

CASE NO.:
Appeal (civil) 2083 of 2002

PETITIONER:
STATE OF U.P. AND OTHERS

Vs.

RESPONDENT:
VIJAY KUMAR JAIN

DATE OF JUDGMENT: 14/03/2002

BENCH:
V.N. Khare & Ashok Bhan

JUDGMENT:

[with C. A. No. 2085/2002 (@ S.L.P (Civil) No. 8975/2001]

J U D G M E N T

V. N. KHARE, J.

Leave granted.

The respondent herein was, on 18.10.1972, initially appointed as an Assistant Engineer in an ad-hoc capacity in U.P. Rural Engineering Services. Subsequently, in the year 1979, the respondent's services were regularised and he was also confirmed on the post of Assistant Engineer. The respondent was promoted to the post of Executive Engineer w.e.f. 23.11.1980 by a Government Order on the basis of seniority-cum-merit. A Screening Committee set up by the U.P. Govt. after considering the respondent's service record and entries available in the character roll recommended that he should be retired compulsorily. Under Government Order, the Screening Committee or the State government while considering a case of compulsory retirement, is required to take into account the service record and entries in the character roll for last ten years prior to the order of compulsory retirement. The government accepted the said recommendation of the Screening Committee and passed an order dated 22.2.1999 compulsorily retiring the respondent from service. The Screening Committee while recommending the compulsory retirement of the respondent and the State government while accepting the said recommendation took into consideration four adverse materials found in the character roll of the respondent, which are as under :

- 1) The order dated 8.2.94 whereby the government directed for recovery of a sum of Rs. 79,994 from the salary of the respondent and also stoppage of increment in the pay scale of Executive Engineer and awarding censure entry in his character roll for the year 1993-94.
- 2) The order dated 16.10.86 whereby an warning was given to the respondent for his conduct in exercise of his duties.
- 3) An order dated 20.3.83 whereby another censure entry was ordered to be recorded in the character roll of the respondent.
- 4) An order dated 13.6.97 whereby the integrity of the respondent was not certified for committing serious

irregularities in the work at Lucknow in the year 1983-84. By the said order the respondent was also awarded a censure entry for the year 1997-98.

The respondent herein filed a writ petition before the High Court of Judicature at Allahabad challenging the order dated 22.2.1999 compulsorily retiring him from service. The respondent also filed a second writ petition before the High Court challenging the order dated 8.2.1994 whereby the government directed for recovery of Rs. 74,994/- from the salary of the respondent and also for ordering stoppage of increment in the pay scale of Executive Engineer and awarding of censure entry in his character roll in the year 1993-94. The respondent also filed a claim petition before the U.P. Services Tribunal, challenging the order dated 13.6.1997 whereby the State government declined to certify his integrity. While the aforesaid writ petitions were pending, the U.P. Services Tribunal disposed of the said claim petition by ordering that the entry in respect of withholding of integrity for the year 1997-98 awarded by an order dated 13.6.1997 since related to the period 1983-84, said entry is shifted to the year 1983-84.

The High Court first took up the writ petition which was directed against the order dated 8.2.1994 and set aside the order impugned in the writ petition on the ground that the respondent was not responsible for any loss caused to the government in the purchase of the materials for the department. After setting aside the order dated 8.2.1994, the High Court took up the writ petition which related to compulsory retirement of the respondent from service. The High Court was of the view that so far as the recovery of money, stoppage of increment and censure entry for the year 1993-94 are concerned, the same having been set aside in connected writ petition, the said adverse materials are rendered non-existent and the same could not have formed basis of passing of the order compulsorily retiring the respondent. Therefore, the High Court excluded the said adverse materials while testing the validity of the order of compulsorily retiring the respondent. The High Court was of the further view that since the order dated 16.10.1986 administering warning to the respondent was not communicated to the respondent and, further, the said warning related to a period beyond ten years prior to the date of order of compulsory retirement, the said entry could not be legally made basis for compulsorily retiring the respondent, especially when the said warning was not communicated to the respondent and also in view of the government order dated 29.7.89 whereunder it has been provided that administering of warning to a delinquent officer shall not form part of the character roll and it is only to be placed in the Personal File of such a delinquent officer. In this way, the High Court excluded the second and third adverse materials which the government took into account while forming its opinion to compulsorily retire the respondent.

The High Court coming to the fourth adverse material contained in the government order dated 13.6.1997 whereby the integrity of the respondent was withheld, was of the view that since the said entry was modified by the U.P. Services Tribunal to the extent that it would relate to the year 1983-84, the said entry being for a period beyond ten years preceding to the date of passing of order of compulsory retirement has to be excluded from zone of consideration for forming opinion to compulsorily retire the respondent. By the aforesaid process of elimination of adverse entries, the High Court found that there was no foundation or basis available to the government to form an opinion to compulsorily retire the respondent. In that view of the matter, the High Court set aside the order of compulsory retirement of the respondent, being arbitrary and allowed the writ petition. It is against the aforesaid judgment of the High Court the State of U.P. has preferred these appeals by way of special leave petitions.

We took up Civil Appeal No../2002 (arising out of S.L.P (Civil) 8738/2001) first which arises out of the judgment of the High Court whereby the order compulsorily retiring the respondent from service was set aside.

Learned counsel for the appellant urged that, under law relating to compulsory retirement, the State government is entitled to take into account the entire service record, preference being given to the later entries while considering whether an officer is required to be retained in the service after he attains the age of 50 years or has put in qualifying service and the view taken by the High Court that entries only for the period of ten years immediately prior to the date of order of compulsory retirement could only be looked into is patently erroneous. However, learned counsel appearing for the respondent supported the judgment of the High Court and contended that the entries falling only within ten years of the order of compulsory retirement can only be looked into while exercising power of compulsory retirement and any consideration of adverse material beyond ten years from the date of order of compulsory retirement would vitiate the order of compulsory retirement.

It is true that as per government order, the service record or confidential reports for ten years prior to passing of order of compulsory retirement are ordinarily required to be seen for taking a decision to compulsorily retire a government servant. It appears that the High Court on the said premise held that entries in the character roll being beyond ten years of passing of the order of compulsory retirement, the order passed by the State government compulsorily retiring the respondent was arbitrary. Assuming that the view taken by the High Court that entries in the character roll of a government servant only for ten years can be seen for passing of an order of compulsory retirement is correct which according to us is not a correct view of law, the question arises whether the Government Order dated 13.6.1997 whereby the integrity of the respondent was withheld, merely being relatable to the year 1983-84 would render the order of compulsory retirement as arbitrary. Admittedly, the order withholding of integrity was passed in the year 1997 which was well within ten years of passing of the order of compulsory retirement. But the said entry in the character roll was shifted from the year 1997-98 to 1983-84 by the order of U.P. Services Tribunal. It is not disputed that the aforesaid entry in the character roll of the respondent was taken into account by the Screening Committee while recommending the compulsory retirement of the respondent and the State government also took into consideration the said entry while passing the order compulsorily retiring the respondent.

Fundamental Rule 56 (in short F.R.) of the U.P. Fundamental Rules provides for compulsory retirement of government servant. FR 56 (c) provides that notwithstanding anything contained in clause (a) or clause (b), the appointing authority may, at any time by notice to any government servant (whether permanent or temporary), without assigning any reason, require him to retire after he attains the age of fifty years or the government servant may by notice to the appointing authority voluntarily retire at any time after attaining the age of forty five years or after he has completed qualifying service of twenty years. Sub-rule (2) of Rule 56 of the Fundamental Rules reads as under:

"2) that in order to be satisfied whether it will be in the public interest to require a government servant to retire under clause (c) the appointing authority may take into consideration any material relating to the government servant and nothing herein contained shall be construed to exclude from consideration.

(a) any entries relating to any period before such government servant was allowed to cross any efficiency bar or before he was promoted to any post in an officiating or substantive capacity or on an ad-hoc basis; or

(b) any entry against which a representation is pending, provided that the representation

is also taken into consideration along with the entry; or

(c) any report of the Vigilance Establishment constituted under the Uttar Pradesh Vigilance Establishment Act, 1965."

The aforesaid rule thus empowers the State government to retire any government servant on completion of fifty years of age or on completion of qualifying service.

Before we advert to the question which we are required to decide, it is necessary to notice the nature of an order compulsorily retiring a government servant under FR 56 (c). In *Shyam Lal vs. State of U.P.* (1955) 1 SCR 26, it was held that an order of compulsory retirement is neither a punishment nor any stigma attached to it and it was held therein as thus:

"There is no such element of charge or imputation in the case of compulsory retirement. The two requirements for compulsory retirement are that the officer has completed twenty five years' service and that it is in the public interest to dispense with his further services. It is true that this power of compulsory retirement may be used when the authority exercising this power cannot substantiate the misconduct which may be the real cause for taking the action but what is important to note is that the directions in the last sentence of Note 1 to Article 465-A make it abundantly clear that an imputation or charge is not in terms made a condition for the exercise of the power. In other words, a compulsory retirement has no stigma or implication of misbehaviour or incapacity."

In *Union of India vs. J.N. Sinha*, 1971 (1) SCR 791, it was held that an employee compulsorily retired does not lose any right acquired by him before retirement and that the said rule is not intended for taking any penal action against the government servant and that the order retiring a government servant compulsorily can only be challenged on the ground that either the order is arbitrary or it is not in public interest. No other ground is available to a government servant who is sought to be compulsorily retired from service under the relevant rules subject to the conditions provided therein.

Coming to the main question whether entries beyond ten years of the service record from the date of compulsory retirement could have been taken into account by the government while retiring a government servant under FR 56 (c) of the Rules, it is necessary to refer some of the decisions of this Court.

In *Baikuntha Nath Das and another vs. Chief District Medical Officer Baripada and another* 1992 (2) SCC 299, this Court laid down certain principles which are as under:

"(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."

In State of Punjab vs. Gurdas Singh 1998 (4) SCC 92, it was held thus:

"Before the decision to retire a government servant prematurely is taken the authorities are required to consider the whole record of service. Any adverse entry prior to earning of promotion or crossing of efficiency bar or picking up higher rank is not wiped out and can be taken into consideration while considering the overall performance of the employee during whole of his tenure of service whether it is in public interest to retain him in the service. The whole record of service of the employee will include any uncommunicated adverse entries as well."

The aforesaid decisions unmistakably lay down that the entire service record of a government servant could be considered by the government while exercising the power under FR 56 (c) of the Rules with emphasis on the later entries. FR 56 (c) of the Rules read with sub-rule (2), empowers the State government with an absolute right to retire an employee on attaining the age of 50 years. It cannot be disputed that the dead woods need to be removed to maintain efficiency in the service. Integrity of a government employee is foremost consideration in public service. If a conduct of a government employee becomes unbecoming to the public interest or obstruct the efficiency in public services, the government has an absolute right to compulsorily retire such an employee in public interest. The government's

right to compulsorily retire an employee is a method to ensure efficiency in public service and while doing so the government is entitled under Fundamental Rule 56 to take into account the entire service record, character roll or confidential report with emphasis on the later entries in the character roll of an employee. In fact, entire service record, character roll or confidential report furnishes the materials to Screening Committee or the State government, as the case may be, to find out whether a government servant has outlived his utility in service. It is on consideration of totality of the materials with emphasis on the later entries in the character roll, the government is expected to form its opinion whether an employee is to be compulsorily retired or not.

Withholding of integrity of a government employee is a serious matter. In the present case, what we find is that the integrity of the respondent was withheld by an order dated 13.6.1997 and the said entry in the character roll of the respondent was well within ten years of passing of the order of compulsory retirement. During pendency of the writ petition in the High Court, the U.P. Services Tribunal on a claim petition filed by the respondent, shifted the entry from 1997-98 to 1983-84. Shifting of the said entry to a different period or entry going beyond ten years of passing of order of compulsory retirement does not mean that its vigour and sting of the adverse entry is lost. Vigour or sting of an adverse entry is not wiped out merely it is relatable to 11th or 12th years of passing of the order of compulsory retirement. The aforesaid adverse entry which could have been taken into account while considering the case of the respondent for his compulsory retirement from service, was duly considered by the State Government and said single adverse entry in itself was sufficient to compulsorily retire the respondent from service. We are, therefore, of the view that entire service record or confidential report with emphasis on the later entries in the character roll can be taken into account by the government while considering a case for compulsory retirement of a government servant.

It was not urged before us that the order compulsorily retiring the respondent was mala fide or was not in the public interest, and in the absence of such a case, we do not find any infirmity in the order compulsorily retiring the respondent from service.

For the aforesaid reasons, we find that this appeal deserves to be allowed. The order under challenge is set aside. The appeal is, accordingly, allowed. No costs.

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In view of the decision in Civil Appeal No. 2083/2002 (@ S.L.P (Civil) No. 8738/2001), this appeal is rendered infructuous and is, accordingly, dismissed. No costs.

...J.
(V. N. KHARE)

...J.
(ASHOK BHAN)

14th March, 2002