

**Raj Kumar Vs. State of U.P. and Others**

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**Court :** Allahabad

**Decided On :** Oct-11-2000

**Reported in :** 2001(1)AWC149; (2001)3UPLBEC2043

**Judge :** Jagdish Bhalla, J.

**Acts :** [Constitution of India](#) - Article 311

**Appeal No. :** Writ Petition No. 1924 (S/S) of 1992

**Appellant :** Raj Kumar

**Respondent :** State of U.P. and Others

**Advocate for Def. :** C.S.C.

**Advocate for Pet/Ap. :** A.P. Singh

**Judgement :**

**Jagdish Bhalla, J.**

1. This writ petition is directed against the orders dated 25.3.1992, contained in Annexures-1 and 2, compulsorily retiring the petitioner from the post of Lekhpal.

2. The facts of the case, in brief, are that a Screening Committee consisting of Registrar Kanungo, Naib Tehsildar, Tehsildar and Sub-Divisional Officer, Biswan, district Sitapur met on 1.2.1992 and after considering the case of the petitioner,

recommended for his compulsory retirement on the following grounds :

- (i) that he has been under suspension for three times ;
- (ii) he did not take interest in the Family Welfare Programme in 1987-88 ;
- (iii) on survey done by the Sub-Divisional Officer, Biswan on 8.1.1992, it was found that he had made wrong entries in the khasra ;
- (iv) his progress in Small Savings Scheme was zero till 8.2.1992 ;
- (v) his progress in National Family Welfare Programme was also zero ;
- (vi) he made wrong survey of kharif season ;
- (vii) he did not make the entries of substitution in time ;
- (viii) neither he lives within the area of his posting nor makes surveys of his area nor does he maintain the records properly ; and
- (ix) he does not have any interest in the Government work.

3. Agreeing with the recommendation of the Screening Committee, the Sub-Divisional Officer, Biswan, district Sitapur passed the impugned order dated 25.3.1992, contained in Annexure-2 to the writ petition compulsorily retiring the petitioner with immediate effect making further allegations in the aforesaid order that the petitioner does not take interest in the works of his post but his work is only to do politics.

4. Heard learned counsel for the petitioner as well as learned standing counsel.

5. Learned counsel for the petitioner has submitted that in fact, a disciplinary enquiry was being held against the petitioner for certain charges and in that connection, a charge-sheet had already been served upon the petitioner on 16.1.1992 to which he has also submitted his reply on 28.1.1992 but the opposite parties instead of proceeding with the enquiry to its logical end, adopted a novel and short-cut method of throwing the petitioner out of service by compulsorily retiring him from the service which is not permissible under law.

6. Learned standing counsel while giving reply to the above argument of the learned counsel for the petitioner, has submitted that in fact the petitioner has been compulsorily retired on the basis of the recommendations of the Screening Committee and not on the basis of the charge-sheet which was served upon the petitioner on 18.1.1992 and the fact of pendency of disciplinary enquiry against the petitioner was not at all taken into consideration either by the Screening Committee or by the Appointing Authority who passed the impugned order dated 25.3.1992 compulsorily retiring the petitioner.

7. A perusal of the record shows that the charges of (i) making wrong entries in the khasra found by the Sub-Divisional Officer, Biswan, in his survey dated 8.1.1992, (ii) not taking interest in the Small Savings Scheme and National Family Welfare Programme ; regarding which a departmental enquiry was proceeding against the petitioner and a charge-sheet dated 16.1.1992 was also served upon the petitioner, also find place in the impugned order of compulsory retirement. In view of the above fact, the contention of the learned standing counsel that the disciplinary enquiry pending against the petitioner was not at all considered while passing the impugned order, has no legs to stand.

8. Next it has been submitted by the learned counsel for the petitioner that the impugned order dated 25.3.1992 compulsorily retiring the petitioner is stigmatic because in the impugned order several charges have been levelled against the petitioner and, therefore, the impugned order is violative of Article 311 of the [Constitution of India](#) and is liable to be quashed. In support, learned counsel for the petitioner has placed reliance on the case of Jagdish Mitter v. Union of India, AIR 1964 SC 449, wherein Sri Jagdish Mitter, temporary 2nd Division Clerk was served with a month's notice of discharge from service on the ground that he was found undesirable to be retained in Government service. In that case, the Hon'ble Supreme Court observed as under :

'No doubt the order purports to be one of discharge and as such can be referred to the power of the authority to terminate the temporary appointment with one month's notice. But it seems to us that when the order refers to the fact that the appellant was found undesirable to be retained in Government service, it expressly

casts a stigma on the appellant and in that sense must be held to be an order of dismissal and not a mere order of discharge.'

The Apex Court further observed in the above case as under :

'It seems that anyone who reads the order in a reasonable way, would naturally conclude that the appellant was found to be undesirable, and that must necessarily import an element of punishment which is the basis of the order and is its integral part. When an authority wants to terminate the services of a temporary servant, it can pass a simple order of discharge without casting any aspersion against the temporary servant or attaching any stigma to his character. As soon as it is shown that the order purports to cast an aspersion on the temporary servant, it would be idle to suggest that the order is a simple order of discharge. The test in such cases must be ; does the order cast aspersion or attach stigma to the officer when it purports to discharge him? If the answer to this question is in the affirmative, then notwithstanding the form of the order the termination of service must be held, in substance, to amount to dismissal.'

9. Learned counsel for the petitioner has further placed reliance on the case of State of Uttar Pradesh v. Madan Mohan Nagar, 1967 SLR 147. That was also a case of compulsory retirement. The respondent, Madan Mohan Nagar, who was a Director of State Museum, was compulsorily retired from service at the age of 52 years on the ground that he had outlived his utility. In this case, the Hon'ble Supreme Court, following the case of Jagdish Mitter v. Union of India (supra) held that the same test must apply in the case of compulsory retirement, namely : does the order of compulsory retirement cast an aspersion or attach a stigma to the officer when it purports to retire him compulsorily? In para 5 the Hon'ble Supreme Court held as under :

'In the present case where is not only the question of implication but a clear statement appears on the face of the order that the respondent had outlived his utility ; in other words, it is stated that he was incapacitated from holding the post of Director, State Museum, Lucknow. The order clearly attaches a stigma to him and any person who reads the order would immediately consider that there is something wrong with him or his capacity to work.'

10. Learned counsel for the petitioner has further placed reliance on the case of High Court of Punjab and Haryana v. Ishwar Chand Jain and another, JT 1999 (3) SC 266, wherein the Hon'ble Supreme Court observed as under :

'From the resolutions of the Full Court of December 12, 1995 and January 11, 1996, it is apparent that Jain was retired while under suspension. It appears that the High Court on its administrative side decided to keep disciplinary proceedings against Jain pending for the purpose of imposing the cut on his retiral benefits. The conclusion is obvious that action of the High Court in retiring Jain was based on the allegation of misconduct, which was subject-matter of the inquiry before a Judge of the High Court and which appears to us to be the basis for recording of adverse remarks by the High Court in the ACR of the officer for the years 1991-92. There is substance in the argument of Mr. M. N. Krishnamani, learned counsel for Jain, that the High Court found as short cut to remove Jain from service when the order of retirement was based on the charges of misconduct, subject-matter of the inquiry. We agree with Mr. Krishnamani that the impugned order of compulsorily retiring Jain though innocuously worded is in fact an order of his removal from service and cannot be sustained.'

11. In view of the above case laws, the following principles are well-settled :

(1) An order of compulsory retirement casting aspersion or attaching a stigma is invalid ;

(2) The provisions of Article 311 of the [Constitution of India](#) are also applicable in case of compulsory retirement ; and

(3) Short-cut method of compulsory retirement is not permissible meaning thereby a Government servant cannot be retired compulsorily on the same charge/charges regarding which a disciplinary enquiry is already pending.

12. From a bare perusal of the impugned order of retirement, it is crystal clear that it is stigmatic because so many charges have been levelled therein against the petitioner. Not only this, the impugned order also contains the charges regarding which disciplinary inquiry was pending against the petitioner. Tested on the above

principles, the impugned order is invalid and cannot be allowed to sustain.

13. In the result, the writ petition is allowed. The orders dated 25.3.1992 compulsorily retiring the petitioner from the post of Lekhpal, contained in Annexures-1 and 2 to the writ petition are quashed. The petitioner shall be reinstated on the post from which he was compulsorily retired w.e.f. 25.3.1992 and shall be given all benefits of service forthwith. Costs easy.

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