

Deo Narayan Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Nov-08-1982

Reported in : 1982WLN(UC)324

Judge : S.K. Mal Lodha, J.

Appeal No. : S.B. Civil Writ Petition No. 2035/1974

Appellant : Deo Narayan

Respondent : State of Rajasthan and ors.

Disposition : Petition allowed

Judgement :

S.K. Mal Lodha, J.

1. Petitioner Deo Narayan has filed this writ petition under Article 226 of the Constitution of India on July 11, 1974 for quashing the order Ex. 3 dated March 11, 1974 of his compulsory retirement and has also prayed for other consequential reliefs.

2. The relevant facts may be noticed: The District and Sessions Judge, Pali, by his order (Ex. 3) dated March 11, 1974, under Rule 244 (2) of the Rajasthan Service Rules (for short 'the Rules' herein) passed the order of compulsory retirement of the petitioner as the petitioner had completed 25 years of qualifying service A bank

draft of Rs. 1740/- being three months, pay and allowances in lieu of three months notice was also sent along with the order. It has been stated by the petitioner that his service record was quite clean except for the fact that by order dated November 25, 1947, a fine of Rs 5/- was imposed by the Chief Justice, Chief Court, Jodhpur on the grounds that his work was found 'to be very unsatisfactory' and that 'he was very careless and negligence in discharge of his duties.' A representation was submitted by him in this connection. On this representation, recommendation was made by the then Registrar of the erstwhile Chief Court of Jodhpur that the case of the petitioner is reported to be better than B. Jankidas in the audit note, and, therefore, he may be temporarily promoted. The petitioner received promotion order on September 21, 1949. Thereafter, it appears that Shri Roshanlal Mehta, the Reporting Officer (District Judge) made some adverse entries in the confidential report relating to the year 1964. The material portion of the adverse entries in Ex. 4, is as follows:

General remarks (including a statement on integrity and reliability and a note of special qualifications not included above)

No substantive complaint about his integrity, but I do not find him a reliable official

Section II- Degree of fitness for promotion (Delete all but one of the following:

'not yet qualified.

Remarks: His work was not found satisfactory. He is intriguing and un-reliable official.

The case of the petitioner is that the aforesaid entries were never communicated to him and he came to know about them only when he saw the record at the time when he was denied regular promotion to the post of Munsarim. Despite these adverse entries in the Confidential Report, relating to the year 1964, the petitioner was promoted to the post of Senior Reader. The petitioner has further stated that in the year 1964, a Committee was constituted to examine the record of persons in the Pali Judgeship for the purpose of seeing whether any one of them deserves to be retired in terms of Rule 244 of the Rules, but he was not compulsorily retired.

3. The petitioner has challenged the order Ex. 3 of compulsory retirement on the ground that the order of compulsory retirement is bad, for, his efficiency has not been impaired, i. e. there has not been any deterioration of his efficiency. It was also stated by the petitioner that a Committee consisting of Shri Ratanlal Barmera, District Judge, Pali, Shri O.P. Jain, Additional District & Sessions Judge, Sirchi and Shri Radhey Shyam, Civil Judge, Pali was constituted for scrutinising the cases of the persons, who were to be compulsorily retired. It was alleged that the order of the retirement was made malafide as Shri Ratanlal Barmera, th(sic) then District Judge was prejudiced against him.

4. A reply has been filed on behalf of the non-petitioners contesting the writ petition on various grounds. It was stated that the entire record of the petitioner was taken into consideration and after its evaluation, it was found that the petitioner's efficiency has been impaired and, therefore, he was retired compulsorily under Rule 244 (2) of the Rules in the public interest. It was also pleaded that the petitioner had known the adverse entries and as such he could have made a representation against the same. Non-communication of the entries is only fortuitous. The allegations against Shri Ratanlal Barmera were denied. In support of the reply, affidavits of Shri Nag Raj Mehta, the then Civil Judge-cum-Chief Judicial Magistrate, Pali Shri Ratanlal Barmera, the then District and Sessions Judge, Pali and Shri Radhey Shyam, the then Judge, Small Causes Court, were filed. The reply was accompanied by Exs. 1 to 3. Ex. 3 is the letter written by petitioner to the District and Sessions Judge, Pali through the Munsif-Magistrate, Pali, in reply to the Office Order Nos. 32 and 33 dated March 4, 1968 relating to the petitioner's promotion of the post of Assistant and posting in District Court, Pali. In this letter the petitioner's declined to accept the promotion offered to him. It is necessary to refer to the following portion of the letter, on which reliance was placed by the learned Government Advocate.

I have been suffering from Low Blood Pressure and eyes cataract for the last nearly 4 years and therefore, find myself unable to shoulder the higher responsibilities and duties of the post of an Assistant, more so when it does not mean any appreciable financial advantage to me. Looking to the duties and functions of an assistant in the District Court, Pali, where 4 Sections have been put

under my supervision, I will be required to strain myself much more than I am required to strain myself presently. This would mean an adverse effect on my health, in view of the Low Blood Pressure from which I have already been suffering. With such adverse effect, I will inevitably be required to incur an additional expenditure for necessary treatment which would neutralize the financial advantage, which I may have as an Assistant.

Rule 244(2) of the Rules is as under:

(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.

5. The Note appended to rule 244 of the Rules 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.

This note is an integral part of the rule. Reference in this connection may be made to V.C. Shroff v. Gujarat Elect. Board 1978 (2) SLR 502. In that case, an argument was raised that as per the clear import of the regulation No. 72, an employee has got a right to service till the completion of 50 years of his life and that the premature retirement provided was subject to the specified circumstances mentioned in notes 2, 3 and 4, which notes provided there at the criteria and procedure to be followed; 'to ensure uniform & equitable application of the provisions,' for premature retirement. It was held as under:

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 play of the notes on the enabling provision that provides for premature retirement.

It is clear from the said note that the power given by Rule 244 can only be exercised against the Government servant, whose efficiency has impaired i. e. there has been deterioration of the efficiency.

6. The question is whether there was material on the record on the basis of which the conclusion could reasonably be arrived at that the petitioner's efficiency has been impaired to that extent that he could be chopped off from the service as dead wood, In this connection, it will be pertinent to refer (sic) to some of the authorities of the Supreme Court as well as of this Court.

7. It was observed in *Swami Saran Saksena v. State of U.P.* : (1980)ILLJ103SC as follows:

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 compulsorily retire a Government servant. 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 itself. 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 & 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 be

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 impugned order.

A Division Bench of this Court in *State v. Narandra Mal* 1981 WLN (UC) 465 held that the power given by Rule 244(2) can only be exercised against the Government servant, whose efficiency has been impaired, i.e. there has been deterioration of the efficiency & that ordinarily no employee should be compulsorily retired on the ground of inefficiency if during preceding five years of service or where he has been promoted to a higher post during that five years period, his service in the higher post has been found satisfactory. In the light of these principles, which have been laid down by the Supreme Court and this Court, let me examine whether there was any material before the Committee for holding that the efficiency of the petitioner has been impaired so as to say that it is not in the public interest to retain him in service and should be retired compulsorily under Rule 244 (2) of the Rules.

8. A fine of Rs 5/- was imposed upon the petitioner by the order of the Chief Justice on November 25, 1947 allegedly on the ground that the work of the petitioner was very unsatisfactory and that he was very careless and negligent in the discharge of the duties. The recommendation made on the representation with which the then Chief Justice of the Chief Court, Jodhpur agreed shows that this was not attached any importance, for, there was no irregularity for which the fine was imposed, as his work as Judicial Clerk for the last 10 years was quite good. As a result of that, the petitioner was temporarily promoted. There is adverse entry dated January 28, 1965 relating to the year 1964, made by the then District and Sessions Judge, Pali against the petitioner, in which it is stated that there was no substantial complaint about the petitioner's integrity, but he is not a reliable officer and in the remarks, it is mentioned that his work was not found satisfactory and that he is intriguing and unreliable official.

9. As regards communication of the confidential report of earlier years, their Lordships of *Brij Behari Lal v. High Court of M.P.* : (1982)ILLJ1SC observed, after considering *Union of India v. J.N. Sinha* : (1970)ILLJ284SC , *State of U.P. v.*

Chandra Mohan Nigam : (1978)ILLJ6SC R.L. Butail v. Union of India : [1979]3SCR518 and Union of India v. M.E. Reddy AIR 1980 SC 503 as follows:

What we would like to add is that when considering the question of compulsory retirement, while it is no doubt desirable to make an overall assessment of the Government servant's record, more than ordinary value should be attached to the confidential reports pertaining to the years immediately preceding such consideration. 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 he would be of advantage to continue him in service up to 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.

It is not necessary to go into the question whether this entry was communicated to the petitioner or not and what is the effect of non-communication of the entry, for, the order compulsorily retiring the petitioner is dated March 11, 1974, i.e. nine years after this adverse entries. The learned Government Advocate has placed confidential record of the petitioner before me. It appears from the minutes of the meeting of the Committee formed under Govt. Order No.F--24(2(sic)5)-Apptts (A)/57 pt.I.G.II/Cr. dated Jan. 13, 1964 & High Court Circular letter No. Gen/xv/67/63/6530 dated Aug. 20, 1964 that the case of the petitioner was considered in the light of the service record and Annual Confidential Reports. It has been stated in minutes of the meeting:

There is nothing adverse against him and his confidential reports show that his work is satisfactory and there is also no complaint about his integrity. We are, therefore, of the opinion that he should be continued in service.

It is signed by Shri Roshanlal Mehta, the then District and Sessions Judge, Pali (Convener), the Civil & Additional Sessions Judge, Sirohi (Member). Upto 1969 to 1973, there is no adverse entry against the petitioner. On the contrary, it has been written that he is 'Yogva, or 'Suyogya'. In the annual confidential report dated February 18, 1973 of the District and Sessions Judge, Pali, he has been described as 'Kushal and Pritirami Utkrishtha.' The Annual Confidential Report of Shri

Ratanlal Barmera, is un-dated. It must be after February 20, 1973 and before the date of the passing of the order of the compulsory retirement dated March 11, 1974. The Annual Confidential Report preceding five years of the order Ex. 3 dated March 11, 1974 of the petitioner except that of Shri Ratanlal Barmera, the then District Judge, Pali, which is undated is after February 20, 1973 are good and do not contain any adverse entry or remark against him. In the Confidential Reports pertaining to 1969, 1970, 1971 1972 and 1973 and the subsequent Confidential Report, there is apparent contradiction. If the petitioner was 'Yogya'.'Suyogya' in the years 1969 to 1973, some evidence should have been placed on record to show that there after there has been deterioration in the quality of the petitioner's work, which warranted his compulsory retirement. There is nothing on the record. In reply to the Office Order, Vide Ex. 3, the petitioner in his letter, his stated that hi has been suffering from Low Blood pressure & eyes cataract for the last nearly four years &, therefore, he finds himself unable to shoulder the higher responsibilities and duties and functions of the post of an Assistant. On the basis of this, it is submitted by the learned Government Advocate that it is apparent that his health was not good and he was suffering from the ailments referred to in Ex. 3 filed with the reply which affected his efficiency and, as such, the Committee was right in recommending that his efficiency has been impaired and, therefore, he should be compulsorily retired. It has to be remembered that this letter Ex. 3 was written when the petitioner was promoted & by means of Ex. 3 (marked by non-petitioners), he declined to accept the promotion. A perusal of the Confidential Report of the petitioners relating to the year 1969, 1970, 1971, 1972, 1973 and that of 1974 shows that against column No. 10, relating to health either remark 'very good' is written or 'satisfactory'. In most of the reports from 1969 to 1(sic)73, 'satisfactory' is written. Tim shows that from 1969, to 1973, the petitioner's health was satisfactory and it cannot be said that his efficiency has been impaired on account of the bid health Bearing aside what has been mentioned above, nothing was shown from which an inference that the efficiency of the petitioner has been impaired can be drawn to an extent that he was unfit for retention in service. On the basis of the over-all appreciation of the material that was before the Committee, which recommended compulsory retirement and in pursuance of which the order Ex. 3 dated March 11, 1974 was

passed, it is difficult to say that there was deterioration of the efficiency of the petitioner, so as to warrant the order of his compulsory retirement in public interest. No reasonable man could come to that conclusion to which the Committee did on the basis of that material that the petitioner's efficiency has been impaired to that extent that he should be chopped off from the service as dead wood.

10. In these circumstances, I do not consider it proper to examine the question relating to spite and ill-will of Shri Ratanlal Barmera against the petitioner in detail.

11. Learned Counsel for the petitioner submits that the petitioner has attained the superannuation age on May 17, 1975 and, therefore, there is no question of making an order regarding his reinstatement in service.

12. The result is that I allow the writ petition & quash the order Ex. 3 dated March 11, 1974 of the District and Sessions Judge, Pali compulsory retiring the petitioner from service. The petitioner will be paid arrears of salary from March 11, 1974 to May 16, 1973. In the circumstances of the case there will be no order as to costs.