

State of Rajasthan Vs. Narendra Mal

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Court : Rajasthan

Decided On : Jul-21-1981

Reported in : 1981WLN(UC)465

Judge : S.K. Mal Lodha and; Kanta Bhatnagar, JJ.

Appeal No. : D.B. Civil Special Appeal No. 336 of 1980

Appellant : State of Rajasthan

Respondent : Narendra Mal

Advocate for Def. : Mr. Mridul

Disposition : Appeal dismissed

Judgement :

S.K. Mal Lodha, J.

1. By this Special appeal under Section 18 of the Rajasthan High Court Ordinance, the State of Rajasthan has questioned the correctness of the order dated August 12, 1980, passed by a learned Single Judge of this court, by which he dismissed its petition under Article 226 of the Constitution of India seeking to quash the order (Ex.6) dated May 9, 1979 of the Rajasthan Civil Services Appellate Tribunal. Jaipur (for short the Tribunal), by which it quashed the order of compulsory retirement of respondent No. 1.

2. Briefly put the facts leading to this appeal are these : Respondent No. 1, who was the appellant before the Tribunal was initially appointed as Muafi Enquiry Officer on September 18, 1948 in the Settlement Department of the erstwhile Jodhpur State. He was appointed as Naib-Tehsildar in the year 1954. He was promoted to the Rajasthan Administrative Service in the year 1971. Respondent No. 1, continued on this post until the order (Ex-1) dated October 22, 1975 was passed compulsorily retiring him under Rules 244(2) of the Rajasthan Service Rules (hereinafter referred to as 'the Rules'). Respondent No, 1 was promoted as Tehsildar in the year 1960. During his tenure

as Tehsildar and until he was promoted on ad hoc basis in the cadre of Rajasthan Administrative Service, there were certain enquiries against him* The details of the enquiries and punishments are as follows:

S.No.	Date of	Period of	Nature of	Quantum of
			Punishment	Punishment
			Charges	Punishment

1. 2. 3. 4. 5.

1. 16.11.73 67-68 Irregularities Stoppage of two

in purchase grade increments

and other with cumulative

financial effect

matters

2. 16/17.12.73 61-52 Over-payment Stoppage of one

for construc- grade increment

tion of without cumula-

Patwargarh tive effect

3. 5.2.74 about over payment Recorded warning

67-68 to the

contractor for

Patwar Khana

4. 4.2.75 prior to Irregularity Stoppage of two

1971 in regulari- grade increment

sing the land without cumula-

in khatedari tive effect

in Destt. Sirohi

It will be clear from the above statement that respondent No. 1 was promoted to the Rajastban Administrative Service in the year 19)1 on ad hoc basis after due screening by the committee, which consisted of the Chairman of the Board of Revenue for Rajasthan, the Revenue Secretary and the Special Secretary, Appointments before the punishments were imposed. The enquiries were pending at the time of the promotion. The enquiries were concluded after the ad hoc promotion and after it, punishment as stated above, were awarded. After passing of the compulsory-retirement order, a Review committee was constituted & the review was rejected on June 19, 1976. Thereafter, by order dated September 28, 1977, a committee was again constituted and subsequent review was rejected by the Committee vide order dated July 26, 1978. This order was served on respondent No. 1 on August 2, 1978. Feeling aggrieved the appellant filed an appeal before the Tribunal. The appeal was filed against the order No. P. 2 (49) Karmik/ka-IV dated October 22, 1975, (order of compulsory retirement) read with the order No. s-1/57 Karmik/Stha/77 dated July 26, 1978. The Tribunal consisted of Sarva Shri Rules Section Kumbhat, Chairman, Rules R.L. Gupta, Member and Rules N. Srivastva, Member. Shri Rules L. Gupta, was of the opinion that the appeal should be dismissed. Shri R.N. Shrivastava was of the opinion that the compulsory retirement order being contrary to the condition of the Note appended

to for 244 of the Rules, deserves to be set aside. The Chairman Shri R.S. Kumbhat agreed with the opinion of Shri R.N. Srivastava, but for different reasons. He was of the view that the order compulsorily retiring respondent No. 1 should be set aside and the appeal should be accepted. In view of the opinion of the majority, the Tribunal by its order (Ex.6) dated May 9, 1979 accepted the appeal and set aside the order of compulsory retirement passed against respondent No. 1.

3. The State of Rajasthan filed a writ petition on February 28, 1980 impleading respondent No. 1 and the Tribunal as parties (non-petitioners) to it. The learned Single Judge, by his order dated August 12, 1980 dismissed the writ petition without any order as to costs.

4. Feeling aggrieved, the State of Rajasthan has come up in appeal.

5. We have heard Mr. H.H. Calla, Additional Government Advocate and Mr. M. Mridul for respondent No. 1.

6. At the very outset, Mr. Mridul, learned Counsel for respondent No. 1. contended that the writ petition, which was filed for quashing the order (Ex.6) of the Tribunal was belated and for which no plausible explanation was given by the State of Rajasthan. He submitted that point of delay was argued before the learned single Judge, but he did not like to consider (he point and decided the writ petition on merit. Besides, supporting the order of the learned Single Juige, on merits, Mr. Mridul submitted that the writ petition should be dismissed because it was filed after inordinate delay. In the order of the learned Single Judge, there is no mention that the point regarding belated presentation of the writ petition was raised before him. The raising of the point regarding belated presentation of the writ petition before the learned Single Judge, at one point of time, was not disputed by Mr. Cala, the learned Additional Government Advocate, but on second thought, he submitted that he has recollected that there was no occasion for the learned Counsel for respondent No. 1 to have argued the point of belated presentation of the writ petition before the learned Single Judge and that the point of belated presentation, according to him, for the first time, was raised at the time of the admission of the special appeal. On this statement being made by Mr. Calla, Mr.

Mridul submitted his affidavit dated February 15, 1981 stating, inter alia, that as soon as the hearing of the writ petition commenced before the learned Single Judge, he raised a preliminary objection that the writ petition having been filed after nine months, of the order of the Tribunal, it deserves to be rejected summarily and cited the Circular of the Government which was reproduced in the reply to the show cause notice. On this, the learned Single Judge observed that since he is deciding the matter on merits he will not like to decide the case on this point. The affidavit of Mr. Mridul has not been controverted. It may be mentioned that the writ petition was filed on February 29, 1980. The Tribunal gave its judgment on May 9, 1979. The time taken for obtaining the certified copy of the judgment of the Tribunal was six days. The point regarding belated presentation of the writ petition was taken in the reply dated April 8, 1980 to the show cause notice and it was, inter alia, stated that the writ petition was filed with gross delay and no explanation has been given for it of about 9½ months. The Circular dated July 26, 1980, which was issued by the Government of Rajasthan, amongst others, makes mention that in order to ensure that a final action on the order of the Tribunal is taken within a reasonable time limit, it is enjoined on all the concerned authorities to ensure that the orders passed by the Tribunal should be implemented positively within three months from the date of the delivery of the certified copy of the order and that, if in any case, the order of the Tribunal is to be taken to the High Court by way of a writ petition, it should also be filed within three months invariably. In these circumstances, Mr. Mridul submitted that no indulgence should be granted to the State of Rajasthan and the writ petition should be dismissed on the ground of delay alone.

7. In view of the dispute regarding raising of the point of belated presentation of the writ petition before the learned Single Judge, and further for the fact as it appears from the affidavit of Mr. Mridul filed on February 13, 1981 that the learned Single Judge observed that since he is deciding the matter on merits he will not like to decide the case on the point of delay, we do not consider it necessary to examine the question of belated presentation of the writ petition in the appeal.

8. Mr. Calla, learned Additional Government Advocate urged that the approach of the Tribunal in setting aside the order of the compulsory retirement and that of the

learned Single Judge in not quashing its order, was not correct. He submitted that the charges against respondent No. 1 related to the years 1961-62, 1967-68 and prior to 1971, that enquiries were pending against him when promotion was made in 1971 and that the punishments were imposed afterwards. The Screening Committee took into consideration overall picture of respondent No. 1 and the orders passed in the enquiries and, thereafter, it was decided to compulsorily retire him. That opinion was formed by the Government and it was not open to the Tribunal to take a different view other than the one taken by it (Government). According to Mr. Calla, it is only the totality of the circumstances that has to be taken into consideration for forming an opinion whether a particular Government employee is to be compulsorily retired or not. Once the opinion is formed, argued Mr. Calla, the only question that can arise is whether that opinion was formed bonafide. In support of the contention that correctness of the opinion cannot be challenged, he referred to *Vithalrao v. State of Maharashtra* 1973 (1) SLR 258, where in it was observed that the court cannot be the Judge of the correctness or propriety of the action or sufficiency or adequacy of the material, but the Court shall have to satisfy itself that there existed some material and that order is not actuated by any irrelevant consideration, even when the case is outside the purview of Article 311(2). It was also submitted by Mr. Calla that the Tribunal went wrong when it observed that there was no sufficient material for not compulsorily retiring respondent No. 1 and that the punishments imposed on him (respondent No.1) should have been taken into consideration as they are relevant in forming the overall picture. On the other hand, Mr. Mridul submitted that the Tribunal was justified in reversing the decision taken by the Government in regard to the compulsory retirement of respondent No. 1. He further contended that if the Tribunal has taken a view on the basis of the material, which was before it and if it was a possible view, it could not have been interfered with in a petition under Articles. 226 of the Constitution. He pressed that the learned Single Judge has declined to interfere with the order of the Tribunal in the petition under Art. 226 whereby affirming the view taken by it in appeal and so while hearing the special appeal, we should not disturb it.

9. In view of the aforesaid rival contentions the most important question that emerges is whether the Tribunal was right and justified in setting aside the order,

whereby the Government ordered compulsory retirement of respondent No. 1.

10. Shri R.N. Srivastava (Member) did not agree with Shri R.R.L. Gupta (Judicial Member) and as there was a difference of opinion between the two members, the matter was referred to the Chairman of the Tribunal, who agreed with Shri R.N. Srivastava although for different reasons.

R. 244 of the Rules is as under.

244(1) A Government servant may, after giving at least three months previous notice in writing to the Government, retire from the service on the date on which he completes 25 years of qualifying service or on any date thereafter to be specified in the notice.

(2). The Government may, after giving him at least three months previous notice in writing require a Government servant to retire from the service on the date on which he completes 25 years of qualifying service or attains the age of 55 years or on any date thereafter to be specified in the notice. Provided that a Government servant of class IV can only be required to retire on the date on which he completes 25 years of qualifying service or any date thereafter.

The Note appended to rule 244 reads as under:

1. The right conferred by Rule 244(2) is intended to be exercised only against a Government servant whose efficiency is impaired but against whom it is not desirable to make formal charges of inefficiency or who has ceased to be fully efficient but not to such a degree as to warrant his retirement on compassionate allowance. It is not the intention to use this rule as financial weapon, that is to say, the provision should be used only in the case of Government servant who are considered unfit for retention on personal as opposed to financial grounds.

The Tribunal has found that the Note is to be read as an integral part of the main provision. It was held by a Division Bench of the Gujarat High Court in *V.C. Shroff v. Gujarat Elec. Board* 1978 (2) SLR 502, as follows:

Those notes are departmental instructions or guidelines issued by the Executive to the subordinates, but they have no force of law. In the case on hand, the notes are integral part of the main provision and, therefore, stand on the same footing. They would have the same rigorous force as the main provision has. In other words, the entire regulation No. 72 is to be interpreted as a whole unit after allowing the full scope and lay of the notes on the enabling provisions that provides for premature retirement.

From the Note which is the integral part of Rules 244(2), it is clear that the power given by Rules 244 can only be exercised against the Government servant, whose efficiency has impaired, i.e. there has been deterioration of the efficiency.

11. The Circular dated March 28, 1978 of the D.P.O. which was considered by Shri R.N. Srivastava, (Member), is as under:

It has now been decided that while the entire service record of an employee would be considered at the time of screening, no employee should ordinarily be retired on ground of inefficiency if his service during the preceding 5 years or, where he has been promoted to higher post during that 5 years period, his service in the higher post has been found satisfactory.

From the above referred circular, it is amply borne out that ordinarily no employee should be compulsorily retired on the ground of inefficiency (1) if during preceding five years of service or (2) in case of promotion to the higher post during that 5 years' period his service in the higher post has been satisfactory.

12. Here, we may notice some of the authorities having bearing on the question of compulsory retirement.

13. In *Swami Saren Saksena v. State of U.P.* : (1980)ILLJ103SC , it was observed as under:

The contention which has found favour with us is that on a perusal of the material on the record and having regard to the entries in the personal file and character roll of the appellant, it is not possible reasonably to come to the conclusion that the compulsory retirement of the appellant is called for. This conclusion follows

inevitably from the particular circumstances, among others, that the appellant was found worthy of being permitted to cross the second efficiency bar only a few months before. Ordinarily, the Court does not interfere with the judgment of the relevant authority on the point whether it is in the public interest to compel a government servant to retire. And we have been even more reluctant to reach the conclusion we have, when the impugned order of the compulsory retirement was made on the recommendation of the High Court. But on the material before us we are unable to reconcile the apparent contradiction that although for the purpose of crossing the second efficiency bar the appellant was considered to have worked with distinct ability and with integrity beyond question, yet within a few months thereafter he was found so unfit as to deserve compulsory retirement. The entries in, between in the records pertaining to the appellant need to be examined and appraised in that context. There is no evidence to show that suddenly there was such deterioration in the quality of the appellant's work or integrity that he deserved to be compulsorily retired. For all these reasons, we are of opinion that the order of compulsory retirement should be quashed. The appellant will be deemed to have continued in service on the date of the impugned order.

(Underlining is ours).

In *Prem Chand Sanghi v. the State of Rajasthan* (D.B. Civil Special Appeal No. 144 of 1975, decided on March 11, 1980), it was observed as under:

Taking into consideration the entire set of circumstances, we have no hesitation in coming to the conclusion that there was no legal material on the basis of which the Screening Committee could ultimately come to a conclusion that the petitioner be ordered to retire compulsorily. We must make it clear that we are not trying to sit in appeal over the orders of the screening Committee, but at the same time, if the orders of the Screening Committee, are based on irrelevant and extraneous circumstances, and are based on no legal material then this Court shall not fail in its duty to render justice where justice has been denied to an individual on the basis of extraneous and irrelevant consideration. The order of compulsory retirement dated 2-9-1972 was, therefore, wholly unjustified and based on no relevant material. Under these circumstances, we find it exceedingly difficult to

uphold the order of the learned Single Judge.

It was further observed:

There is no material on the record on the basis of which the State could reasonably come to the conclusion that the appellant's efficiency has been impaired to that extent that he could be chopped off from the service as a dead wood. We have already given in details the reasons which have compelled us to come to this conclusion that the order of compulsory retirement of the appellant is arbitrary, capricious in nature, and is violative of the principles of natural justice.

The Division Bench in Prem Chand Sanghi's case (supra), noticed O.M. Banerjee v. State of West Bengal 1979 (2) SLR 309, V.C. Shroff's case (2), State of Bihar vs. Shiv Bhikshuk 1970 SLR 18, Jagdish Prasad v. State of U.P. 1970 SLR 938, J.F. Jain v. Union of India 1970 (2) SLR 309, Chandrika Prasad v. Rajyapal UP. Sharma 1979 (2) SLR 309, and Jatan Singh v. State of Bihar 1979 (2) SLR 111. In Brij Behari Lal Agarwal v. Hon'ble High Court of M.P. 1981 (UJ) SC 15, it was observed by Pathak, J., as under:

It is possible that a Government servant may possess a somewhat erratic record in the early years of service, but with the passage of time he may have so greatly improved that it would be of advantage to continue him in service upto the statutory age of superannuation whatever value the confidential reports of earlier years may possess, those pertaining to the later years are not only of direct relevance but also of utmost importance.

A contention was raised in N.M. Linga v. State of Karnataka 1981 (1) SLR 147 that as the petitioner had been promoted to the cadre of Regional Deputy Director which was a senior class I post as late as in January, 1975, the Government could not have come to the conclusion in October, 1975 that the continuance of the petitioner in the service of the State Government was opposed to the public interest. While repelling the contention, it was observed as follows:

In my view, the contention urged for the petitioner that as the petitioner had been promoted to the cadre of Regional Deputy Director which was a senior Class I

pose as late in Jan. 1975, the Government could not have come to the conclusion in October, 1975 that the continuance of the petitioner in the service of the State Government was opposed to public interest is sound as the decision is highly inconsistent with promotion given to him to a ' Senior Class I post in January, 1975, as there is no confidential report regular or special found in the records made after the date of the promotion of the petitioner indicating, any subsequent deterioration of his efficiency or lack of integrity. Further, it is pertinent to note that the authority competent to make and which ordered the promotion of the petitioner to the cadre of Regional Deputy Director was not any lower authority but the Government itself. Therefore, in the absence of any subsequent adverse service record it is difficult to appreciate how the Government could have reasonably formed an opinion that his continuance in service was opposed to public interest and directed his premature retirement in October, 1975.

In 1971, respondent No. 1 was promoted to the cadre of Rajasthan Administrative Service. Shri R.N. Srivastava (Member) found that it would be impossible to hold that his efficiency stood impaired or that he was not efficient enough. According to him, the various acts of omission and commission which formed the subject matter of the enquiries relating to the years 1961-62, or 1967-68 Respondent No. 1 was promoted to R.A.S. cadre in 1971 & so it could not be said that his efficiency had deteriorated. The Chairman, agreed with the conclusion of Shri R.N. Srivastava (Member). There are no allegations regarding impairment of efficiency after respondent No. 1's promotion to Rajasthan Administrative Service Cadre and his work was found good. The Tribunal has stated in its order that the Annual Confidential Reports anterior or posterior of respondent No. 1 were either good or excellent and only one was average. The learned Single Judge was of the opinion that the omissions and commissions were of remote past of the years 1961-62 and 1967-68 and further that after all these developments, respondent No. 1 was promoted in the cadre of Rajasthan Administrative Service by a high-level Committee and that this all negatives the finding of the Screening Committee that the efficiency of respondent No. 1 was impaired. The learned Single Judge was further of the view that nothing happened in the years from 1972 to 1975 as neither any adverse entry was shown nor any departmental enquiry was conducted for any omission or commission and against respondent No. 1 and in

view of this, there was no proximate cause for holding that the efficiency of respondent No. 1 was impaired.

14. At this stage, we would like to examine the scope and powers of the Tribunal while dealing with the orders of compulsory retirement in appeals.

15. Section 3 of the Raj. Civil Services (Service Matter Appellate Tribunal) Act, 1976 ('the Act') deals with Constitution and Composition of Tribunals. Sub-section (2) and (3) where of are as under:

(2) Each of the Tribunals shall consist of a Chairman who shall be an officer of super time scale of Indian Administrative Service and at least two other members, one of whom shall be a member of the Rajasthan Higher Judicial Service.

(3) The term of the Chairman and members of the Tribunal shall ordinarily be three years. The Government may, however for special reason, recall the Chairman or any member of the Tribunal before the expiry of the period of three years.

Section 4 of the Act relates to the duties of the Tribunal. It is as under:

Duties of the Tribunal. (1) The Rajasthan Civil Services Appellate Tribunal shall hear an appeal against the order passed by any officer or authority on any service matter or matters affecting a Government servant in his personal capacity.

(2) The Tribunal shall have power to confirm, vary or reverse the order against which the appeal is preferred or to remand the matter for fresh decision in accordance with the directions given by it.

According to Sub-section (2) of Section 4, while hearing the appeal and deciding it, the Tribunal, amongst others, can reverse the order against which the appeal is preferred. The Tribunal can adjudicate upon the validity or correctness or propriety of the order of the compulsory retirement. For this, while deciding appeal it is competent to re-appreciate and re-appraise the relevant material bearing on the question. In other words, the ambit of consideration by the Tribunal is co-extensive with that of the authority passing the compulsory retirement order. The powers of the Tribunal under Section 4 (2) are, thus, wide and we are unable to agree with

the learned Additional Government Advocate that the Tribunal while hearing the appeal could not vary or reverse the conclusion and the opinion on the question of compulsory retirement.

16. The matter can be examined from another point of view. The State Government, while passing the order of compulsory retirement of respondent No. 1, took certain material into consideration. The Tribunal while hearing the appeal, on the basis of the material that was before it, took a contrary view, i.e. that the order of compulsory retirement of respondent No. 1 was bad. Shri R.N. Srivastava (Member) has stated as under in the order (Ex.6):

In any case, for the matter of compulsory retirement the limited purpose is to form the bonafide opinion about the fitness of the Government servant and for that guiding principle or year of event or incident or penalty is quite reasonable.

To sum up the above position, I am of the considered view that unless there are any special reasons, ordinarily adverse service record of a servant prior to 5 years is not relevant & should not be taken into account for forming a bonafide opinion about his fitness for future in retention. If he has worked satisfactorily on that post, promotion given to the officer should be given due weight and adverse entries anterior to it should be looked against him only for special reasons to be recorded, for example, where the adverse material had escaped then notice at the time of promotion and because a departmental enquiry was pending, it could not be taken into consideration by the D.P.C. at the relevant time or when there is repetition of delinquency by the officer. There should, however, be no legal bar for mechanically not taking into account any adverse remarks or punishment if those become specially relevant with reference to present performance of the official.

Consideration in this respect is to be kept that this Tribunal has a wider jurisdiction as an appellate body then the Courts who cannot look into the sufficiency of the material.

Now, adjudicating the case of the Appellant in the light of the above general examination & principles, it may be mentioned that he was promoted on urgent temporary basis on the recommendations of a high powered screening committee

to the R.A.S. in 1971 by superseding 30-40 officers. Enquiries were then pending in which orders of penalties of stoppage of grade increments were passed on 16-11-73 & 17-11-73. The events of delinquences occurred in 1962-1967. Since the pending D.Rs. should not be allowed to be evaded, we may examine whether if these punishments would have been ordered before consideration for promotion, he would have been promoted. Being an urgent temporary promotion in 1971, faults upto 1966 would have been ignored in the 5 years note & one penalty could at the most have marginally come in his way even if principles of occurrence of events of 1972 circular are notion-ally applied. Taking a strict view, we may ignore his achievements of promotion in 1971 & look to record anterior to it. But I find that his A.C. Rs. anterior & posterior, all are either Excellent, Good and only one is average. He could, therefore, be even promoted after 1972 onward & even by merit. The question of washing off of adverse record is hardly attracted & the moot point is for penalties for which he has partly already suffered. Even taking these again as evidence of impairment of efficiency, it has to be in a realistic manner & as a matter of fact to be actually treated adverse in 1962-1967. But in 1975 those are too remote to determine his efficiency now. There is on the contrary definite record of his good work & improvement for many & latest years, as depicted by A.C. Rs. It was, therefore, not at all a material relevant for forming bonafide opinion to prove his impairment of efficiency, but facts are just the reverse. It is not on account of any wiping out of adverse record due to latest promotion, but the material of delinquences being too old & absolute & the appellant having reformed by continued & uniform future good conduct for 7-8 years, that these prove his progressive efficiency rather than inefficiency.

The retirement order, therefore, being contrary to the condition of the note to Rule 244(2) of the R.S.R., deserves to be set aside. It is one of the cases in which there was no justification to treat him unfit for further retention in Government service.

Shri R.S. Kumbhat (Chairman) has mentioned in the order (Ex. 6) as follows:

It is thus clear that the adverse record in the entire service career of Shri Mehta, the Appellant, is related to punishment that were awarded to him in the period 1973 to 1975 for incidents of 1961-62, 67-68 or near about. The incidents are of

remote past and relate to negligence in following official procedure. These punishments show that the officer was not careful but now here it is alleged or even inferred that his integrity was doubtful or that his understanding was so poor that he could be deemed as inefficient. The Officer was promoted to the R.A.S. on an adhoc temporary basis and even during that period he has discharged his duties satisfactorily. It cannot be denied that the punishments do reflect on his efficiency but if the A.C.Rs. and punishments and the entire service record is seen together in a total perspective, the incidents being of remote past and all A.C.Rs. being of good, very good and average nature, one cannot come to a definite conclusion that his efficiency was so impaired that he was unfit for retention in government service.

The matter relating to the compulsory retirement is administrative in character and if the Tribunal took the view, which was possible and justified, then even if the other view is possible, the court in exercise of its jurisdiction under Article 226 of the Constitution, would not be justified in interfering with the view taken by the Tribunal if it was a possible view. *State of Orissa v. Bidyabhushan Mahapatra* AIR 1963 SC 79 and *State of Maharashtra v. B.K. Takkamore* : [1967]2SCR583 were referred to in *Swam Singh v. State of Punjab* : AIR 1976 SC232 , where in it was observed:

There is authority for the proposition that, where the order of a domestic tribunal makes reference to several grounds, some relevant and existent, and others irrelevant and, non-existent, the order will be sustained if the Court is satisfied that the authority would have passed the order on the basis of the relevant and existing grounds, and the exclusion of irrelevant or non-existing grounds could not have effected the ultimate decision.

The cases reported in *Dr. C.L. Pathak v. State of Rajasthan* 1976 WLN 1, *Sambhu Singh v. State of Rajasthan* 1980 WLN 324 and *Bhola Ram v. State and Ors.* 1980 WLN (UC) 83 are not of much help and are distinguishable.

17. The Tribunal set aside the order of compulsory retirement on the basis of the material and the Circular issued by the Government. The material, which was considered, cannot be said to be irrelevant or extraneous. The Tribunal came to

the conclusion that there was no impairment of efficiency or that respondent No. 1 had become unfit to be retained in service. This conclusion not being unreasonable or perverse, the learned Single Judge, in our opinion, was right when he declined to interfere with the order of the Tribunal in a writ petition under Article. 226 of the Constitution. The order of compulsory retirement was, therefore, correctly set aside by the Tribunal and the learned Single Judge was right in dismissing the writ petition.

18. A contention was raised before the learned Single Judge that the appeal filed by respondent No. 1 against the order of compulsory retirement was barred by time and as there was neither any application nor affidavit showing sufficient cause for not preferring the appeal in time, the Tribunal should not have entertained the appeal. The learned Single Judge repelled the contention and held that the appeal was rightly entertained.

19. Under Section 9 of the Act, the period limitation prescribed for preferring appeal is 60 days from the date of the order of the authority. If the appeal against the order of compulsory retirement was barred by time, then, according to Mr. Calla, the Tribunal should have rejected it under Section 3 of the Limitation Act, 1963, and so, the question of waiver does not arise. In this connection, he referred to *Maqbul Ahmad v. Onkar Pratap* AIR 1935 PC 85 and *Rama Shankar v. Shyamalata* : [1969]2SCR360 . Mr. Mridul refuted the contentions and urged (1) that the point of limitation was not canvassed before the Tribunal, and, therefore, it could be taken in the writ petition; (2) that there was waiver or abandonment of the point of limitation and, therefore, it could not be raised at the time of hearing of the writ petition; (3) that the State of Rajasthan is precluded from raising the point on the principle of estoppel; (4) that the limitation will start from the date of the order, i.e. July 26, 1978, for, it was a fresh order and as such appeal filed on September 23, 1978 was within limitation; (5) that the Limitation Act, 1963 does not apply; and (6) that the question of limitation is a mixed question of law and fact and, therefore, it should not be permitted to be raised.

20. The learned Single Judge held that the appeal was rightly entertained as it was within limitation. In this connection, the learned Single Judge observed as

follows in the impugned order:

I am of the opinion that the order Ex. 3 of 1978 itself points out that after review the Government rejected the representation of the respondent Shri Mehta considered as whole, the matter of compulsory retirement and reinstatement was very much alive till the impugned order of 1978 was passed and, therefore the tribunal was justified in entertaining the appeal and treat it within time.

21. We proceed to examine the correctness of the aforesaid finding of the learned Single Judge. In this connection, a few facts may be recounted. The order of compulsory retirement was passed on October 22, 1975. The Review Committee was constituted. A review petition was filed and same was rejected on June 19, 1976 by order dated November 28, 1977. A second review committee was constituted. This committee rejected the review petition on July 26, 1978, which was communicated to respondent No. 1 on August 2, 1978 and, thereafter, the appeal was filed on September 23, 1978. The Act received the assent of the President on May 7, 1976. In exercise of the powers conferred by Section 3 of the Act, the State Government constituted with effect from July 1, 1976 the Tribunal.

22. Section 9 of the Act is as follows:

9. Limitation for Appeals. - No appeal shall lie to the Tribunal after the expiry of sixty days from the date of the order of the Authority. Provided that an appeal may be admitted after the prescribed period if the appellant satisfies the Tribunal that he had sufficient cause for not preferring the appeal within such period.

Section 10 says that no suit or other proceedings shall lie or be instituted in any Civil Court with respect to any matter arising under or provided for by this Act. Section 11 deals with the special provisions in respect of pending cases. It runs as under:

Special provision in respect of pending cases, - Notwithstanding anything contained in this Act, all cases in respect of a service matter pending in any Civil Court on the date on which this Act comes into force shall be continued to be heard and decided by that Court as if this Act had not been passed.

The Rajasthan Civil Services (Service Matters Appellate Tribunal) Rules, 1976 (for short 'the Rules') were framed by the Government of Rajasthan in exercise of the powers conferred by Sub-section (1) of Section 12 of the Act. Rules 16 of the Rules deals with scrutiny. It, inter alia, lays down that a report is to be made whether the appeal is within the period of limitation or whether the appellant has given sufficient cause for not preferring appeal within the limitation period. Rules 17 of the Rules deals with the admissibility of the appeal. It provides that either on the basis of the scrutiny referred to in Rules 16 or on its scrutiny, the Bench nominated by the Chairman or in his absence by the Member authorised by the Chairman for the purpose may - (a) admit the appeal against the necessary parties; (b) permit the appellant to amend the memorandum of appeal or produce necessary documents and, there after, admit the appeal against the necessary parties; or (c) reject the appeal. Rules 18 provides that the Bench set up under Rules 17 shall hear the appellant or this representative or advocate, in case it is proposed not to admit his appeal. The order of compulsory retirement was passed on October 22, 1975. The Tribunal was constituted on July 1, 1976. In these circumstances, there was no question of preferring the appeal before the Tribunal within a period of 60 days from the date of the aforesaid order, as there was no validly constituted Tribunal at that time.

23 Section 10 and Section 2(f) of the Act came up for examination before one of Under Section (S.K. Mal Lodha, J.), sitting singly in State v. Jodh Singh 1980 WLN 245, where-in it was observed:

From the conspectus of the provisions of Act, it is clear to my mind that under Section 10 of the Act, jurisdiction of the civil court is excluded with respect to the matters arising under or provided for by the Act. The order of compulsory retirement was made on December 18, 1974. The Act came into force from July 1, 1976. It is, thus, clear that when the order of compulsory retirement was passed, the Rajasthan Civil Service (Service Matters Appellate Tribunal) Act, 1976 was not in existence. The cause of action accrued to the respondent for quashing the order of compulsory retirement on December 18, 1974. The period prescribed for preferring an appeal by the affected party in respect of an order passed by any officer or authority on any service matters under Section 9 of the Act, is sixty days

from the date of the order. In these circumstances the question of preferring appeal before the Rajasthan Civil Service Appellate Tribunal against the order of compulsory retirement dated December 18, 1974 within the period of sixty days does not arise. For adjudicating the question whether Section 10 is applicable to the cases of service matters as defined in Section 2(f) of the Act in regard to which the cause of action has accrued prior to the coming into force of the Act, Section 11 affords useful guide. Section 11 begins with non-obstante clause. According to this Section, all cases in respect of service matters pending in any Civil Court on the date, on which the Act came into force are to be continued to be heard and decided by the Court as if the Act had not been passed. Having regard to the language used in Section 10, suits and other proceeding with regard to matters arising under or provided for by the Act have only been excluded. The order of compulsory retirement, which was passed on December 18, 1974, cannot be said to be matter arising under or provided for by this Act.

It is clear from Section 9 of the Act that the period prescribed for preferring an appeal by the effected party is in respect of an order passed by any officer or authority in any service matters is sixty days from the date of the order and, therefore, the question of preferring appeal before the Tribunal against the order of compulsory retirement dated October 22, 1975 within the period of sixty days did not arise. Under Section 11, the suit could be filed within 3 years i.e. upto October 22, 1978. Against the order of the compulsory retirement a second review petition was preferred. The review was entertained and decided on merits and it was rejected. Thus, it was a fresh order relating to compulsory retirement of respondent No. 1. In *Rao Raja Tej Singh v. Hastimal* 1972 WLN 129 it was observed:

In this view of the matter, even though the Collector had dismissed the review application without recording any further evidence which the petitioners wanted to adduce in support of their contention, it shall be taken that the review petition was dismissed by the Collector (Jagir) after crossing the second stage of the proceeding and as such the order passed by the Collector (Jagirs) shall be treated as a fresh decree or order from which an appeal can lie to the Khudkasht Commissioner.

A perusal of the order Ex. 3 dated July 26, 1978 shows that the Government re-considered the matter and there after, has taken the decision that it was not proper to set aside the order of compulsory retirement. As it was a fresh order, it was appealable under Section 4 of the Act. We may, however, add that in the memo of appeal (Ex.4), it is mentioned that the appeal before the Tribunal was directed against the order No. F. 2(49) Karmik/Ka-IV/72 dated October 22, 1975 received on October 25, 1975 read with the order No. 1/57/Karmik/5th/77 dated July 26, 1978. The prayer made in the appeal before the Tribunal was that the order dated July 26, 1978 may be quashed, the compulsory retirement of respondent No. 1 may be declared illegal and it be directed that respondent No. 1 has been in continuous service since October 25, 1975. The appellant (State of Rajasthan) filed a reply to the memo of appeal. In reply to para 5 of the memo of appeal, it was stated:

For para (v) it is submitted that on a representation from the appellant dated 17-4-76, the appellants case was first reviewed by the Committee constituted vide Govt, order No. F.13(56) Karmik/AC-R/76 dated 23-3-76. On the recommendations of the Reviewing Committee, the Govt, did not find any reason to rescind the orders of retirement of the appellant. The decision was communicated to the appellant vide this Deptt. letter No. F. 2(49) Karmik/Ka-IV/72 dated 9-6-76, a copy of which is enclosed and marked Ex. Rules. 1 Further on a review petition preferred by the appellant in terms of Government circular No. F. 13(56) Karmik ACR/76 dated 24-3-77, the case of appellant was again re-considered and the Govt, did not find any justification to rescind the retirement orders of the appellant. The decision was communicated to the appellant vide impugned order dated 26-7-78.

In these circumstances, it cannot be said that the Tribunal went wrong when it decided the appeal on merits. We agree with the conclusion arrived at by the learned Single Judge.

24. In view of the conclusion, to which we have arrived at, it is not necessary to examine the question of waiver, abandonment or estoppel or whether the Limitation Act applies or not, and to pass any orders on the application under Order XLI, Rules 27, Case.

25. For the reasons stated here in above, we are satisfied that there is no infirmity in the order dated August 12, 1980 of the learned Single Judge, by which he dismissed the writ petition filed by the State of Rajasthan against the order Ex. 6 dated May 9, 1979 of the Tribunal.

26. The result is that this appeal has no force and it is, accordingly, dismissed. In the circumstances of the case, we leave the parties to bear their own costs.

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