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Devi Sharan Sharma Vs. District Magistrate, Meerut and Others

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Court : Allahabad

Decided On : Nov-16-1999

Reported in : 2000(1)AWC510; [2000(84)FLR488]; (2000)1UPLBEC582

Judge : V.M. Sahai, J.

Acts : Fundamental Rules - Rule 56

Appeal No. : C.M.W.P. No. 37219 of 1991

Appellant : Devi Sharan Sharma

Respondent : District Magistrate, Meerut and Others

Advocate for Def. : V.K. Rai, Adv. and ;S.C.

Advocate for Pet/Ap. : P.K. Singh and ;Miss Rollie Kauser, Advs.

Judgement :

V. M. Sahai, J.

1. The petitioner was appointed on 1.4.1976 as peon in Collectorate, Meerut. He was regularised/confirmed with effect from 1.8.1972. Since he was a class IV employee, his age of superannuation was sixty year. His date of birth being 28.4.1940. he was due to retire in August, 2000. He was suspended on 28.2.1985 and remained under suspension till 18.3.1985. Thereafter, he was reinstated in

service. An adverse entry was awarded to him on 25.6.1985. The respondent No. 1 by his order dated 26.11.1991 compulsorlly retired the petitioner. Itis this order which is under challenge in the instant writ petition.

2. I have heard Miss Rollie Kauser, learned counsel for the petitioner and Sri V. K. Rai, brief holder. State of Uttar Pradesh appearing for the respondents. Learned counsel for the petitioner has urged that on the basis of one adverse entry the petitioner could not be retired compulsorlly and there was nothing against the petitioner from the year 1986 to 1991. On the other hand, learned counsel for the respondents supported the impugned order of compulsory retirement and produced the report of the screening committee before this Court. The relevant part of the report of the screening committee so far as it relates to the petitioner is quoted below :

^^43- Jh nsoh'kj.k] pijklh lnj utkjr %&bUgsa; fnukad 25-6-85 dks ,d izfrdwy izfof'V feyh gS ftlesa fnukad 28-2-85ls 18-3-85 rd fcuk vodk'k Lohr djk;s gq, vuqifLFkr jgus dk nks'kh ik;kx;k gS rFkk vius Li'Vhdj.k esa vf/kdkjh ds izfr >wBh ckrsa fy[kh xbZ gSAmDr izo`fk ds deZpkjh dks lsok esa cuk;s j[kuk tufgr ,oa dk;Z fgr nksuksa esagh mfpr ugha g SA vr% desVh bUgsa vfuok;Z :i ls lsok fuo`k fd;s tkus dh laLrqfrdjrh gS**

3. The report of the screening committee demonstrates that the petitioner was compulsorily retired on the basis of one adverse entry awarded to him on 25.6.1985 as he was under suspension for about twenty days and he made incorrect allegations against his officers. No material has been produced by the counsel for respondents to show that the petitioner was awarded any other adverse entry. The question, therefore. that arises for consideration is whether one adverse entry by itself is sufficient for the appointing authority to exercise his discretion that the retention of an employee was not in public interest. The compulsory retirement under Rule 56 (c) of Financial Hand Book Volume II. Part II to IV, is not apunishment but it affects the employee injuriously. That is why the exercise of power is subject to public interest. It can arise when the continuance of employee is not in the interest of the service. The objective of the rule is obviously to weed out the dead wood. In other words, the employee should have become of

no use for the service. For arriving at such a decision adverse entry of one year, ordinarily cannot furnish material to decide that the employee deserved to be weeded out. The record must establish that the retention of the employee was not in public interest. In the case of petitioner, he was found absent from duty for few days. The respondents had taken action against him. He was reinstated. But he was given adverse entry. This entry in absence of any other material either before or after was not sufficient to warrant the conclusion in Rule 56 (c) that it was in public interest to retire the petitioner from service.

4. The petitioner was retired in public interest. This expression has been explained in various decisions. For instance in S. Ramachandra Raju v. State of Orissa. (1984) 28 ATC 443, the Apex Court held that an order of compulsory retirement based on one adverse entry followed by subsequent good reports makes the exercise of power arbitrary. In absence of any material that the work of the petitioner after 1985 was such that he deserved to be weeded out. the order is arbitrary.

5. In the result, this petition succeeds and is allowed. The order dated 26.11.1991 passed by respondent No. 1, Annexure-1 to the writ petition Is quashed with all consequential benefits of service to the petitioner. The respondents are directed to reinstate the petitioner and pay his entire arrears of salary within a period of two months from the date a certified copy of this order is produced before them.

6. There shall be no order as to costs.

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