

Kailash Chandra Agarwal

Vs

State of Madhya Pradesh and Another

Civil Writ Petition No. 984 of 1986

(CJI R. S. Pathak, V. Khalid JJ)

29.06.1987

JUDGMENT

PATHAK, C.J. -

1. This petition has been filed by the petitioner for quashing the order dated June 25, 1986 passed by the Madhya Pradesh Government compulsorily retiring him from service.
2. The petitioner joined the Judicial Service in Madhya Pradesh in January 1962 as a Civil Judge Class II. He was promoted as a Civil Judge Class I and thereafter assumed the post of Additional District and Sessions Judge. In 1981, upon the creation of the Madhya Pradesh Higher Judicial Service the petitioner was absorbed in that service and posted as Additional Judge to the Court of the District Judge and Additional Sessions Judge.
3. When he attained the age of 57 years the question whether the petitioner should be continued in service was considered in a Full Court meeting of the Madhya Pradesh High Court. In May 1986 the Full Court of twenty-five Judges unanimously resolved that the petitioner should be retired in the public interest even before attaining the age of superannuation. The recommendation of the High Court was conveyed to the State Government, and the State Government passed in order No. F. TWO/8/86/21-A(CS) dated June 25, 1986 retiring the petitioner. The order was made under Rule 56(3) of the Fundamental Rules. The petitioner was allowed pay and allowances in lieu of three months' notice.
4. The case of the petitioner is that the Full Court meeting of the High Court held in May 1986 considered not merely the earlier record of the petitioner but also additional material in the nature of a confidential report recorded by Shri S. P. Khare, District and Sessions Judge, Sagar for the period ending March 31, 1986 as well as an inspection note relating to the court of the petitioner for the preceding year recorded by Mr. Justice S. K. Seth of the High Court, that the report of Shri Khare and the inspection note of Mr. Justice Seth contained material prejudicial to the petitioner, and the petitioner complains that he was given no opportunity to represent against that material before the High Court recommended his compulsory retirement. It is also urged on behalf of the petitioner that no reliance could be placed on adverse remarks entered in his confidential reports as they were never communicated to him, and that in any event notwithstanding such adverse remarks he was found fit for promotion to the superior post in the Madhya Pradesh Higher Judicial Service.
5. When the writ petition came up for hearing before this Court, it became necessary, having regard to the plea taken by the petitioner, to direct the High Court to disclose to the petitioner the prejudicial material on which it had relied and to afford an opportunity to the petitioner to represent

against it. The petitioner filed a representation before the High Court setting out his case in considerable detail in respect of the material contained in the report of Shri Khare as well as the inspection note of Mr. Justice Seth. The representation was considered by the High Court, but it failed to convince the High Court. The representation was disposed of by a detailed opinion drawn up by Mr. Justice C. P. Sen, a senior Judge of the High Court, which was endorsed by the other Judges of the High Court.

6. It is contended for the petitioner that the impugned order was made by way of punishment and that therefore the provisions of Article 311(2) of the Constitution have been contravened inasmuch as no inquiry was made before the petitioner was compulsorily retired. We are referred to *Baldev Raj Chhada v. Union of India* ((1980) 4 SCC 321 : 1981 SCC (L&S) 1 : 1981 UPSC 1) and *Binoy Kumar Chatterjee v. M/s. Jugantar Limited* ((1983) 3 SCC 289 : 1983 SCC (L&S) 377). We see no substance in the contention. It appears to us that the High Court recommended Compulsory retirement not with a view to punish the petitioner but in view that the petitioner was no longer fit in the public interest to continue in service. We have carefully perused the material on which the High Court relied and have heard the petitioner in regard to the detailed instances set forth in the inspection note of Mr. Justice Seth. We are of opinion that no other reasonable conclusion can be drawn than the one which prevailed with the High Court. We do not think that the conclusions reached by Mr. Justice C. P. Sen in the note prepared by him after considering the material on the record and after taking into account the petitioner's representation can be faulted. It seems to us unnecessary to deal expressly with each instance noted by Mr. Justice Seth and Shri Khare, and the case presented by the petitioner in respect thereof. We have heard learned counsel for the petitioner in respect of each item. Upon the material before us we are not satisfied that the High Court intended to punish the petitioner when it recommended that he be compulsorily retired.

7. Learned counsel for the petitioner contends that the High Court considered subsequent comments made by the District Judge on his representation. It is pointed out that the High Court should have confined itself to the material which was originally before it when it made the impugned recommendation for compulsorily retiring the petitioner. We have considered this point also, and we cannot agree that any prejudice was occasioned to the petitioner. The comments related to the points taken by the petitioner in his representation.

8. We are also not impressed by the contention that certain adverse remarks made in the petitioner's confidential report were not communicated to the petitioner, because we find that effectively the opinion of the High Court proceeded on the reports of Shri Khare and the inspection note of Mr. Justice Seth.

9. Accordingly, the petition must fail.

10. The writ petition is dismissed but in the circumstances there is no order as to costs.

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