

**Parshottam Singh Vs. State and ors.**

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**Court :** Jammu and Kashmir

**Decided On :** Apr-08-2010

**Judge :** Mansoor Ahmad Mir, J.

**Appellant :** Parshottam Singh

**Respondent :** State and ors.

**Advocate for Def. :** Mr. Kakkar

**Disposition :** Petition allowed

**Judgement :**

**Mansoor Ahmad Mir, J.**

1. Petitioner has questioned the Government Order No. 9903-GAD of 2006 dated 14th of August' 2005, whereby he came to be prematurely retired from service with effect from 14th of August' 2005, on the grounds taken in the writ petition.

2. It is contended in the petition that the petitioner came to be appointed as Patwari in the Revenue Department on 18th of August' 1980. He worked to the best satisfaction of his superiors and earned best and excellent APRs, came to be promoted as Girdawar on 2nd of April' 2005 on the basis of service record including the APRs. He discharged his duties as Girdawar to the best satisfaction of his superiors and no complaint was made against him. He is having an

unblemished service career. It is further contended that he hails from a very small village and due to jealousy a conspiracy came to be hatched against him, but he never cared and un-detterdly performed his duties consciously, efficiently and fairly without fear and favour. He remained as Tehsil President as well as District President of Patwar Association. A strike was called in the month of August for three consecutive days i.e., 10th, 11th and 12th of August' 2006, which became the bone of dispute and the superiors in order to punish him passed the impugned order. The impugned order came to be passed without considering the service record and the fact that he was promoted as Girdawar in the year 2005. Virtually the impugned order has been passed arbitrarily, without any evidence/application of mind and is the outcome of malice.

3. Respondents have filed the counter and resisted the petition on the grounds detailed therein. It is averred that the impugned order came to be passed on the basis of reports received from concerned departments and various agencies as well as the opinion from the public in general and in the public interest. It is also averred that petitioner has indulged in corrupt practices at different stages of his service career and the material considered by the Committee would demonstrate that the premature retirement of petitioner does not suffer from the varies of law rather has been passed on the basis of information received from a cross section of public about the general reputation of the petitioner. Further, it is contended that the Committee while recommending the premature retirement of officers-officials including the petitioner, has taken note of various facts and the inputs/material provided by the Vigilance Organization and Additional Director General, CID about the reputation of such officers among the public.

4. Petitioner has not filed any rejoinder.

5. The core question in the writ petition is, whether in the given circumstances of the case interference is warranted.

6. In order to return the findings, it is necessary to know what are the parameters, guidelines and tests laid down by the Apex Court, this Court and other High Courts of the country in various cases reported as Baldev Raj Chandra v. Union of India : 1980 (4) SCC 321; Baldev Raj Chandra v. Union of India : AIR 1981 SC 70; H.C.

Gagri v. State of Haryana : AIR 1987 SC 65; Brij Mohan Singh Chopra v. State of Punjab : AIR 1987 SC 948; Baidyanath Mahapatra v. State of Orissa : AIR 1989 SC 2218; Ram Ekbal Sharma v. State of Bihar : 1990 (3) SCC 504; Union of India v. Bulal Dutt : 1993 (2) SCC 179; S. Ramchandra Raju v. State of Orissa : 1994 Supp (3) SCC 424; State of J&K; v. Jia Lal Gupta 1994 SLJ 24; Chief General Manager, SBI v. Suresh Chandra Behera : AIR 1995 SC 1745; K. Kandaswamy v. Union of India : AIR 1996 SC 277; Allahabad Bank Officers Association v. Allahabad Bank : 1996 (4) SCC 504; M.S. Bindra v. Union of India : 1998 (7) SCC 310; M.S. Bindra v. Union of India : AIR 1998 SC 3058; State of Gujarat v. Suryakant Chunilal Shah 1999(1) SC 529; State of Gujrat v. Umedbhai M. Patel : AIR 2001 SC 1109; State of U.P v. Chater Sen 2005 (9) SCC 592; Pritam Singh v. Union of India : 2005(9) SCC 748; Ashok Kumar Jain v. State of J&K; and Ors, LPA Nos. 27J and 28J of 2005 decided on 5-8-2005; Mohammad Mehraj-ud-Din Khan v. State of J&K; and Ors. 2006 (3) JKJ 240 (HC); Shah Latief v. State of J&K; and Ors. 2008(1) JKJ 573 [HC]; SWP No. 828 and other bunch of petitions titled Zareena Banoo & connected matters v. State and Ors. 2008 (3) JKJ HC-106 date of decision 6-6- 2008 and Janak Singh v. State of J&K; and Ors. 2009(1) JKJ 588 [HC].

7. While going through the judgments (supra), one comes to an inescapable conclusion that the order of compulsory retirement can only be interfered with while keeping in view the guidelines, parameters and tests laid down by the Apex Court in Baikuntha Nath Dass and Anr. v. Chief District Medical Officer : AIR 1992 SC 1020, which are as under:

An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of mis-behaviour. The order has to be passed by the Government on forming opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the Government. Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate Court, they may interfere with if they are satisfied that the order passed is (a) mala fide, or (b) that it is arbitrary in the sense that no reasonable person

would form the requisite opinion on the given material in short; if it is found to be a perverse order. The Government or the Review Committee, as the case may be, shall have to consider the entire record of service before taking a decision in the matter, of course attaching more importance to record and performance during the later years. The record so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority. An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it un-communicated adverse remarks were also taken into consideration. That circumstance by itself cannot be made basis for interference. Keeping in view the mandate of the judgments (supra), compulsory retirement can be questioned on the grounds of mala fide, lack of evidence, being arbitrary or malice. Accordingly, this case has to be examined on the touchstone of the law laid down by the Apex Court and other High Courts as well as this Court.

8. Petitioner has specifically averred that he has earned best APRs through out his service career, came to be promoted as Girdawar in the year 2005 and the respondents have not denied the same. Respondents have produced the record on 10th of February' 2010 and, accordingly, case was reserved for judgment. Thereafter, the record came to be returned to Mr. Kakkar, learned Counsel for respondents in the open court in a sealed cover with a direction to produce the same along with relevant copies of APRs and property statements. Mr. Kakkar again submitted the said record in the same sealed cover along with photostat copy of FIR and details of property. He made a statement before the Court that the record produced is the only record which was considered by the Committee. Thus, respondents have failed to produce the service record of the petitioner, not to speak of his relevant APRs.

9. It appears that the Committee came to be constituted in order to consider the cases of various officers-officials for premature retirement in terms of Article 226(2) and Article 226(3) of the J&K; XSR and met on 9th of December' 2005 under the Chairmanship of Chief Secretary. On 8th of August' 2005, the

Committee consisting of Chief Secretary, Financial Commissioner-Home Department; Commissioner/Secretary- General Administration Department; Commissioner/Secretary- Law Department; Additional Director General, CID and Commissioner of Vigilance, met and made the recommendation of premature retirement of ten officers including the petitioner who figures at serial No. 7 in the said list. As per the said report, the allegations contained in the FIR No. 18/2005 registered with Police Station, Vigilance Organization, Jammu, the general reputation of the official-petitioner and the information gathered by the Vigilance Organization from cross section of public was considered. The Committee's report nowhere indicates that the entire service record of the petitioner was examined. Thus, the record produced by the respondent categorically indicates, rather supports the version of the petitioner that the Committee has not considered his service record and the fact that he came to be promoted as Girdawar. It is worthwhile to mention here that petitioner has specifically averred in paras 2 & 3 of the writ petition that he has earned the best APRs, reputation and name throughout his service career and came to be promoted as Girdawar. The respondents have not denied the said fact specifically or evasively, thus stands admitted. Therefore, only on this count, the impugned order merits to be quashed. The Apex Court in the Judgment reported as Baikuntha Nath Dass and Anr. v. Chief District Medical Officer : AIR 1992 SC 1020 (supra) while laying down the tests specifically held that it is mandatory to consider the entire service record before taking a decision. The Apex Court in case titled Baldev Raj Chadha v. Union of India : (1980) 4 SCC 321; H.C. Gargi v. State of Haryana : AIR 1987 SC 65; M.S. Bindra v. Union of India (1988) 7 SCC 310; State of U.P v. Chater Sen (2005) 9 SCC 592 and a Division Bench of this Court in case titled Janak Singh v. State of J&K; and Ors. 2009 (1) JKJ 588 [HC] have laid down the same principles. Keeping in view the law laid down by the Apex Court and the Judgment of this Court (supra), one can come to an inescapable conclusion that the relevant material was not before the Committee. Thus, it can be safely said that the impugned order came to be passed on no evidence.

10. It appears that as per record, as discussed herein above, the impugned order came to be passed on two counts; firstly lodging of FIR and, secondly, receiving of reports from various agencies. It is a beaten law that pendency of FIR or a criminal

case is no ground for compulsory retirement. As it has been held by the Apex Court in *State of Gujarat v. Suryakant Chunilal Shah* 1999(1) SCC 529. It is apt to reproduce para 14 of the judgment.

26. Applying the principles laid down above to the instant case, what comes out is that in compulsorily retiring the respondent from service, the authorities themselves were uncertain about the action which was to be taken ultimately against him. In fact, there was hardly any material on the basis of which a bona fide opinion could have been formed that it would be in public interest to retire the respondent from service compulsorily. The material which was placed before the Review Committee has already been mentioned above. To repeat, the respondent was promoted in 1981; the character roll entries for the next two years were not available on record; there were no adverse entries in the respondents character roll about his integrity; he was involved in two criminal cases, in one of which a final report was submitted while in the other, a charge-sheet was filed. Although there was no entry in his character roll that the respondents integrity was doubtful, the Review Committee on its own, probably on the basis of the FIRs lodged against the respondent, formed the opinion that the respondent was a person of doubtful integrity. The Review Committee was constituted to assess the merit of the respondent on the basis of the character roll entries and other relevant material and to recommend whether it would be in public interest to compulsorily retire him from service or not. The Review Committee, after taking into consideration the character roll entries and noticing that there were no adverse entries and his integrity was, at no stage, doubted, proceeded, in excess of its jurisdiction, to form its own opinion with regard to the respondents integrity merely on the basis of the FIRs lodged against him. Whether the integrity of an employee is doubtful or not, whether he is efficient and honest, is the function of the appointing authority or the immediate superior of that employee to consider and assess. It is not the function of the Review Committee to brand, and that too, offhand, an employee as a person of doubtful integrity. Moreover, the Review Committee did not recommend compulsory retirement. It was of the opinion that the respondent had committed grave irregularity and that he must be retained in service so that he may ultimately be dealt with and punished severely. The Secretary and the Chief Secretary, who considered the recommendations of the

Review Committee, had other ideas. They thought that the investigation and subsequent prosecution of the respondent would take a long time and that it would be better to immediately dispense with his services by giving him the temptation of withdrawing the criminal cases and retiring him compulsorily from service, provided he does not approach the court against the order of compulsory retirement. This proposal too was not immediately acted upon and it was thought that nobody could say whether the order of compulsory retirement would be challenged by the respondent before the court or he would merely submit to it on the temptation that the criminal cases against him would be withdrawn. It was at this stage that the order of compulsory retirement was passed.

11. Second ground considered by the Committee was the general reputation of the petitioner as gathered by other agencies from the cross section of people that he was notorious for being the corrupt revenue official. There is nothing on the record suggesting the fact as to what was the material considered by the Committee and how the said finding was recorded, which agency reported that the reputation of the petitioner was bad, it is not forthcoming from the record. How the Committee came to the conclusion that he was a corrupt revenue official is best known to the Committee. There is nothing on the file suggesting the fact that the service record, not to speak of the entire service record, was considered by the Committee. The report or record nowhere indicates what does the word 'cross section of people' mean and from whom the said opinion was received or gathered. Whether that was verbal or in writing, nothing is coming from the file either from the record or from the pleadings. If any information has been received that should have been in writing or if it was verbal, it should have been recorded in writing with the particulars of the agency or the person who has made that opinion. As discussed hereinabove, the respondents have virtually admitted that petitioner was having good service record at his back and he was promoted as Girdawar. Then, how he became a bad official over-night, is best known to the respondents-Committee. Apex Court in : AIR 1992 SC 1020, : AIR 1995 SC 1745 and : AIR 1998 SC 3058 laid down that in order to hold whether a Government official is having good reputation or otherwise, service record is to be considered not otherwise. It is apt to reproduce para 6 of the judgment reported in : AIR 1995 SC 1745 and para 13 of the judgment reported in : AIR 1998 SC 3058 here in:

6. Learned advocate for the respondent relied on a decision in the case of Baldev Raj Chandra v. Union of India : (1981) 1 SCR 430 : AIR 1981 SC 70. In that case, the appellant was compulsorily retired on the basis of his poor performance many years ago. He had been allowed to cross the efficiency bar and there was nothing adverse in his service record for the past five years. This Court said that the order of compulsory retirement could not be sustained as it ignored relevant material. This judgment has no application to the facts of the present case.

13. While viewing this case from the next angle for judicial scrutiny i.e., want of evidence or material to reach such a conclusion, we may add that want of any material is almost equivalent to the next situation that from the available material no reasonable man would reach such a conclusion. While evaluating the materials the authority should not altogether ignore the reputation in which the officer was held till recently. The maxim *Nemo Fit Repente Turpissimus* (no one becomes dishonest all of a sudden) is not unexceptional but still it is salutary guideline to judge human conduct, particularly in the field of Administrative Law. The authorities should not keep the eyes totally closed towards the overall estimation in which the delinquent officer was held in the recent past by those who were supervising him earlier. To dunk an officer into the puddle of doubtful integrity it is not enough that the doubt fringes on a mere hunch. That doubt should be of such a nature as would reasonably and consciously be entertainable by a reasonable man on the given material. Mere possibility is hardly sufficient to assume that it would have happened. There must be preponderance of probability for the reasonable man to entertain doubt regarding that possibility. Only then there is justification to ram an officer with the label doubtful integrity.

12. Same point came up for consideration while considering the case of Zarina Bano and Ors. v. State and Ors. SWP No. 828/2005 decided on 6-6-2008 and it was held by this Court that order of premature retirement cannot be passed on mere guess work and without any material to support the same. This Court also in a case titled Janak Singh v. State of J&K; and Ors. 209 (1) JKJ 588 [HC] laid down the same principle. It is the duty of the Court to lift the veil and record the finding whether the order of compulsory retirement is without justification, arbitrary and outcome of malice as held by the Apex Court in a case titled Ram Egbal Sharma

v. State of Bihar : 1990 (3) SCC 504.

13. While going through the counter filed by the respondents and record, as produced by the respondents as discussed hereinabove, there was nothing before the respondents to arrive at such a conclusion. Virtually, the impugned order has been passed arbitrarily, on no evidence and without application of mind.

14. Keeping in view the discussion made herein above, I am of the considered view that the petitioner has been able to carve out a case. Accordingly, the writ petition is allowed and the impugned order is quashed.

15. Registry is directed to return the record to Mr. Sanjay Kakkar.

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