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S. RAMACHANDRA RAJU

v.

STATE OF ORISSA

AUGUST 31, 1994

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[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

Service Law

Orissa Service Code : Rule 71(a).

C

Compulsory Retirement—Government should exercise the power only in public interest—Entire service record of employee should be considered—Where the order was passed without considering the entire record and was based on solitary adverse remarks it was held to be arbitrary exercise of Power—Order held illegal and quashed.

D

Confidential Reports—Reporting Officer—Duty of—Reporting Officer should eschew his subjectivity and personal prejudice or proclivity and make objective assessment.

E

The appellant, a Lecturer in a Government College, was given adverse comments for the year 1987-88. His service record earlier and later to 1987-88 was meritorious. He made a representation for expunging the adverse remarks alleging that remarks were made due to *mala fides* and personal vendatta by the Principal. In the meanwhile, he was promoted as Reader. However, by proceedings dated May 28, 1991 he was compulsorily retired from service under Rule 71(a) of the Orissa Service Code. The sole foundation for the exercise of the power of retiring the appellant from service was the adverse remarks for 1987-88 and the recommendation of the Review Committee which also relied on the said adverse remarks only. His representation for expunging the remarks was rejected. The appellant unsuccessfully challenged the order of compulsory retirement before the Administrative Tribunal.

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In appeal to this Court it was contended on behalf of the appellant that the Tribunal erred in its conclusion because appellant's entire service record was not considered and the order was based only on the Report of the Review Committee which was founded only upon the adverse remarks of the Principal for one particular year.

Allowing the appeal and setting aside the order of compulsory retirement, this Court A

HELD : 1. The exercise of power by the government falls in the category of arbitrary exercise of power or failure to take the total record of service into consideration objectively as only the solitary adverse report for the year 1987-88 has been taken as a foundation to compulsorily retire the appellant from service. The Review Committee as well considered only that report; neither earlier reports nor subsequent reports were considered. The appellant was promoted as a Reader after the adverse report and the adverse comments were communicated to him and in a mechanical way they rejected the representation to expunge the adverse remarks, even without going into the contention of the appellant that the then Principal was actuated with *mala fides* by submitting wrongly or falsely in confidential report which appear to have some foundation or suspicion, for such a consistent record earlier and later periods would establish that the appellant has meritorious record of service as a teacher. Therefore, in that background the exercise of the power is illegal. [838-G-H, 839-A, B] B C D

2. Though the order of compulsory retirement is not a punishment and the government employee is entitled to draw all retiral benefits including pension, the government must exercise its power only in the public interest to effectuate the efficiency of the services. The entire service record or character rolls or confidential reports maintained would furnish the back drop material for consideration by the Government or the Review Committee or the appropriate authority. On consideration of the totality of the facts and circumstances alone, the government should form the opinion that the government officer needs to be compulsorily retired from service. Therefore, the entire service record, more particularly the latest, would form the foundation for the opinion and furnish the base to exercise the power under the relevant rule to compulsorily retire a government officer. [837-G, 838-B, C] E F

3. The dead wood need to be removed to augment efficiency. Integrity in public service need to be maintained. The exercise of power of compulsory retirement must not be a haunt on public servant but must act as a check and reasonable measure to ensure efficiency of service and free from corruption and incompetence. The officer would live by reputation built around him. In an appropriate case, there may not be sufficient evidence G H

- A to take punitive disciplinary action of removal from service. But his conduct and reputation may be such that his continuance in service would be a menace in public service and injurious to public interest.

[837-G-H, 838-B]

- B 4. When an officer reaches the age of compulsory retirement, he could neither seek alternative appointment nor meet the family burdens with the pension or other benefits he gets and thereby he would be subjected to great hardship and family would be greatly affected. Therefore, before exercising the power, the competent appropriate authority must weigh the pros and cons and balance the public interest as against the individual interest. On total evaluation of the entire record of service
- C if the government or the governmental authority forms the opinion that in the public interest the officer needs to be retired compulsorily, the court may not interfere with the exercise of such *bonafide* exercise of power but the court has power and duty to exercise the power of judicial review not as a court of appeal but in its exercise of judicial review to consider
- D whether the power has been properly exercised or is arbitrary or vitiated either by *mala fide* or actuated by extraneous consideration or arbitrary in retiring the government officer compulsorily from service. [838-D, E]

- E *Shyam Lal v. State of U.P.*, [1955] 1 S.C.R. 26; *Union of India v. Col. J.N. Sinha & Anr.*, [1971] 1 SCR 791; *B.R. Chadha v. Union of India & Ors.*, [1980] 4 S.C.C. 321; *C.D. Ailawadi v. Union of India & Ors.*, A.I.R. (1990) S.C. 1004; *Ram Ekbal Sharma v. State of Bihar*, Vol. 78 - (1991) F.J.R. p. 11 = [1990] 3 SCR 504 and *Baikuntha Nath Das v. Chief District Medical Officer*, [1992] 2 S.C.C. 299, referred to.

- F 5. Writing confidential reports bears onerous responsibility on the reporting officer to eschew his subjectivity and personal prejudices or proclivity or predilections and to make objective assessment. It is needless to emphasise that the career prospect of a subordinate employee largely depends upon the work and character assessment by the reporting officer.
- G The latter should adopt fair, objective, dispassionate and constructive commends/comments in estimating or assessing the characterability, integrity and responsibility displayed by the concerned employee during the relevant period for the above objectives if not strictly adhered to in making an honest assessment, the prospect and career of the subordinate officer being put to great jeopardy. The reporting officer is bound to lose his
- H credibility in the eyes of his subordinates and fail to command respect and

work from them. [839-E to G]

6.1. The writing of the confidentials is contributing to make the subordinates work at least to some extent. Therefore, writing the confidential reports objectively and constructively and communication thereof at the earliest would pave way for amends by erring subordinate officer or to improve the efficiency in service. At the same time, the subordinate employee/officer should dedicate to do hard work and duty; assiduity in the discharge of the duty, honesty with integrity in performance thereof which alone would earn his usefulness in retention of his service. Both would contribute to improve excellence in service. [839-H, 840-A, B]

6.2. In the instant case the facts are eloquent. When anterior to or subsequent to 1987-88 Respondent was a man of ability and of integrity, how the same would become below average only for the academic year 1987-88 without discernible reasons. It would speak volumes on the objectivity of assessment by the reporting officer i.e. the Principal. This conduct is much to be desired. [839-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5815 of 1994.

From the Judgment and Order dated 25.1.93 of the Orissa Administrative Tribunal, Bhubneswar in O.A. No. 686 of 1991.

S.B. Upadhyay for the Appellant.

A.K. Panda for the Respondent.

The Judgment of the Court was delivered by

K. RAMASWAMY, J. Leave granted.

The appellant was initially appointed as a Lecturer on September 29, 1965 in a private college which was taken over by the government with effect from March 9, 1971. He was transferred from that college in 1978 to Bhawanipatna College. For the year 1987-88, the Principal one Mr. U.C. Mohapatra made adverse comments for the period 1.4.1987 to 29.2.1988. Thereon the appellant had submitted his representation alleging that the remarks were made due to *mala fides* and personal vendetta by the Principal. In the meanwhile on March 20, 1991 the appellant was promoted

A as a Reader in the pay-scale of Rs. 3700 to 5700. By the proceeding dated May 28, 1991 he was compulsorily retired from service. His representation was rejected on December 5, 1991. When he challenged the order, the Administrative Tribunal by order dated January 25, 1993 dismissed the petition. Thus this appeal.

B It was contended and stated in the grounds of appeal that despite his request, the tribunal did not call for his service record nor considered the totality of his service. It relied upon the only report of the Review Committee which in turn was founded upon the adverse remarks based on the report of the Principal. We directed the State to produce the entire record of the appellant and his confidential reports in his service record of his character roll. Accordingly they have been placed before us. We have perused the entire record. The record disclosed that from the year 1973-74 onwards, the year in which the College was taken over, his work was commended as good, sincere and satisfactory. He is a sincere teacher, helpful in maintaining discipline, a strong-minded person and willing worker. For the year 1980, the government communicated that his work was unsatisfactory for the years 1976-77, while the Principal recorded for the same year that his integrity was good, his zeal was fair, his work was fair but relations with the students was average. Same was the report for the year 1979-80. For the year 1980-81, the Principal also reported that his integrity was good. He was a good teacher his conduct was good and work was satisfactory. Same was the report for the year 1981-82. The government communicated to the appellant that he had not conducted any research work. The report for the year 1982-83 equally was satisfactory and he was advised to publish papers. For the year 1983-84, the report was that his conduct was good, his integrity was good, he is a good teacher, his work was fair and his relation with the students was good. The government reiterated that he did not conduct any research work. For the year 1984-85 his knowledge on the subject was good, his work as a teacher was very good. He takes pains in imparting lectures. He is a sincere worker, his zeal is good, integrity is good, official conduct is good, work as a proctor is good, his relationship with the students is good. For the year 1985-86, the remarks of the Principal was that his work as a teacher and knowledge on the subject is satisfactory, his work as a proctor is satisfactory, his integrity upto the mark, his relationship with the students is satisfactory. We do not have the report for the year 1986-87. For the year 1987-88 the report of the Principal is that his knowledge on the subject is average, work as a

teacher is below average. He is inclined to drop classes when not watched. His relationship with the students average, work as a proctor average, official conduct average, zeal below average, integrity below average, in general remarks, it was stated that he is a disintegrated officer, constantly grumbling over his last opportunity and neglect his duties, he prefers to stay away from the college as long as possible. It was communicated by the Govt. on December 5, 1988, the record also shows that his representation was considered to expunge the remarks for 1987-88 and was rejected. For the year 1988-89 another Principal in his report dated May 13, 1989 stated that appellant's knowledge on the subject is good, his work as a teacher is good, other works in the department is good, in his extra-curricular activities as Vice President of humanitarian society his work is commendable, his power of taking responsibility is good, his relationship with the students is good, his work as a proctor is fair, official conduct good, zeal good, integrity fair and in general remarks "a very responsible and disciplined teacher". In the year 1989-90 it was reported that his knowledge on the subject is good, his work as a teacher is good, his work in the department is good as a Vice President of the humanitarian society and as a Judge of several debate competitions he exhibited good work, his relationship with the students is good, his work as a proctor fair, official conduct good, zeal fair, integrity is good and in the general remarks "he is a polite and reliable officer" which received on June 20, 1990 and the same was the remarks for the year 1990-91.

The question, therefore is whether the government, while exercising its powers of compulsorily retiring the appellant under Rule 71(a) of Orissa Service Code and G.A. Department circular No. 30495/GA, dated November 24 1987, had exercised its power in the public interest and the order is legal. It is contended in the counter affidavit filed in this Court as well as in the tribunal that the sole foundation for the exercise of the power of retiring the appellant compulsorily from service is the "gross adverse remarks for the period 1.4.1987 to 29.2.1988" and the recommendation of the Review Committee. It is well settled law from a leading judgment of this Court by a Constitution Bench in *Shyam Lal v. State of U.P.*, [1955] 1 SCR p.26, that compulsory retirement does not amount to dismissal or removal from service within the meaning of Art. 311 of the Constitution. It is neither punishment nor visit with loss of retiral benefits. It does not cast stigma. The officer will be entitled to the pension that is actually earned and there is no diminution of the accrued benefits. The object to exercise

- A the power to compulsorily retiring the government employee was considered and held in *Union of India v. Col. J.N. Sinha & Anr*, [1971] 1 SCR 791 at 795 'D', that power can be exercised subject to the conditions mentioned in the rule, (Rules 56(J) of the Fundamental Rules), one of which is that the concerned authority must be of the opinion that it is in public interest to do so. If that authority *bona fide* forms that opinion, the correctness of that opinion cannot be challenged before courts. It is open to the aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision. Compulsory retirement involves no civil consequences. While exercising the power various considerations would weigh with the appropriate authority. 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 the office is not inefficient but the appropriate authority may prefer to have a more efficient officer or in certain key posts public interest may require that a person of undoubted integrity and ability would be there. "There is no denying the fact that in all organizations and more so in government organisations, there is good deal of dead wood. It is in public interest to chop off the same. Fundamental Rule 56(j) holds the balance between the rights of the individual government servant and the interest 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 that case only the contention raised was that no opportunity of hearing was given before compulsorily retiring the respondent. The contention was negatived holding that the rules of natural justice are not embodied in exercising the power under Rule 56(j) of the Fundamental Rules and that no prior opportunity should be given to the concerned government retirement. That was found favour with the High Court and was confirmed by this Court.

- In *B.R. Chadha v. Union of India & Ors.*, [1980] 4 SCC 321, this Court while considering the scope of judicial review of the exercise of the power to compulsorily retiring a government servant held at p.325 that the Administration, to be competent, must have servants who are not plagued by uncertainty about tomorrow. At the age of 50 when you have family responsibility and the somber problems of one's own life's evening, your experience, accomplishments and fullness of fitness become an asset to the Administration, if and only if you are not harried or worried by 'what will

happen to me and my family?' 'Where will I go if cashiered?' 'How will I survive when I am too old to be newly employed and too young to be superannuated?' These considerations become all the more important in departments where functional independence, fearless scrutiny, and freedom to expose evil or error in high places is the task. And the Ombudsmanic tasks of the office of audit vested in C and AG and the entire army of monitors and minions under him are too strategic for the nation's financial health and discipline that immunity from subtle threats and oblique over-awing is very much in public interest. So it is that we must emphatically state that under the guise of 'public interest' if unlimited discretion is regarded acceptable for making an order of premature retirement, it will be the surest menace to public interest and must fail for unreasonableness, arbitrariness and disguised dismissal. To constitutionalise the rule, we must so read it as to free it from the potential for the mischief we have just projected. The exercise of power must be *bona fide* and promote public interest. When an order is challenged and its validity depends on 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 reasonably instructed in the law, is sufficient to sustain the grounds of 'public interest' justifying forced retirement of the public servant. Judges cannot substitute their judgment for that of the Administrator but they are not absolved from the minimal review well settled in administrative law and founded on constitutional obligations. The limitations on judicial power in this area well known and we are confined to an examination of the material merely to see whether a rational mind may conceivably be satisfied that the compulsory retirement of the officer concerned is necessary in public interest.

The whole purpose of the rule is to weed out the worthless without the punitive extremes covered by Art.311 of the Constitution. After all, Administration, to be efficient, must not be manned by drones, do nothings, incompetents and unworthies. They may not be delinquent who must be punished but may be a burden on the Administration if by insensitive, insouciant, unintelligent or dubious conduct impede the flow or promote stagnation. In a country where speed, sensitivity probity, and non-irritative public relations and enthusiastic creativity are urgently needed, paper-logged processes and callous cadres are the besetting sin of the Administration. It is in public interest to retire a never-do-well, but to juggle

A with confidential reports when a man's career is at stake is a confidence trick contrary to public interest. Moreover, confidential reports are often subjective, impressionistic and must receive sedulous checking as basis for decision-making. The appropriate authority, not the court, makes the decision, but even so, a caveat is necessary to avoid misuse.

B This Court considered the whole service record. In that case some anterior record in which the Review Committee found that the performance of the appellant was below average and that, therefore, he was compulsorily retired. But the service of latter years disclosed that there was considerable improvement in the efficiency of the appellant. While considering the exercise of the power in that background this Court held that one wonders how an officer whose continuous service for 14 years crossing the efficiency bar and reaching the maximum salary in the scale and with no adverse entries for five years immediately before the compulsory retirement, could be cashiered on the score that long years ago, his performance had been poor, although his superiors had allowed him to cross the efficiency bar without qualms. A short cut may often be wrong cut. The order of compulsory retirement fails because vital material, relevant to the decision, has been ignored and absolute material, less relevant to the decision, has influenced the decision. Any order which materially suffers from the blemish of overlooking or ignoring, willfully or otherwise, vital facts bearing on the decision is bad in law. Accordingly the appeal was allowed and the order of compulsory retirement was set aside. In *C.D. Ailawadi v. Union of India & Ors.*, AIR (1990) SC 1004, this Court reiterated that the order of compulsory retirement is liable to be upset if no requisite opinion was found on the basis of the total evolution of the record or it was based on collateral grounds or the decision is arbitrary. On the facts that the Committee had found in the character rolls of the appellant that he did not have unblemished record of service, this Court upheld the order of compulsory retirement. In *Ram Ekbal Sharma v. State of Bihar*, Vol. 78 (1991) F.J.R. p.1, the facts were that the appellant had excellent record of service and was successively promoted to various high echelons from time to time. Departmental proceedings were initiated against him. Midway it was dropped and exercising the power under Rule 74(b)(ii) of the Bihar Service Code, he was compulsorily retired from service which was challenged but when became unsuccessful in the High Court, on appeal, this Court held that though the order of compulsory retirement was couched in an innocuous language the Court could look

into the record by lifting the veil and consider whether the order was by way of punishment. On the facts it was found that the order of compulsory retirement was by way of casting a stigma on the reputation or career of the appellant and that, therefore, it was held to be in contravention of Art. 311 of the Constitution. A

In *Baikuntha Nath Das v. Chief District Medical Officer*, [1992] 2 SCC 299, a bench of three Judges of this Court was to consider whether uncommunicated adverse remarks would be considered to order compulsory retirement. This court considering the scope of Fundamental Rule 56(j) on the anvil of administrative law, held that the order of compulsory retirement has to be passed on forming the opinion that it is in the public interest to retire a government servant compulsorily. Though the order is passed on the subjective satisfaction of the government, the government or the Review Committee 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 so considered would naturally include the entries in the confidential records Character rolls, both favourable and adverse. The order of compulsory retirement is not liable to be quashed on mere showing that while passing it uncommunicated adverse remarks were taken into consideration. Further this does not mean that judicial scrutiny is excluded altogether. Though the court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is *mala fide* or passed on no evidence or that 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, the remedy under Article 226 is an important safeguard, since the remedy is an effective check against arbitrary, *mala fide* or perverse actions. B C D E F

It is thus settled law that though the order of compulsory retirement is not a punishment and the government employee is entitled to draw all retiral benefits including pension, the government must exercise its power only in the public interest to effectuate the efficiency of the service. The dead wood need to be removed to augment efficiency. Integrity in public service need to be maintained. The exercise of power of compulsory retirement must not be a haunt on public servant but must act as a check and reasonable measure to ensure efficiency of service and free from corruption and incompetence. The officer would live by reputation built G H

A around him. In an appropriate case, there may not be sufficient evidence to take punitive disciplinary action of removal from service. But his conduct and reputation is such that his continuance in service would be a menace in public service and injurious to public interest. The entire service record or character rolls or confidential reports maintained would furnish the back drop material for consideration by the Government or the Review Committee or the appropriate authority. On consideration of the totality of the facts and circumstances alone, the government should form the opinion that the government officer needs to be compulsorily retired from service. Therefore, the entire service record more particular the latest, would form the foundation for the opinion and furnish the base to exercise the power under the relevant rule to compulsorily retire a government officer. When an officer reaching the age of compulsory retirement, as was pointed out by this Court, he could neither seek alternative appointment nor meet the family burdens with the pension or other benefits he gets and thereby he would be subjected to great hardship and family would be greatly effected. Therefore before exercising the power, the competent appropriate authority must weigh pros and cons and balance the public interest as against the individual interest. On total evaluation of the entire record of service if the government or the governmental authority forms the opinion that in the public interest the officer needs to be retired compulsorily, the court may not interfere with the exercise of such *bonafide* exercise of power but the court has power and duty to exercise the power of judicial review not as a court of appeal but in its exercise of judicial review to consider whether the power has been properly exercised or is arbitrary or vitiated either by *malafide* or actuated by extraneous consideration or arbitrary in retiring the government officer compulsorily from service.

F Keeping these principles in mind and on considering the facts extracted hereinbefore we find that the exercise of power by the government falls in the category of arbitrary exercise of power or failure to take the total record of service into consideration objectively but has taken only the solitary adverse report for the year 1987-88 as a foundation to compulsorily retire the appellant from service. The Review Committee as well considered only that report, neither earlier reports nor subsequent reports were considered. It is seen that admittedly the appellant was promoted as a Reader after the adverse report and the adverse comments were communicated to him and in a mechanical way they rejected the report to expunge the adverse remarks, even without going into the contention of the H appellant that the then Principal was actuated with *mala fides* by submitting

wrongly or falsely in confidential reports which appear to have some foundation or suspicion for such a contention consistent record earlier and latter periods would establish that the appellant has meritorious record of service as a teacher and that his devotion to the service is good and fair and that he maintains discipline, good relations with the students and imparts teaching to the students fairly with good knowledge as a teacher. Therefore, in that background the exercise of the power is illegal.

The facts are eloquent. From 1973-74 the appellant started with a commendation of his performance to be "satisfactory" to "fair" in the year 1990-91. Would it be comprehensible that in the year 1987-88 whether he would suddenly drop down and become an average or below average teacher? When he was a responsible teacher and he had cordial relations with the students' community, and was taking pains to impart lessons to the students, would it be believable that he avoids to take classes and drops down "if not watched"? When anterior to or subsequent to 1987-88 he was a man of ability and of integrity, the same would become below average only for the academic year 1987-88 without discernible reasons. It would speak volumes on the objectivity of assessment by the reporting officer i.e. the Principal. This conduct is much to be desired. This case would establish as a stark reality that writing confidential reports bears onerous responsibility on the reporting officer to eschew his subjectivity and personal prejudices or proclivity or predilections and to make objective assessment. It is needless to emphasise that the career prospect of a subordinate officer/employee largely depends upon the work and character assessment by the reporting officer. The latter should adopt fair, objective, dispassionate and constructive commends/comments in estimating or assessing the character, ability, integrity and responsibility displayed by the concerned officer/employee during the relevant period for the above objectives if not strictly adhered to in making an honest assessment, the prospect and career of the subordinate officer being put to great jeopardy. The reporting officer is bound to lose his credibility in the eyes of his subordinates and fail to command respect and work from them. The constitutional and statutory safeguards given to the government employees largely became responsible to display callousness and disregard of the discharge of their duties and make it impossible to the superior or controlling officers to extract legitimate work from them. The writing of the confidentials is contributing to make the subordinates work at least to some extent. Therefore, writing the confidential reports objectively and constructively and

- A** communication thereof at the earliest would pave way for amends by erring subordinate officer or to improve the efficiency in service. At the same time, the subordinate-employee/officer should dedicate to do hard work and duty; assiduity in the discharge of the duty, honesty with integrity in performance thereof which alone would earn his usefulness in retention of his service. Both would contribute to improve excellence in service.
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Accordingly the appeal is allowed. The order of the compulsory retirement is set aside and the O.A. is accordingly allowed with all consequential benefits and with costs quantified as Rs. 5,000.

T.N.A.

Appeal allowed.