

Bhootaram Vs. State and ors.

Bhootaram Vs. State and ors.

SooperKanoon Citation : sooperkanoon.com/758767

Court : Rajasthan

Decided On : Feb-02-1980

Reported in : 1980WLN(UC)82a

Judge : S.K. Mal Lodha, J.

Appeal No. : S.B. Civil writ Petition No. 342 of 1980

Appellant : Bhootaram

Respondent : State and ors.

Advocate for Pet/Ap. : Mr. M.R. Calla

Disposition : Petition dismissed

Judgement :

S.K. Mal Lodha, J.

1. The petitioner was initially appointed on the post of Patwari with effect from September 1, 1951. An order of compulsory retirement was passed vide order No. LR/Estt/5229 dated July 31, 1978 by the Collector, Jalore under Rule 244(2) of the Rajasthan Service Rules, 1958 Aggrieved, the petitioner preferred an appeal before the Rajasthan Civil Services Appellate Tribunal (which will hereinafter, for the sake of brevity, be referred to as 'the Tribunal'). The memorandum of appeal has been filed by the petitioner marked as Ex. 1 The Tribunal, by its order (Ex 3)

dated June 13, 1979, dismissed the appeal. The petitioner has filed this writ petition praying that the impugned order (Ex. 3) dated June 13, 1979 passed by the Tribunal, may be quashed, and that the petitioner may be reinstated on the post of Patwari with all consequential benefits as if the order of compulsory retirement had never been passed against the petitioner.

2. I have heard Mr. M.R. Calla, learned Counsel for the petitioner at some length.

3. The first contention of Mr. Calla is that the order of compulsory retirement is vitiated in as much as the appointing authority (Collector) had failed to exercise independent discretion in the matter because of circular dated April 19/24th April, 1972, which is as under:

Attention is invited to Appointments (A(sic) II CR) Department No. F. 24(55) Appts (4)57 pt. 1 Cr. II/GR dated the 13th January 1955, where in procedure was laid down for compulsory retirement of Ministerial Staff in the State under rule 244(2) of the RSR contents of the above order have been reviewed and in modification of previous instructions of the subject, the following procedure is prescribed for being followed by the various departments:

Staff in the District Including Staff of the Range Level Offices I.E. DIR Dy. Director etc.

1. Collector of the District concerned. Governor

2. Appointing authority if it is other than the Collector, otherwise a senior officer nominated by the Collector. Member

On receipt of the recommendations of the committee, retirement orders shall be issued immediately by the concerned appointing authority as per specimen enclosed.

The submission of the learned Counsel is that the appointing authority, because of the mandatory character of the aforesaid circular, could not act independently and was bound by the recommendations of the screening committee. In this connection, he placed strong reliance on *Sita Ram v. State of Rajasthan* 1970

RLW 256. The committee consisted of only two members one is Collector and the other is the appointing authority. From the circular, it cannot be said that in case of difference of opinion between the two persons, whose opinion shall prevail. The appointing authority is the member of the Screening committee and, therefore, until and unless the appointing authority agrees with the other member, no recommendation can be made. The copy of the order of compulsory retirement (Ex. 11) was filed with the memo of appeal (Ex 1). The material portion of the said order reads as under:

Whereas Shri Bhootaram Patwari Rewat has completed 25 years of qualifying service attained the age of 50 years.

Now, therefore, In pursuance of the delegation made under Sub-rule (2) of rule 244 of the Rajasthan Service Rules, vide F.D.'s order No. F. 1(50)FD/Gr. 2/75, dated 23-4-77 the undersigned hereby required Shri Bhootaram Patwari by payment to him three months pay and allowances in lieu of three months previous notice, to retire from the service on the receipt of this order by him.

A.P.O. of the amount of Rs. 1620/- in respect of three months pay and allowances in lieu of three months previous notice is enclosed.

Encl. D.D. No. A.O. 587669 Dated 31-7-78.

sd/- Collector, Jalore

Having regard to the order of compulsory retirement, it cannot be said that the appointing authority had not taken the decision of its own or that the appointing authority has not applied its mind or that the Collector being the member of the Committee, was prevented to exercise his own view. A similar point was raised before me in *Samshu Singh v. State of Rajasthan and Ors.* S.B. Civil Writ Petition No. 89 of 1980 decided on January 17, 1980. In that case, after distinguishing *Sitaram's case* (1), I expressed my agreement with the view taken in *Manmal v. State of Rajasthan and Anr.* S.B. Civil Writ Petition No. 252 of 1974, decided on September 33, 1975, *Gafoor Mohd. v. State of Rajasthan and Ors.* 1977 (2) SLR 268 and *Bansilal v. State of Rajasthan* 1978 (2) SLR 218. It was held in *Bansilal's*

case that the Committee was only to recommend and the circular nowhere laid down that the appointing authority should issue order in terms of the recommendation and that the mere fact that the appointing authority shall pass the orders immediately does not imply that it was not open to the appointing authority to exercise its independent judgment and come to a decision of its own. The contention is, therefore, rejected.

4. It was next argued that the adverse entries in the A.C. Rs. were not communicated to the petitioner and hence the order of the Tribunal is bad as it has relied on the uncommunicated entries of A.C.R. In this connection, learned Counsel for the petitioner invited my attention to a decision reported in *Gurdial Singh v. State of Punjab* 1975 WLN 891. The position of the ACR, as mentioned by the Tribunal, is as under:

The misconduct in the last penalty case is very serious and perhaps that by itself was sufficient to retire the appellant from service. The learned Counsel for the appellant argued that this penalty order was issued the very day. The order of compulsory retirement was passed. This undue haste shows malice on the part of the Collector. The file shows that the decision imposing this penalty was taken on 26-7-1978 by the Collector himself. As the Collector himself was the appointing authority and convenor of a Committee, he could very well take into consideration the fact of penalty imposed recently by him. In fact draft of penalty order was put up on 27-7-1978 and was approved by Section officer that very day. But signatures of the Collector were obtained on 31-7-1978. We do not find any illegality or impropriety in considering this penalty also for compulsory retirement of the appellant.

The Tribunal has observed that for the purpose of compulsory retirement even uncommunicated, adverse entries can be seen. It referred to *Premchand v. State of Rajasthan* AIR 1979 SC 1662. The Tribunal has recorded that taking part in party politics by a civil servant is perhaps one of the worst traits and without anything more a civil servant entitles the authorities to retire such a person. In *R.L. Baital v. Union of India* : (1970) 11 LLJ 514 SC, Shelton J., speaking for the Court, observed as under:

These rules abundantly show that a confidential report is intended to be a general assessment of work performed by a Government servant subordinate to the reporting authority, that such reports are maintained for the purpose of serving as data of comparative merit when questions of promotion confirmation etc. arise. They also shows that such reports are not ordinarily to contain specific incidents upon which assessments are made except in cases where as a result of any specific incident a censure or a warning is issued and when such warning is by an order to be kept in the personal file of the Government servant. In such a case the officer making the order has to give a reasonable opportunity to the Government Servant to present his case. The contention therefore that the adverse remarks did not contain specific instances and, were therefore, contrary to the rules, cannot be sustained. Equally unsustainable is the corollary that because of the omission the appellant could not make an adequate representation and that therefore the confidential reports are vitiated.. It may well be that inspite of the work of the appellant being satisfactory, as he claimed it was, there may have been other relevant factors such as the history of the appellant's entire service and confidential reports throughout the period of his service, upon which the appropriate authority may still decide to order appellant's retirement under F.R. 56(sic)).

In *Union of India v. M.E. Reddy* 1972 (2) SLR 792, a contention was raised that if adverse remarks should have been made in confidential report, they should have been communicated. While repelling the contention, it was observed:

In the first place, under the various rules on the subject it is not every adverse entry or remark that has to be communicated to the officer concerned.

In *Sambhu Singh v. State of Rajasthan* S.B. Civil Writ Petition No. 89 of 1980, decided on January 17, 1980, I had taken a view that the communication of adverse entries is necessary in case promotion is denied on their basis, for, without communication, explanation cannot be offered and without consideration, it cannot be said whether adverse entries were justified I also held that this is, however, not invariably applicable to the cases of compulsory retirement and that such retirement involves no stain or stigma nor does it entail any penalty or civil

consequences. I may mention here that in Union of India's case (6), their Lordships of the Supreme Court observed as under:

It is now well settled by a long catena of authorities of this Court that compulsory retirement after the employee has put in a sufficient number of years of service having qualified for full pension is neither a punishment nor a stigma so as to attract the provisions of Article 311(2) of the Constitution. In fact, after an employee has served for 25 to 30 years and is retired on full pensionary benefits, it cannot be said that he suffers any real prejudice. The object of the Rule is to weed out the dead wood in order to maintain a high standard of efficiency and initiative in the State Services.

So far the following punishments were imposed on the petitioner:

(1) Penalty of one grade increment vide order dated July 25, 1974 and appeal is reported to be pending:

(4) Penalty of censure; and

(3) Penalty of stoppage of three grade increments with cumulative effect (this order was passed on file on July 26, 1978 but it was issued on July 31, 1978)

The Tribunal in its order has stated that the first penalty was imposed for not completing the Patwar Work as ordered. The second penalty was imposed for extending leave in spite of strict orders of the Tehsildar not to extend the leave. The third penalty was imposed on an enquiry under Rule 16 of the Rajasthan Civil Services (Classification, control and appeal Rules, 1958). Three charges, which were said to have been proved against the petitioner were (1) that the petitioner in order to gain undue benefit from the parties opened the mutation which he should not have opened; (2) that the petitioner realised Rs. 60/- for charai and demanded Rs. 250/- for next year, and in this connection it was charged that the petitioner misbehaved with the villagers after being drunk, but that part was not proved; and (3) that the petitioner got a mutation sanctioned by Panchayat showing a person to be an adopted son of the deceased, although there was no documentary evidence and this was done ostensibly to give undue advantage to the party so that land may

not be escheated or be taken under ceiling law. The Tribunal was of the opinion that the charges which were proved and for which penalty of stoppage of grade increment with cumulative effect was ordered, were serious and the misconduct of the petitioner in this respect was sufficient to retire him from service. It took note of the argument raised on behalf of the petitioner that the undue haste in passing the order on the very day that the penalty of stoppage of three grade increments with cumulative effect was made, shows malice on the part of the Collector. The Tribunal observed that the file showed that the decision imposing the penalty was taken on July 56, 1918 and that was approved by the Section officer that very day. However, the signatures of the Collector were obtained on July 31, 1978. It may be mentioned that the Collector was the appointing authority and he was also the convenor of the Committee, It is clear from the order of the Tribunal that the order of compulsory retirement was upheld on the basis of the adverse entries in A.C. Rs. and the penalties that were imposed on the petitioner from time to time. The Tribunal has observed as under:

Considering the whole materials, we are of the view that there are no sufficient reasons for interfering with the impugned order.

Whether the order has been passed under Rule 244(2) of the Rules by the appointing authority, the scope for further examination by the Court is very limited, for, this Court cannot embark upon the examination of the correctness of the opinion fumed by the competent authority. In Prem Chand case (5), a learned Single Judge of this Court observed as under:

It must be recognised that compulsory retirement does not deprive the Government servant of any existing right as the docs do not visit him with any penalty. However, before passing an order under sub rule (2) of Rule 244 of the Rules, the appropriate authority must bonafide form an opinion that the Government servant concerned was no longer required to be retained in public service in the public interest on the ground of efficiency and such an opinion must be formed on the basis of some relevant material.

It was further observed, in that case, as under:

It may also be emphasised here that if some grounds or material exists, then it is not for the court to consider the question of its sufficiency. What the Court is entitled to look into is that there was some material germane to the issue, on the basis of which the appropriate authority could reasonably or possibly come to the conclusion regarding the compulsory retirement of the employee but the Court cannot enter into an assessment of the value of such material to consider as to whether the conclusion arrived at by the appropriate authority in that respect is correct or not.

In *Gurdial Singh* case(4), it was held that an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. In that case, the adverse report was communicated and an explanation was submitted in this regard, but the State Government was not able to consider the explanation and decide whether the report was justified. In these facts, it was held that the non-issuance of the integrity certificate to the appellant could not be supported. In a matter under Rule 244(2) of the Rules, in *Tara Singh v. State of Rajasthan* : [1975]3SCR1002, it was held that so long as the right is not qualified, the right of the Government to retire a Government servant compulsorily must be held to be absolute. In *C.L. Pathak v. State of Rajasthan* 1976 WLN 1, it was held that the High Court cannot sit as a court of appeal over the decision of the Government relating to compulsory retirement, which was arrived at after taking into account the whole picture of the officer. The Tribunal did not interfere with the order of compulsory retirement as material existed for making it and it has not been shown that the opinion was formed on account of malice or extraneous or irrelevant considerations. In these circumstances, the argument that the order of compulsory retirement was passed on the uncommunicated adverse entries of A.G. Rs, is futile.

5. The last contention raised by the learned Counsel for the petitioner is that his case for compulsory retirement was considered in 1976 and 1977, but recommendations for compulsory retirement were not made and that after consideration of 1976 and 1977, no new or additional material came into existence

on the basis of which he could be compulsorily retired. In this connection, he referred to para 7(xi) of the memo of appeal (Ex.1). In the reply it was submitted on behalf of the respondents before the Tribunal that para No. 7 (xi) of the appeal was admitted. He referred to *shri Banshilal v. State of Rajasthan and Swami Saran v. State of U.P.* 1979 (2) SLR 781. I have carefully read these authorities and in my opinion, they are not applicable to the facts and circumstances of the case in hand. It may be mentioned that petitioner has sought issuance of writ of certiorari. It was held by a Division Bench of this court in *State of Rajasthan v. Smt. Lahur Kunwar* 1974 RLW 85 that before a writ of certiorari could be issued, an error apparent on the face of the record must be shown to exist. It was observed as under:

Obviously there cannot be an error on the face of the record because this point was neither raised nor considered by the Board of Revenue, and we do not have the benefit of examining the view of the Tribunal whose order is under attack.

The Tribunal in the impugned order has stated that only two points were raised for its consideration in the appeal (1) whether there was sufficient material or ground in respect of the appellant from his retirement from service under Rule 244(2) of the Rules, and (2) whether the impugned order is vitiated inasmuch as the appointing authority failed to exercise independent discretion in the matter on account of circular dated April 19/24, 1972.

6. The last argument, which has been canvassed before me was not raised before the Tribunal. Apart from this, it may be mentioned, as stated by the Tribunal in its impugned order, that misconduct on the basis of which the penalty of stoppage of three grade increments with cumulative effect was imposed, was itself sufficient to retire the appellant from the service. The decision to impose the aforesaid penalty was taken on July 26, 1978 and the order for compulsory retirement was passed on July 31, 1978. The charges, which were held to be proved and on the basis of which penalty of stoppage of three grades increments with cumulative effect was imposed, could not be the subject matter in 1976 and 1977. Apart from that, this Court cannot sit as an appellate authority over the decision of the appointing authority in the matter of compulsory retirement of an employee.

7. All the three contentions raked by the learned Counsel for the petitioner have no force.

8. The result is that the writ petition fails and it is, accordingly, dismissed summarily.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com