

Todar Singh Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Nov-22-2012

Judge : Tarun Agarwala

Appeal No. : Civil Misc. Writ Petition No. 19072 of 2009

Appellant : Todar Singh

Respondent : State of U.P. and Others

Judgement :

1. Heard the learned counsel for the petitioner and the learned Standing Counsel.
2. The petitioner has filed the present writ petition challenging the order of compulsory retirement dated 15th December, 2008 issued under Rule 56(c) of the Fundamental Rules.
3. The ground urged in the writ petition is that the order is punitive in nature and was not issued in public interest, and that it was based on an ex-parte report of the Tehsildar which indicated that the petitioner had manipulated the revenue records. On this allegation notices were issued and the respondents were directed to file a counter affidavit.
4. The counter affidavit reveals that the Committee constituted for this purposes considered the service record of the petitioner of the last 10 years and found that the petitioner was suspended on four occasions and, that there were four other

adverse entries indicating that he was inefficient and that he had a bad image in the eyes of the public and, that he was not taking any interest in his work and that he was also found drunk on duty.

5. The Screening Committee also considered the entire service record of 34 years and found that he was suspended on several occasions. At one time, he was terminated from the service. There were ten adverse entries and, on this basis, the Committee recommended that the petitioner should be compulsory retired.

6. Based on the Screening Committee's report, the petitioner filed a supplementary affidavit along with an application praying that the additional grounds may be taken into consideration. Though, this is not the method of taking fresh grounds but considering the fact that the supplementary affidavit was entertained against which a supplementary counter affidavit was filed, the Court has heard Sri Sukhendu Pal Singh and the learned Standing Counsel on this issue.

7. The learned counsel for the petitioner has taken eight grounds questioning the validity and legality of the compulsory retirement order.

8. The learned counsel for the petitioner submitted that while considering the record of the last 10 years, the Screening Committee did not consider the service record of 2 years and, therefore, the order of compulsory retirement was bad in law. In support of his submission the learned counsel for the petitioner placed reliance upon a decision of this Court in Phool Chand Yadav (Dr.) Vs. State of U.P. and others, 2001 (2) UPLBEC 1079 wherein it was held that the adverse entries of the last 10 years were not placed before the reviewing authority and, consequently, the Court held that the order of compulsory retirement was bad in law. The learned counsel for the petitioner further contended that the Screening Committee had only considered the service record for certain years selectively and deliberately had not taken into consideration the service record of other years. The contention of the learned counsel for the petitioner is that only adverse entries have been taken consideration whereas good entries have not been taken into consideration while considering the service record of the petitioner.

9. The learned counsel for the petitioner further contended that the documents relating to the adverse entries were not considered. In this regard, the petitioner moved an application under the Right to Information Act, in which the petitioner was informed that the said documents were not available on the record. Armed with this information, the learned counsel for the petitioner submitted that the relevant documents were not before the Screening Committee and, consequently, the Screening Committee was not in a position to gauge as to whether the adverse entries was based on cogent reasons or not.

10. The learned counsel for the petitioner submitted that the adverse entry for the year 1981- 82 was taken into consideration whereas the adverse entry of this year was never communicated to the petitioner. Relevant allegation has been made in paragraph 10 of the supplementary affidavit which is admitted by the respondents in paragraph 11 of their supplementary counter affidavit.

11. According to the learned counsel for the petitioner, the order of suspension is not an order of punishment and, consequently, no adverse inference can be drawn against the petitioner on the basis of the suspension orders passed against him.

12. The learned counsel for the petitioner has further contended that the petitioner had discharged his duty faithfully and that there was no complaint against him whatsoever nor was there any complaint with regard to his working and, consequently, he was not a deadwood and could not have been retired compulsory.

13. The learned counsel for the petitioner further contended that the service conditions of the petitioner was covered by the U.P. Lekhpals Service Rules 1958 and, as per Rule 31 thereof, the petitioner could only be retired compulsorily upon reaching the age of 55 years or thereafter, whereas, in the instant case, the petitioner had been retired at the age prior to 55 years under Rule 56(c) of the U.P. Fundamental Rules. The submission of the learned counsel for the petitioner is, that when there is a specific Rule which governs the service condition of the petitioner, the general Rule contemplated under the Fundamental Rules cannot be invoked and, therefore, the action of the respondents in invoking Rule 56(c) of the Fundamental Rules was patently illegal and without jurisdiction. In this regard, the

petitioner has relied upon a decision of this Court in Dharam Pal Singh Vs. State of U.P. and others, 2001 (3) UPLBEC 2586.

14. The learned counsel for the petitioner further submitted that the Screening Committee has taken into consideration the entry and warnings which again cannot be taken into consideration and in support of his submission has relied upon a decision of this Court in Vijai Kumar Jain, Executive Engineer in R.E.S. Vs. State of U.P. and others, 2000 (2) UPLBEC 1508 (2000 All LJ 1753).

15. The learned counsel for the petitioner further submitted that the Screening Committee has given a finding that the integrity of the petitioner is doubtful. The learned counsel submitted that where a finding on integrity has been given, the same becomes stigmatic and, on this basis, a disciplinary proceedings could only be initiated but no order of compulsory retirement could be passed. In this regard, the learned counsel for the petitioner has placed reliance upon a decision of Supreme Court in Swaran Singh Chand Vs. Punjab State Electricity Board and others, 2009 (13) SCC 758 (AIR 2010 SC 151).

16. Before proceeding further, it would be appropriate to refer to Rule 56(c) of the Fundamental Rules, which is extracted hereunder:-

"56(C)- 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 such Government servant may, by notice to the appointing authority voluntarily retire at any time after attaining the age of [forty five year] or after he has completed qualifying service for twenty years."

17. The aforesaid Rule clearly indicates that the Appointing Authority can retire a Government Servant after he attains the age of 50 years in public interest. The order of premature retirement is based on subjective satisfaction of the Appointing Authority and principles of natural justice has no application. However, judicial review of such an order under Article 226 of the Constitution of India is permissible on limited grounds, namely, malafides or absence of relevant evidence, that is to

say, that no reasonable person could form an opinion on the basis of the evidence on the record.

18. In *Baikuntha Nath Das Vs. Chief District Medical Officer*, 1992 (2) SCC 299, the Supreme Court laid down the following principles with regard to compulsory retirement, namely:

"(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.

19. In *Shyam Lal Vs. State of U.P.*, AIR 1954 SC 369, the Constitution Bench of the Supreme Court held that compulsory retirement does not amount to dismissal or removal from service within the meaning of Article 311 of the Constitution of India as it is neither a punishment nor visits with loss of retiral benefits nor does it cast any stigma and that the Officer is entitled to pension.

20. In *Union of India Col. J.N. Singh*, 1970 (2) SCC 458.(AIR 1971 SC 40). The Supreme Court held that where compulsory retirement was made in public interest and that the opinion was formed bonafidely, the correctness of that opinion could not be challenged before the Court and that it could only be challenged on limited grounds of mala fides.

21. In *Vijai Kumar Jain, Executive Engineer in R.E.S. Vs. State of U.P. and others*, 2000 (2) UPLBEC 1508 (2000 All LJ 1753), a Division Bench of this Court held that it is settled law that entries of only 10 years, prior to the order of compulsory retirement, was only to be seen.

22. In the instant case, the Court also finds that the Screening Committee, in the first instance, had considered the service record of the petitioner of the last 10 years and also considered the entire service record for forming an overall subjective opinion.

23. In the light of the aforesaid decisions of the Supreme Court, the Court is of the opinion that the challenge to the order of compulsory retirement can only be reviewed in a writ petition on limited grounds, namely, malafides, absence of evidence, non-consideration of relevant evidence or arbitrariness, namely, that no reasonable person could have formed the requisite opinion on the material available with the Screening Committee.

24. The Court has noted the submissions of the learned counsel for the petitioner in the preceding paragraphs and finds that the submissions raised do not come within the parameters for reviewing the order of compulsory retirement in a writ jurisdiction. There is no allegation of mala fide or arbitrariness. There is no allegation of absence of evidence and there is no allegation of arbitrariness to the extent that no reasonable person could have arrived at the opinion on the basis of

the material evidence on record.

25. Since the petitioner has argued the matter at some length, the Court instead of scuttling the issue, proposes to consider and decide the objections raised by the learned counsel for the petitioner.

26. There is no quarrel with the proposition of law that the record of the last 10 years are required to be considered in the first instance. The Screening Committee considered the record of the last 10 years and found that the petitioner was suspended on four occasions and was given adverse entries on four other occasions. Therefore, out of 10 years there were 8 instances against the petitioner with regard to his inefficiency, bad image with the public, not taking interest in the official work and being drunk on duty. The Screening Committee has categorically stated that the service record of two years was missing and, therefore, the same has not been considered.

27. In the opinion of the Court the mere fact that the service record of two years was missing is not fatal to the issue and does not mean that the respondents had taken selective entries of the petitioner of certain years and have not considered the good entries. The contention of the petitioner in this regard is misconceived and the judgment cited has no relevance to the facts of the present case.

28. Apart from considering the entries of the last 10 years, the Court finds that the Screening Committee had also considered the entire service record of 34 years and also found that on eight occasions the petitioner was suspended, on one occasion the petitioner's services were terminated and that there were 10 adverse entries against him and, consequently, formed an opinion that the petitioner was inefficient and his integrity was doubtful.

29. In this regard, the fact that the Screening Committee has mentioned the adverse entry of the year 1981-82, which entry was not communicated to the petitioner does not make the compulsory retirement order fatal. The Supreme Court in Baikunth Nath Das (supra) has held that the order of compulsory retirement cannot be quashed only on the ground that uncommunicated adverse entries were taken into consideration. As stated, the relevant entries of only last 10

years was required to be considered but, while judging the conduct and performance of the petitioner, the entire service record was also taken into consideration. Consequently, if the entry of one year which was not communicated to the petitioner but was considered while making the order of compulsory retirement does not make the order illegal, inasmuch as the Court finds and is of the opinion that the overall performance which has been depicted in the report of the Screening Committee clearly indicates the inefficiency of the petitioner while discharging the official work. Consequently, the factum that the petitioner was suspended on several occasions or that he was given a warning was only to make an overall assessment of his conduct. It was the cumulative effect which led the Screening Committee to form an opinion on the subject which this Court does not find any error. The contention raised by the learned counsel for the petitioner and the decision so cited are irrelevant in the facts and circumstances of the given case.

30. On the question as to whether the Fundamental Rule 56(c) is applicable or the Lekhpals Service Rules 1958 is applicable, the decision of this Court in the matter of Dharampal Singh (supra) is clearly in favour of the petitioner, namely, that the Fundamental Rules cannot be given precedent over the Lekhpals Service Rules, 1958 and that since the Lekhpals Service Rules, 1958 provides a separate provision for retiring a Lekhpal compulsorily the same can only be done under Rule 31 of the Lekhpals Service Rules, 1958 and not under Rule 56(c) of the Fundamental Rules.

31. The Court finds that the Lekhpals Service Rules, 1958 cannot be taken into consideration for the reason that the Lekhpals Service Rules, 1958 has been superseded by U.P. Lekhpals Service Rules, 2006 which came into existence w.e.f. 6th August, 2007. For facility the preamble of the Rules of 2006 is extracted hereunder:-

"In exercise of the powers conferred by the proviso to Article 309 of the Constitution and in supersession of all existing rules and orders on the subject, the Governor is pleased to make the following rules regulating recruitment and the conditions of service of persons appointed to the Uttar Pradesh Lekhpals Service."

32. A perusal of the aforesaid preamble clearly indicates that these Rules have come into existence in supersession of all existing rules and orders on the subject, meaning thereby, that the U.P. Lekhpals Service Rules, 1958 stands superseded by the U.P. Lekhpal Service Rules, 2006. Consequently, the contention of the petitioner that the Rules of 1958 would prevail is incorrect and cannot be accepted.

33. This Court further finds that the Rules of 2006 does not provide any provision for compulsory retirement of a Lekhpal and, in this regard, Rule 28 of the Rules of 2006 would come into picture which is extracted hereunder:-

28. Regulation of other matters.- In regard to the matters not specifically covered by these rules or special orders, persons appointed to the service shall be governed by the rules, regulations and orders applicable generally to Government servants serving in the connection with the affairs of the State.

34. From a perusal of the aforesaid Rule 28, it is clear that with regard to matters not specifically covered by these Rules, persons appointed to the service shall be governed by the Rules and Regulations and order applicable generally to government servants serving in connection with affairs of State, meaning thereby that the Fundamental Rules would automatically come into play. This Court, consequently, is of the opinion that the exercise made by the respondents by invoking Rule 56(c) is in consonance with Rule 28 of the U.P. Lekhpals Service Rules, 2006 and is justified.

35. Coming to the last question, namely, that observation of doubtful integrity of the petitioner, by the Screening Committee, in this regard, the learned counsel for the petitioner submitted that the same is stigmatic and, on this basis, only a disciplinary proceeding could be initiated and that the petitioner cannot be compulsorily retired.

36. The submission of the learned counsel for the petitioner seems to be very attractive. There is no doubt that a person cannot be compulsory retired on the basis of doubtful integrity, since the same would become stigmatic. The Supreme Court in Baikunth Nath Das (supra) has held that the order of compulsory

retirement is not a punishment as it does not cast any stigma.

37. In the light of the aforesaid, the Court finds that merely because an adverse entry was never communicated but has been relied upon or that the Screening Committee has used the word "doubtful integrity" does not in the circumstances of the case vitiate the order of compulsory retirement, inasmuch as, the Court finds that on an overall consideration of the entire service records, the Screening Committee gave an opinion of the inefficiency of the petitioner/ doubtful integrity. The Court finds that the word "doubtful integrity" has been used loosely, which is not stigmatic, and which is not fatal to the decision. The formation of the opinion by the Screening Committee was based on material evidence.

38. Further in the absence of malafides coupled with the fact that the report of the Screening Committee is based on material evidence which is neither arbitrary and the opinion so formed is based on relevant consideration, the Court finds that the order of compulsory retirement does not suffer from any error of law.

39. In the light of the aforesaid, the writ petition fails and is dismissed.

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