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Court : Rajasthan

Decided On : Nov-09-1966

Reported in : (1968)ILLJ468Raj

Judge : Dave, C.J. and; Kan Singh, J.

Appellant : Sibal Singh

Respondent : State of Rajasthan

Judgement :

Kan Singh, J.

1. This is a writ petition by one Sibal Singh, who was a sub-inspector of police in the State of Rajasthan and by it he questions the validity of the order of his compulsory retirement dated 21 August 1935 (Ex 37 on record), issued under Rule 244(2) of the Rajasthan Service Rules, 1952. He also prays for an appropriate writ, direction or order against the respondent. The relevant facts may briefly be stated as follows:

The petitioner joined the service in the erstwhile Jodhpur State in the Police Department as a constable on 13 April 1934. He claims that on account of his hard and honest work he was promoted first as a head constable and then as an officiating sub-inspector in 1937. He says that he also received sanad and cash rewards for his good work from time to time. On the formation of Rajasthan he

came to be confirmed as a sub-inspector of police on 16 August 1952 under orders of the inspector-General of Police. He submits that, as sub-inspector, his work was appreciated by his superiors and he has produced a number of sanade and letters of commendation in this behalf. He goes on to say that while he was posted in the direct of Sirohi in 1961, he fell foul of the then Superintendent of Police, Sirohi, Sri K.N. Gupta, and misfortune befell the petitioner as a result of Sri Gupta's displeasure. According to him, several enquiries were instituted against him and also some adverse remarks came to be made in his confidential roll. According to the petitioner, as a result of his representation to the Government, several of the enquiries instituted by Sri K.N. Gupta were set aside and regarding some others, four or five, the matter was pending at the time of his compulsory retirement. He also submitted representation against the adverse entries recorded in his service record. The petitioner makes grievance of the fact that even though certain enquiries were still pending and the petitioner had also made his representations which were not disposed of, his papers in this behalf were forwarded to the scrutiny committee which was to screen the cases for compulsory retirement and eventually he was visited with the order of compulsory retirement, Ex. 37.

2. The petitioner questions the validity of the order of his compulsory retirement (Ex. 37) on a number of grounds. The first ground is that Rule 244(2) of the Rajasthan Service Rules is ultra vires of the Constitution as the same is violative of Articles 14 and 16 of the Constitution inasmuch as it denied equality of opportunity to the petitioner to serve the state and also it gave arbitrary powers to the Government to pick and choose persons for compulsory retirement, simply because one has been in the service of the state for the requisite period of 25 years and it thus vests unguided discretion in the Government. The second ground of attack is that the action was actuated by mala fides as the enquiries started by Sri K.N. Gupta were still pending against the petitioner. It is next urged that the petitioner had completed thirty years of service and, therefore, his case could not have been scrutinized at the time it was done, as he had long passed the limit of 25 years. It was then contended that the impugned order was bad as the Deputy Inspector-General of Police, Jodhpur Range, not being the appointing authority in the case of the petitioner, was not competent to pass the order of compulsory

retirement of the petitioner. It is maintained that it was the Government who alone could have passed the order. In the regard it is averred that the case of the petitioner had not been scrutinized by the Government according to the Business Rules of the Government and the proposal had not gone to the Chief Minister or Governor and the latter had thus not applied their minds to the case. Lastly, it is submitted that the powers of the Government under Rule 244(2) could not have been delegated to subordinate authorities.

3. The writ petition has been opposed on behalf of the respondents and it is submitted that the order of the compulsory retirement of the petitioner was actually passed by the Government though it was communicated through the Inspector-General of Police by the Government and the Inspector-General of Police in his turn directed the Deputy Inspector-General of Police to comply with the orders of the Government.

4. We may mention at the outset that the challenge against the validity of Rule 244(2) of the Rajasthan Service Rules was wholly misconceived. Following *Motiram Daka and Ors. v. General Manager, North-east Frontier Railway, and Ors.* 1964-II L L.J. 46 and *S. Gurdev Singh Sidhu v. State of Punjab and Anr.* 1965-I L.L.J. 323 (vide supra) it was held by this Court In *Gopalmal v. State* 1965-I L.L.J. 234 that Rule 244(2) of the Rajasthan Service Rules, 1951, cannot be held to be invalid on the ground that it contravenes Article 311(2) of the Constitution nor was it also open to challenge under Article 14 or 16 of the Constitution. The position elucidated by the Supreme Court in *Motiram Deka and Ors. v. General Manager, Northeast Frontier Railway, and Ors.* 1964-II L.L.J. 467 (vide supra) has been reaffirmed In *Sri vacharana Singh (T.G.) and Ors. v. State of Mysore* 1967-II L.L.J. 246.

5. We have, therefore, to consider the other grounds taken by the petitioner. In our view, these grounds resolve in the main to two grounds:

(1) whether the order of compulsory retirement was passed by the competent authority in accordance with Rule 244(2) of the Rajasthan Service Rules; and

(2) whether the case of mala fides on the part of such authority has been made out.

6. As we have already noted, the stand of the Government was that the order was in fact passed by the Government and not a delegate and we have, therefore, to consider the question whether this was so. As no duly authenticated Government order was placed before us by the respondents and we were not satisfied by what was recited in Ex. 37, the Deputy Government Advocate who appeared before us, was asked to put in all the necessary papers before us. By his further reply to the writ petition he placed before us copies of the letters of the Inspector-General of Police to the Secretary to the Government, Home Department, dated 26 August 1964 and 1 May 1966 and a copy of demi-official letter No. 146/PA/HS 65, dated 4/6 August 1965. by the Home Secretary to the Inspector-General of Police convening the approval of the Government. Also an affidavit of Sri V. Madgal, Deputy Secretary, for showing that it was the State Government who passed the order of compulsory retirement and the approval of the order was by the Chief Minister, was also filed. Finally the learned Deputy Government Advocate submitted Secretariat notes by which the proposal of the Inspector-General of Police dated 25 August 1964 was considered. These notes contain a minute recorded by the Chief Minister on 3 August 1965.

7. About the affidavit of Sri V. Mudgal, Deputy Secretary to the Government, we feel constrained to say that it is most unsatisfactory. There is no verification showing as to what facts were within the personal knowledge of Sri Mudgal and about what other facts he derived knowledge from other sources. He has also not disclosed the source of his information. He does not even say that it was he who had dealt with the proposal. It is lamentable that the Government officers who dealt with this case, or their legal advisers, did not care to see how affidavits meant to be filed in this Court are to be drafted and what they should contain and how they are to be verified. This affidavit is, therefore, altogether valueless and has to be ignored. We need not refer to the various cases to which the learned counsel for the petitioner invited our attention about the form and contents of affidavits.

8. We also cannot fail to notice that the concerned officers of the Government do not seem to have realized, even by now, as to how Government orders are to be issued. If a matter is properly dealt with according to Business Rules and the order is issued in proper form in the name of the Governor and duly authenticated by a Secretary, Deputy Secretary or an Assistant Secretary in accordance with Article 166 of the Constitution, then the order itself will be conclusive of the matter that the particular order was passed by the Government.

9. However, the mere absence of a formal order issued by the Government in accordance with Article 166 of the Constitution will not necessarily lead to the conclusion that the matter was not dealt with by the Government and the Court will not be relieved of considering the other facts that are placed before it. In *State of Rajasthan v. Sripal Jain* 1963-1 L.L.J. 286, the order of compulsory retirement was communicated to the petitioner Sripal Jain who was an inspector of police by the Inspector-General of Police. It was contended on behalf of the Government that the order was passed by the Government. In that case also, there was no properly authenticated Government order and after considering Article 166, as also the Rajasthan Rules of Business, their lordships of the Supreme Court observed as follows:

It is well-settled that any defect of form in the order by Government would not necessarily make it illegal and the only consequence of the order not being in proper form as required by Article 166 is that the burden is thrown on Government to show that the order was in fact passed by it.

It was thus held that where the order was passed by the Government but was communicated to the incumbent by the Inspector-General of Police, the form of the order was defective and, therefore, the burden was thrown on the Government to show that the order was in fact passed by the Government. Then their lordships observed in that case that as the relevant papers from the concerned file had been produced and it had been shown that the recommendation of the high-powered committee was approved by the Home Minister and the Chief Minister and it was also shown that Rule 21 of the Business Rules empowered the Home Minister to approve the proposal, the order of compulsory retirement was taken to

have been passed by the Government, though it was communicated by the Inspector-General of Police and its form was defective.

10. Let us now turn to the facts of the present matter. There is a copy of the note signed by the Inspector-General of Police, the Home Secretary and the Deputy Inspector General of Police (C.I.D.), which shows that the cases of compulsory retirement of sub-inspectors were scrutinized by them in pursuance of Government order No. F. 24 (66) Appts./4/57 P.T I/CR, dated 16 May 1963, The committee met on 29 March 1965. Having considered the service records and other relevant records, It was unanimously decided that the officers including the petitioner be recommended for compulsory retirement as they had completed 25 years of Qualifying service. These recommendations of the committee were conveyed to the Government by the Inspector-General of Police by his letter dated 25 March 1964 and there was then a farther communication dated 1 May 1965 by the Inspector-General. There is a note dated 20 July 1965, by the Home Secretary which says that at a joint meeting of the Inspector-General of Police, Deputy Inspector-General of Police and the Home Secretary, cases of sub-inspectors of police of Ajmer Range, Jodhpur Range, Bikaner Range, Udaipur Range, Kota Range and O.I.D. were considered and persons whose names were noted in the list were recommended for compulsory retirement. This proposal was submitted by the Home Secretary to the Chief Secretary and the Chief Minister. The Chief Minister recorded the following minute on 3 August 1965:

On going through the confidential rolls the reports of the following officers for the last two years are on an average satisfactory. They should, therefore, not be retired. The rest be retired as proposed:

- (1) Sri Kunnanlal, Ajmer Range.
- (2) Sri Ram Singh, C.I.D.
- (3) Sri Ganpatlal, C.I.D.
- (4) Sri Sambhoo Singh, C.I.D.
- (5) Sri Narsingharam, Bikaner Range.

(6) Sri Pratapsingh, Udaipnr-Kota Range.

(7) Sri Shankerlal, Udaipur-Kota Range.

(8) Sri Gopal Singh, Jodhpur Range.

M.L. Sukhadia,

3-8-1965

After this the Home Secretary wrote a demi-official letter to the Inspector-General of Police on 4/5 August 1965, wherein he said in Para. 2 thereof that he was desired to convey approval of the Government for compulsory retirement of the sub-inspectors of police under Rule 244(2) of the Rajasthan Service Rules as recommended by the Board except the sub-inspectors whose names were noted in the letter. We may mention that these names tally with the minute of the Chief Minister. The Home Secretary, therefore, asked the Inspector-General of Police that the copy of orders to be issued be endorsed to the Home Secretary for his record. This letter of the Home Secretary was put up to the Inspector-General of Police as per note dated 16 August 1965 by the Assistant Inspector-General of Police. It was proposed by the latter that in all 41 sub-inspectors were to retire compulsorily and, if approved, orders be issued. On this note the Inspector-General of Police noted 'yes please.' He also noted that the competent authorities be asked to issue immediate orders and they should issue clear orders making mention of the grant of leave, etc., as prescribed by the rules on the subject. It was in pursuance of this order of the Inspector-General of Police that the order Ex. 37 was issued by the Deputy Inspector-General of Police, Jodhpur Range, to the petitioner. By this letter the Deputy Inspector-General of Police gave notice to the petitioner requiring him to retire from the date of expiry of three calendar months from the service of the notice. However, it was made clear in the order that was conveyed to the petitioner that the State Government was satisfied that it was in public interest to dispense with the further service of the petitioner.

11. As we have already observed, the way in which the orders were conveyed to the petitioner was not a regular one, but we are satisfied that the order had in fact

been passed by the Government under Rule 21 of the Rajasthan Business Rules and not by any subordinate authority. This matter could have been disposed of finally by the Minister-in-charge and it is not disputed that the Chief Minister himself was the Minister-in-charge of the Police Department and therefore, the orders of the Chief Minister were the orders of the Government in this regard within the meaning of Rule 244(2) of the Rajasthan service Rules.

12. Learned counsel for the petitioner invited our attention to the Government order dated 13 December 1963 (Ex. 39), wherein the powers of ordering compulsory retirement of members of the Subordinate Police Service, including the sub-inspectors, on their attaining 25 years of qualifying service, had been delegated to the appointing authorities. This order of delegation, however, shows that the procedure laid down in the Government circular dated 16 May 1963 has to be followed. We have also looked to the concerning Government circular which is Ex. 40 on record. Paragraph 3 thereof shows that after the appointing authority has collected the confidential record of the Government servant, the matter will be scrutinized by a committee consisting of the Secretary to the Government, head of the department and the senior deputy head of the department. Paragraph 5 of the circular requires that the recommendation of the committee shall be submitted for approval to the Minister-in-charge by the Secretary through the Chief Secretary (Appointments) and orders of compulsory retirement in individual cases shall be issued by the appointing authority after the approval of the Government was received. This circular only indicates that the Government have been jealous in safeguarding the interests of the Government servants and have laid down that it is the Government who have to approve any proposal for compulsory retirement of a Government servant in subordinate service. In other words, though the subordinate appointing authorities might properly collect the data, make their own assessment and recommend cases to the Government, the final orders are to be passed only by the Government in the manner laid down in the circular. In other words, the order itself is passed by the Government and the other departmental officers only play a subordinate role in the matter. We are, therefore, satisfied that In the present case the order of compulsory retirement had not been passed by the Inspector-General of Police or the Deputy Inspector-General of Police. What the circular contemplates is only the issuing of formal orders by them which is

comparatively a minor affair. The order of compulsory retirement has to be passed by the Government and in the present case it has been shown to have been passed by the Government;. Learned counsel for the petitioner vehemently argued on the basis of *Bachhittar Singh v. State of Punjab and Anr.* A.I.R. 1983 S.C. 395 (vide supra), *Harkishan Singh Surjeet v. State of Punjab and Anr.* A.I.R. 1964 Punj. 198 and *Thakur Bishan Singh v. State of Rajasthan* 1952 R.L.W. 291 : I.L.R. 1952 Raj. 207 that what the Chief Minister noted on the Secretariat file was not enough to show that the proceedings in the Secretariat had matured into a Government order. He points out that before something amounts to an order of the State Government, two things are necessary:

(i) of (sic) Article 166 of the Constitution; and

(ii) it has to be communicated.

Without these, the learned counsel points out that what is noted on the file by the Minister is only his opinion which can be changed. The facts of *Bachhittar Singh v. State of Punjab and Anr.* : AIR 1963 SC395 (vide supra) are distinguishable as the matter rested only at the stage of noting on the Secretariat files and the orders had not been communicated. This is, however, not so in the present case. By his demi-official letter dated 4/5 August 1965, the Home Secretary conveyed to the Inspector-General of Police that the Government had approved all the compulsory retirements of sub-Inspectors concerned except some and the name of the petitioners was not amongst the exceptions. The Inspector-General of Police in his turn conveyed the orders to the Deputy Inspector-General of Police and the order issued by the Deputy Inspector-General of Police again referred to the fact that the Government had been satisfied that the compulsory retirement of the petitioner was in the public interest and thus the petitioner had been apprised of the Government action against him. *Bachhittar Singh case* : AIR 1963 SC395 (vide supra) is thus distinguishable on facts.

13. The case of *Harkishan Singh Surjeet v. State of Punjab and Anr.* A.I.R. 1964 Punj. 198 (vide supra) does not deal with a similar situation. That was a case of detention under the Defence of India Rules, 1962, and as the case of the detenu was renewed after the statutory period, his detention was held to be illegal after

the expiry of such a period. It is, of course, true that there is an observation in that case that the communication addressed to the detenu was not in the name of the Governor and it referred only to a decision by the State Government and was, therefore, bad. However, in view of what their lordships have laid down in *State of Rajasthan v. Sripal Jain* 1963-I L.L.J. 285 (vide supra) we are not impressed by this argument.

14. In *Thakur Bishan Singh v. State of Rajasthan* 1952 R.L.W. 291 : I.L.R. 1952 Raj. 207 (vide supra) it was observed that a note of the Minister for Revenue saying that a particular jagirdar was not fit to manage his Jagirdar, was tantamount to a Government order as required by the Marwar Court of Wards Act, 1923. That case again is distinguishable. The recitals produced in that case were not found sufficient to meet the requirements of Section 7 of the Marwar Court of Wards Act. Incidentally we may observe that in *State of Rajasthan v. Sripal Jain* 1963-I L.L.J. 285 (vide supra), the judgment was delivered by Wanohoo, J., who also delivered the leading judgment as Chief Justice of this Court as one of the members of the Bench in *Thakur Bishan Singh v. State of Rajasthan* 1952 R.L.W. 291 : I.L.R. 1952 Raj. 207] (vide supra). His lordship was then dealing with an altogether different situation and *Thakur Bishan Singh* case (vide supra) bears no similarity with the facts of the present matter and in our view, the dicta in *Sripal Jain* case (vide supra), fully cover the present case.

15. Learned counsel for the petitioner then submitted that the petitioner having already put in qualifying service long back, he could not have been retired in terms of Ex. 40. We are not at all impressed by this argument. The procedure laid down in this circular was for the guidance of the subordinate appointing authorities. It is true, they were to deal with the cases of compulsory retirement in advance before a particular incumbent completed 25 years of qualifying service, but this did not mean that the Government was thereby divested of its own powers derived from Rule 244(2) of the Rajasthan Service Rules. The mere fact that the case of a particular Government servant is not dealt with before he puts in 25 years' qualifying service or soon thereafter will not mean that the Government shall be precluded from dealing with the case subsequently. It may be a different matter if the case is examined by the Government once and after some time it is reopened

again. In the present case, however the order cannot be challenged on the ground that the petitioner continued to serve for some years even after he had put in 25 years' qualifying service. Apart from this, this circular was issued in May 1963, and by that time there were many Government servants who had already put in 25 years' qualifying service and the petitioner was one of them. The direction for considering the oases before a Government servant completed 25 years of qualifying service was for the future and it did not preloads the Government from considering the oases of those who had already put in 25 years of qualifying service. This argument has thus no force and we hereby repel it.

16. The next point that we may consider is about the alleged mala fides of respondents. We may at once say that mala fides on the part of the State Government have been alleged. The petitioner has tried to make out that Sri K.N. Gupta, Superintendent of Police, had acted with mala fides towards the petitioner. He also submits that the subject-matter of enquiries, which were sub judice and about which the petitioner's representations were pending, should not have been looked into by the screening committee or by the Government for that matter. This submission is again without any force. It does not show that there were mala fides on the part of the respondents simply because certain enquiries against the petitioner were pending. The relevant portion of the Government circular Ex. 40, which entitles the Inspector-General of Police to collect enquiry cases is in the following terms:

He will also collect their personal files, confidential rolls and enquiry cases, if any, against them. He will ensure that confidential rolls of all previous years are available in each case, and the missing confidential rolls, if any, are obtained from the reporting officers concerned to bring the record up to date. This work should be completed latest by 31 August of the year.

This shows that it was permissible for the Inspector-General of Police to collect the enquiry cases, if any, and they may be pending cases or closed cases. That being so, even if the Inspector-General of Police collected the pending enquiry oases, it cannot be said to be a mala fide act on that score, as he was simply carrying out the orders of the Government. We are, therefore, unable to find any force in this

plea of mala fides as well.

17. In the result, we find that the writ petition is without any substance and we hereby dismiss it with costs.

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