirement on the basis that there was no material on record justifying the action against the respondent. [p.343D] C

4. An order of compulsory retirement under Fundamental Rule 56(j) is not an order of punishment. The nature of the delinquency and whether it is of such a degree as to require the compulsory retirement of the employee are primarily for the Government to decide upon. The Courts will not interfere with the exercise of this power if arrived at *bona fide* and on the basis of material available on the record. [p.342FG] D

Baikuntha Nath Das v. Chief District Medical Officer, Baripada, 1992 E
-2 J.T. 1 (S.C.), relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1299 of 1976.

From the Judgment and Order dated 20.7.1976 of the Andhra Pradesh High Court in W.A. No. 855 of 1974. F

V.C. Mahajan and C.V.S. Rao for the Appellants.

R. Venkataramani, S.M. Garg, T. Lajapathi Roy and Ms. Rani Chhabra for the Respondents. G

The Judgment of the Court was delivered by

RANGANATHAN, J. The respondent, C.S.N. Murthy, was an Assistant Engineer in the Telecommunication Training Centre at Hyderabad. He was normally due to retire from service in 1980. However, the H

A provisions of rule 56(j) of the Fundamental Rules were invoked in his case. A high powered committee consisting of the Secretary to the Ministry of Finance and the Joint Secretary to the Cabinet Secretariat reviewed the service records of 96 persons belonging to the Department. The committee recommended, on an overall assessment of the confidential records, that there was no justification for continuing the petitioner and two others (with whom we are not here concerned) in service. Accepting the recommendations of the committee, the Posts and Telegraphs Board issued a notice on the respondent on 19.10.73 giving him notice of compulsory retirement under fundamental rule 56(j) with effect from the expiry of three months from the date of service of the notice on him. Consequent thereupon, the C respondent's services came to an end, by way of compulsory retirement, in February 1974.

The respondent filed a writ petition in the Andhra Pradesh High Court challenging the validity of the order of compulsory retirement but D the writ petition was unsuccessful. However, the appeal preferred by him to a Division Bench of the High Court was allowed. The Division Bench, in its judgment and order dated 19.7.76, came to the conclusion that the impugned order of retirement was not founded on any relevant material and was arbitrary and capricious. The impugned order was, therefore, quashed and the petitioner was directed to be reinstated forthwith with all E the benefits that could have accrued to him had the order not been implemented against him. The Union of India has preferred the present appeal.

The modalities for the invocation of fundamental rule 56(j) have been F examined by a number of decisions of this Court. All these judgments have been reviewed and the legal principles applicable thereto have been summarised by B.P. Jeevan Reddy J., speaking for the Supreme Court, in *Baikuntha Nath Das v. Chief District Medical Officer, Baripada*, 1992-2 J.T. 1 (S.C.). These principles have been set out in paragraph 32 of the G judgment, which can be extracted here for purposes of convenient reference :

32. The following principles emerge from the above discussion:

H (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. A

(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 a 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. B

(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. C

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on showing that, while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference. D

Interference is permissible only on the grounds mentioned in (iii) above. This aspect has been discussed in paras 29 to 31 above. E

In the present case, the service records of the petitioner were reviewed by a high powered committee. It is true that there was no material adverse to the respondent upto the year 1969-70. But there were adverse entries for the financial years 1970-71 and 1971-72. The purport of the H

A confidential reports of these years has been placed before this court and had also been referred to by the High Court. These have been set out in letters addressed to the respondent by his superiors on 29.4.1971 and 15.4.1972 respectively. A perusal of these letters shows that they were objective appraisals of the petitioner's work during the two financial years in question. They point out that certain aspects of the respondent's working were quite satisfactory but they also emphasise that certain deficiencies were found in his work during these years for which he was duly cautioned. In the first letter he was cautioned to take more interest in Auto Manual Positions' functioning and against indulging in disrespectful language towards superiors. The petitioner's capacity for tact and courtesy was described as not satisfactory. It was also observed that he had not taken adequate interest in his job, that his handling of staff has also not been satisfactory leading to several complaints, and that there were cases of delays, bad relations and technical neglect, calling for improvement. The letter dated 15.4.72, likewise, after referring to the favourable remarks earned by the respondent emphasised three aspects on which the petitioner's conduct was unsatisfactory. He had been warned for delay in disposal of complaint cases, for delay in confirming a deceased official and for not taking timely action for clearance of jungle on "main line Cuddapah-Tadpatri."

E It will be clear from the extracts referred to above, that though the respondent's conduct was quite satisfactory till March 1970, his standard of work had declined in the last two years under review. In both these years, it was found that he was not taking adequate interest in his work and was responsible for delays of various kinds. As has already been pointed out, F an order of compulsory retirement is not an order of punishment. Fundamental Rule 56(j) authorises the Government to review the working of its employees at the end of their period of service referred to therein and to require the servant to retire from service if, in its opinion, public interest calls for such an order. Whether the conduct of the employee is such as to justify such a conclusion is primarily for the departmental authorities to decide. The nature of the delinquency and whether it is of such a degree as to require the compulsory retirement of the employee are primarily for the Government to decide upon. The courts will not interfere with the exercise of this power, if arrived at *bona fide* and on the basis of material available on the record. No *mala fides* have been urged in the present case.

H The only suggestion of the High Court is that the record discloses no

material which would justify the action taken against the respondent. We are unable to agree. In our opinion, there was material which showed that the efficiency of the petitioner was slackening in the last two years of the period under review and it is, therefore, not possible for us to fault the conclusion of the department as being *mala fide*, perverse, arbitrary or unreasonable. The Division Bench seems to have thought that, since the adverse remarks mentioned in the earlier letter of 29th April, 1971 were not repeated in the subsequent letter, it should be taken that they had been given up subsequently or that the respondent had improved in the subsequent year. We do not think that this is a legitimate inference, for the report for 1971-72 only shows that the respondents' propensity to delay matters persisted despite the warning of the previous year. But, even if one assumes that the High Court was correct on this, the adverse remarks made against the respondent in relation to the period 1971-72, standing by themselves, can constitute sufficient material for the department to come to a conclusion in the matter. It is true that the earlier record of the respondent was good but if the record showed that the standard of work of the respondent had declined and was not satisfactory, that was certainly material enabling the department to come to a conclusion under Fundamental Rule 56(j). We are of opinion that the High Court erred in setting aside the order of compulsory retirement on the basis that there was no material at all on record justifying the action against the respondent.

For the reasons mentioned above, we allow this appeal and set aside the order of the Division Bench and restore the order of the Single Judge of the High Court as well as the order of compulsory retirement of the petitioner dated 29.10.71. We, however, make no order as to costs.

R.P.

Appeal allowed.