

SUPREME COURT OF INDIA

Rajesh Gupta

Vs.

State of J&K & Ors.

C.A.No.952 of 2013

(Surinder Singh Nijjar and Anil R. Dave, JJ.)

23.01.2013

ORDER

Surinder Singh Nijjar, J.

1. Leave granted.
2. We have heard learned counsel for the parties.
3. This appeal is directed against the judgment and order of the Division Bench dated 28th February, 2011 passed by the High Court of Jammu and Kashmir at Jammu in L.P.A.(SW) No. 20 of 2008 whereby the Division Bench confirmed the judgment and order passed by the learned Single Judge dismissing the Writ Petition(S) No. 622 of 2005 by judgment and order dated 29th January, 2008, wherein the appellant had challenged the order passed by the respondent-State dated 26th April, 2005 prematurely retiring the appellant from service.
4. We may briefly notice the relevant facts leading to the filing of the writ petition in the High Court.
5. Upon being selected by the Jammu and Kashmir Public Service Commission, the appellant was appointed as Soil Conservation Assistant in the Department of Agriculture Production in March, 1981. On 20th April, 1985 he was posted as Assistant Engineer in Rural Engineering Wing (hereinafter referred to as 'REW'), Ramban, District Doda, Jammu and Kashmir. He was promoted on the post of Assistant Executive Engineer in REW in September, 1988. While he was posted as such, three separate criminal cases were registered against him on the basis of (i) F.I.R. No. 49 of 1991, (ii) F.I.R. No. 63 of 1994 and (iii) F.I.R. No. 11 of 1995. It is not disputed before us that upon investigation in all the matters, the allegations made in all the three FIRs were found to be 'Not Proved'. In F.I.R. No. 11 of 1995, there was, however, a recommendation to initiate departmental action against the appellant and some other officers. It is also not disputed before us, that no departmental action was ever taken against

the appellant. Record also does not show that any departmental action was taken against him. After completion of the investigation in F.I.R. No. 11 of 1995, the appellant was, in fact, promoted to the post of Executive Engineer on 15.12.1996. In spite of having been promoted, the order of promotion was not given effect to. Therefore, the appellant challenged the action of the Deputy Commissioner, Udhampur who had refused to give effect to the order of promotion by filing a writ petition in the High Court. The writ petition was allowed and thereafter the appellant was permitted to join as Executive Engineer on 6th February, 2003. He worked as Executive Engineer at Jammu till 8th May, 2003. During this period, in the performance of his official duty, the appellant was required to recommend the sanctioning of technical approval to the construction works of various projects.

6. On 5th March, 2003, the Government of Jammu and Kashmir, General Administration Department by Government Order No. 306-GAD of 2003 dated 5th March, 2003 constituted a Committee to consider the cases of officers/officials for premature retirement in terms of Article 226(2) and 226(3) of the Jammu and Kashmir Civil Services Regulations, 1956. On 1st April, 2003, further directions were issued by the Government indicating the circumstances which would be relevant for making a recommendation for premature retirement of a public servant. On 9th May, 2003 the appellant was directed to be attached to the office of the Director, Rural Development, Jammu pending an enquiry into some allegations on the appellant. On 22nd July, 2003, an enquiry report was submitted into the suspected irregularities in the execution of "Rural Development Works" in the eleven Blocks of Jammu and Kashmir. Clause 1 of the terms of reference of the enquiry related to the execution of works during 2002-2003 particularly during the month of March, 2003. It was as under:-

"Whether any irregularity has been committed in any blocks of District Jammu in the execution of works during the year 2002-2003 particularly during the month of March, 2003 in the matter of observing the coral formalities viz. issuing of technical sanction, approval of estimates and allotment of works to mates, test checks etc."

7. As noticed earlier, the appellant was working as the Executive Engineer at Jammu at the relevant time. Therefore, during the performance of his official duty, he was required to issue technical sanctions, approve estimates and allot work to mates as well as conducting test checks of the works allotted by the Block Development Officer. The conclusion recorded by the inquiry officer is as under:-

"The Executive Engineer, Rural Engineering Wing, Jammu has also confessed having accorded such sanctions on spot. All this clearly indicates that no proper records have been maintained by that office and some sanctions have been issued out of record. No record/register of bills/test checks has been maintained.

Regarding accord of back dated technical sanctions and delays, it could not be established with evidence that their existed some back dated technical sanctions or there were delays in accord of technical sanctions and clearance of bills. However, the

casual and haphazard manner of maintenance of records could be a probable pointer towards the direction.”

8. The Inquiry Officer further records that Block Development Officers have taken up number of works without technical sanctions which was contrary to the standing rules governing execution of work. The Inquiry Officer further observed that the Executive Engineer, REW, Jammu, i.e. the appellant, has not maintained the proper record of technical sanctions and test checks. Non-maintenance of the important records has resulted in mismanagement owing to the issue of technical sanctions not adopting a proper procedure for the execution of works and test checks etc. It is a matter of record that even though this report was submitted on 22nd July, 2003, no action was taken on the basis thereof.

9. We may also notice at this stage that the appellant had a spotless service record throughout 24 years of service. In the annual performance report for the period 1.4.1997 till 31.3.1998, his work has been assessed as 'Good'. The reviewing authority has graded the appellant as a 'Very Good Officer'. Against the column of integrity, the remark is 'Excellent'. Similarly, for the year 1998-1999, he was assessed as 'Good officer' and having 'excellent' integrity. In the annual performance report for the year 1999-2000 again his integrity is said to be 'Excellent'. He has been assessed as a very capable and efficient officer. The overall assessment given by the reviewing authority is 'A very good officer'. For the year 2000-2001, the annual performance report again records that the appellant is 'A good officer' with good integrity. A separate assessment was given on 12th March, 2005 for the period 27th October, 2001 to 29th July, 2002 and thereafter from 23rd October, 2002 till 23rd December, 2002. This annual performance report was recorded by the Deputy Commissioner, Jammu for the period of 11 months. In the aforesaid two tenures, the work and conduct of the appellant was found to be good. It is also recorded that no complaint was brought to the notice of the reporting officer. For the year 2003-2004 against the column integrity, it is mentioned that 'nothing against came in notice'. The reporting officer has said 'he is a very good field officer'. The reviewing officer assessed the appellant as 'An outstanding officer'.

10. In spite of having a blemish-free record of service as noticed above, the appellant was directed to be prematurely retired by order dated 26th April, 2005 on the basis of the recommendations made by the High Powered Review Committee. The conclusion on the basis of which the recommendations for retirement of the appellant has been made are as under:-

“5. As per inputs provided by the Additional DG CID the officer has amassed property disproportionate to his known sources of income which include a palatial house at Krishna Colony Kathua built over about 3 kanals of land; two shops in Kathua market; six kanals of land in Kathua town, one kanal of land at Trikuta Nagar Jammu (Sector No.3), two kanals of land at Trikuta Nagar extension, three kanals of land at Greater Kailash Colony, Jammu; 10 marla plot at Bhatiandi and bank account and lockers in United Commercial Bank, R.N. Bazar and Vijay Bank, Purani, Mandi, Jammu.”

11. As per information provided by the Rural Development Department, the officer was attached vide Government Order No. 112-RD of 2004 dated 9.5.2003 for issuing back dated sanctions relating to the execution of departmental works, passing of bills and estimates in Jammu District and other matters related thereto. A departmental enquiry has been ordered vide Government Order No. 125-RD of 2004 dated 22.5.2003. The Officer is a professional litigant who has created problems for the department. Besides, the reputation of the officer is very bad.

12. On the basis of these recommendations the Government issued the order of retirement which was impugned by the appellant in the writ petition.

13. The learned Single Judge dismissed the writ petition with the observations that “there is sufficient material on the record which clearly speaks of the doubtful integrity of the petitioner.” The Division Bench also concluded that the decision of the High Powered Committee to recommend the appellant's premature retirement was based on the inputs received from the Additional DG, CID regarding assets of appellant which were disproportionate to his known sources of income and the information received from the Rural Development Department that the appellant had issued back dated sanctions to some departmental works and passed bills and estimates in respect thereof.

14. The Division Bench concluded that the Vigilance Organization has found part of the assets allegedly disproportionate to the known source of income of the appellant though not purchased in the appellant's own name. The Division Bench notices that the assets at S. Nos. 6 and 7 were shown to have been purchased in the name of the father-in-law of the appellant. The Vigilance Organization had also indicated that there was unaccounted money in the sum of Rs.6,66,103/- in the bank account. It was also stated that in other bank accounts of the appellant, there were transactions of Rs.24 lacs since 23rd February, 2008. Therefore, the Division Bench concluded that there was sufficient material before the Committee constituted to consider the case of the appellant to recommend his premature retirement.

15. Mr. D.K. Garg, learned counsel appearing for the appellant submitted that the conclusion recorded by the High Powered Committee are based on no material and therefore, the recommendations for premature retirement of the appellant was without any basis. He submits that the decision taken by the State Government on the basis of the recommendations of the High Powered Committee is unreasonable and arbitrary and therefore, liable to be quashed. He relies on the unblemished record of the appellant for the past 24 years in support of the submissions that the impugned order has been passed without application of mind and therefore, deserves to be quashed and set aside. He further submitted that even subjective satisfaction of the Government had to be formulated on the basis of relevant material which was wholly missing. Learned counsel further submitted that on the basis of the service record of the appellant it was not possible for the Government to come to the conclusion that the appellant had become deadwood. Furthermore, according to Mr. Garg, there is no justification for the conclusion reached by the learned Single Judge as well as by the Division

Bench that the Committee had recorded a finding of doubtful integrity with regard to the appellant. He submitted that on the basis of some allegations an enquiry was conducted and the conclusion could at best indicate that the appellant had been negligent in performance of his duties. In support of his submissions, learned counsel has relied on judgments of this Court titled *Nand Kumar Verma vs. State of Jharkhand and ors*¹. Reported in and *State of Gujarat vs. Umedbhai M. Patel*² reported in.

16. On the other hand, Mr. Sunil Fernandes, learned counsel appearing for the respondent-State relying particularly, on the conclusions recorded by the Additional DG, CID submits that the material provided by the Additional DG, CID in his report dated 19th October, 2004 clearly indicate that the properties mentioned therein belong to the appellant as also there was no denial that the bank accounts mentioned at S.No. 9 also belong to the appellant. Learned counsel submitted that since the order of premature retirement is not by way of punishment nor is it stigmatic, it was not open to challenge any of the grounds taken by the appellant. He submitted that the plea put forth by the appellant that the properties at S.Nos. 6 and 7 have been gifted to his wife by the father-in-law are without any basis. The appellant has failed to place on record any material to show that the properties were in fact, gifted by the father-in-law.

17. Learned counsel was at pains to emphasise that the order of compulsory retirement is based on the recommendation of the Screening Committee. It was open to the court to interfere, unless such order is based on no evidence or is totally perverse. In the present case, the High Powered Committee had made the recommendation on the basis of relevant material. Therefore, according to the learned counsel, the High Court had rightly declined to interfere with the order. In support of his submission, learned counsel relied on *Jugal Chandra Saikia vs. State of Assam & Anr*³.

18. Mr.Fernandes also submitted that the object of compulsory retirement is to weed out the dead wood and also to dispense with the services of those whose integrity is doubtful. The order of compulsory retirement does not per se cast any stigma on the government servant. Therefore, the scope for interference by the court is minimal. In support of this, he relied on *Allahabad Bank Officers' Association & Anr. vs. Allahabad Bank & Ors*⁴. In support of this submission, he relied on *Baikuntha Nath Das & Anr. vs. Chief District Medical Officer, Baripada & Anr*⁵.

19. We have considered the submissions made by the learned counsel for the parties.

20. The principles on which a government servant can be ordered to be compulsorily retired were authoritatively laid down by this Court in the case of *Baikuntha Nath Das* (supra). In Paragraph 34, the principles have been summed up as follows :

“34. The following principles emerge from the above discussion:

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

(ii) The order has to be passed by the government on forming the 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.

(iii) 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 if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) 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.

(iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before [pic]taking a decision in the matter — of course attaching more importance to record of and performance during the later years. The record to be 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.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.

Interference is permissible only on the grounds mentioned in (iii) above. This aspect has been discussed in paras 30 to 32 above.”

The aforesaid principles have been re-examined and reiterated by this Court in the case of Nand Kumar Verma (supra). The principles have been restated as follows:-

“34. It is also well settled that the formation of opinion for compulsory retirement is based on the subjective satisfaction of the authority concerned but such satisfaction must be based on a valid material. It is permissible for the courts to ascertain whether a valid material exists or otherwise, on which the subjective satisfaction of the administrative authority is based. In the present matter, what we see is that the High Court, while holding that the track record and service record of the appellant was unsatisfactory, has selectively taken into consideration the service record for certain years only while making extracts of those contents of the ACRs. There appears to be some discrepancy. We say so for the reason that the appellant has produced the copies

of the ACRs which were obtained by him from the High Court under the Right to Information Act, 2005 and a comparison of these two would positively indicate that the High Court has not faithfully extracted the contents of the ACRs.

“36. The material on which the decision of the compulsory retirement was based, as extracted by the High Court in the impugned judgment, and material furnished by the appellant would reflect that totality of relevant materials were not considered or completely ignored by the High Court. This leads to only one conclusion that the subjective satisfaction of the High Court was not based on the sufficient or relevant material. In this view of the matter, we cannot say that the service record of the appellant was unsatisfactory which would warrant premature retirement from service. Therefore, there was no justification to retire the appellant compulsorily from service.”

21. In the case of State of Gujarat vs. Umedbhai M.Patel (supra), the same principles were reiterated in the following words:

“11. The law relating to compulsory retirement has now crystallized into definite principles, which could be broadly summarized thus:

(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weight age in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure.”

22. The judgments cited by Mr.Fernandes have only reiterated the principles earlier enunciated. In Jugal Chandra Saikia (supra), this Court reiterated the principles in the following words:-

“6.....
.....It cannot be disputed that the passing of an order of compulsory retirement depends on the subjective satisfaction of the competent authority, of course on objective consideration. Unless it is shown that the order of compulsory retirement was passed arbitrarily and without application of mind or that such formation of opinion to retire compulsorily was based on no evidence or that the order of compulsory retirement was totally perverse, the court cannot interfere.”

23. Examining the record of the appellant therein and the material that was placed before the Screening Committee, the High Court as well as this Court came to the conclusion that on an objective consideration of the material on the record it was not possible to accept the argument that the Screening Committee had acted only on the basis of the report of the Rao Committee. It was found that the recommendations of the Screening Committee were based on relevant material.

24. In Allahabad Bank Officers’ Association case (supra), this Court examined whether the order of compulsory retirement, passed in that case, cast a stigma on appellant No.2. The impugned order therein had recited that there was “want of application to Bank’s work and lack of potential” and “he has also been found not dependable”. It was the case of the appellant NO.2 that the aforesaid expressions were stigmatic as they cast aspersions on his conduct, character and integrity. The High Court rejected the plea of appellant No.2 on the ground that the recitals do not cast any stigma but only assesses the work of appellant No.2 for determining the issue of his compulsory retirement. In these circumstances, it was observed that the object of compulsory retirement is to weed out the dead wood in order to maintain efficiency in the service and also to dispense with the services of those whose integrity is doubtful, so as to preserve purity in the administration. The order of compulsory retirement was distinguished from the order of dismissal and removal, as it does not inflict any punishment on the government servant. It only deprives the government servant of the opportunity to remain in service till the age of superannuation. Therefore, the order of compulsory retirement differs from an order of dismissal or removal both in its nature and consequence. However, in case it is found that the order is stigmatic it would be treated as an order of punishment, which cannot be passed without complying with the provisions of Article 311 (2) and the rules of natural justice. Upon examination of a large body of case law, it was observed that the order of compulsory retirement does not cast a stigma on the Government servant. But if the order contains a statement casting aspersion on his conduct or character, then the court will treat the order as an order of punishment, attracting the provisions of Article 311(2) of the Constitution. In the facts of that case, it was concluded that the two recitals contained in the order of premature retirement had been made in relation to the work of appellant No.2 and not for any other purpose. Therefore, the court declined to interfere with the order of the High Court.

25. Examining the fact situation in this case on the basis of the aforesaid principles, it becomes evident that recommendation made by the High Powered Committee was indubitably arbitrary.

26. The report submitted by the Additional DGP CID is as follows:

“Sub: Disproportionate assets of Shri Rajesh Gupta, Executive Engineer, Rural Engineering Wing, Kathua.

The officer originally hails from Kathua and has amassed property and assets worth crores of rupees. He has accumulated unaccounted wealth in the shape of movable/immovable properties both at Kathua and Jammu by misusing his official position for pecuniary gains. As per reliable sources he is in possession of the following assets which are in no way commensurate with all known sources of his income:-

i) He owns a palatial house at Krishna Colony, Kathua built over at least 3 kanals of land with all modern fittings, fixtures, electronic gadgets and costly household articles. In the same building he has set up a shoe making unit and goods are being sold by his brother in the market on shops owned by him. The estimated cost of this building alongwith other infrastructure is not less than Rs.30 lacs.

ii) He owns a shop below State Bank of India Branch at Kathua which is a busy market. The minimum value assessed is Rs.10 lacs.

iii) Another shop situated opposite DC Office Kathua which is also a prime location valued at more than Rs.10 lacs.

iv) He is also in possession of about 6 kanals of land near DPL Kathua which is also a costly chunk of land valued at not less than Rs.30 lacs.

v) Recently the said officer has purchased plot No.158 measuring one kanal at Trikuta Nagar, Jammu in Sector 3 behind Gurdwara Saheb for Rs.24 lacs. On this piece of land, the officer has spent more than RS.30 lacs for the construction of a house. Previously, he was putting up in a rented house at 48/4 Nanak Nagar, Jammu.

vi) He is also in possession of 2 kanals of land at Trikuta Nagar Ext. Khoo Wali Gali which is also a valuable site and values about Rs.15 lacs.

vii) 3 kanals of land at Greater Kailash Colony, Jammu whose market value is about Rs.25 lacs.

viii) 10 Marla plot at Bathindi valuing Rs.3 lacs.

ix) He has bank accounts and lockers in United Commercial Bank, R.N.Ba....and Vijay Bank, Purani Mandi Jammu.

2. Besides, he may be in possession of other assets in the shape of jewellery/valuables/securities etc. which can be unearthed only after proper probe. He also has lockers/bank accounts in the name of his wife namely Smt. Poonam Gupta, Rahul (son), Balkrishen (father) and Rakesh (brother) at Jammu as well as Kathua. It is worthwhile to mention here that he comes from a family of model means. His father is a retired Sr. Assistant. He has developed connections to manipulate lucrative postings to mint money.

Sd/-

Addl. DGP CID J & K Chief Secretary, J&K No.NGO/EMP©/2698-99 Dated Oct.19, 2004”

27. During the course of the submissions before us, learned counsel for the State of Jammu & Kashmir accepted that there was no material with regard to properties at Sl.No.1 to 5. Therefore, we shall say no more about the same. With regard to the properties at Sl.No.6 and 7, Mr.Garg learned counsel for the appellant pointed out that during the pendency of the Letters Patent Appeal in the High Court, the respondents were directed to place on record the findings recorded by the Special Investigation Team which was constituted for carrying detailed investigation into the question as to whether the petitioner was in possession of the assets mentioned in the report of the Additional DGP dated 19th October, 2004. The report dated 1.7.2010 submitted by the Joint Director (Prosecution) was placed on record of the High Court alongwith an affidavit. The report with regard to the aforesaid two properties is as under:-

“03. Two kanals of land at Trikuta Nagar Extn. Jammu :-

The land/plots were found purchased by Shri Devi Dutt Mal Gupta, (Father-in-law of the subject officer), who subsequently gifted it to his grandson Rahul Gupta, who happens to be the son of Rajesh Gupta (subject officer) in the year 2003.

04. Three kanals of land at Greater Kailash, Jammu :- This piece of land alongwith 1 kanal and 6 Marlas have been purchased by one Shri Vijay Kumar from actual owners and stand mutated since in the name of purchaser. This asset as per revenue records was found not attributable to the subject officer.”

28. The report also does not indicate that there is any irregularity in the bank accounts maintained by the appellant. The affidavit filed on behalf of the State of Jammu and Kashmir clearly shows that according to the Vigilance Organization, three First Information Reports bearing Nos. 49/91, 11/95 and 63/94 were registered by the State Vigilance Organization

against the appellant when he was posted as Executive Engineer (REW, Kathua). Upon investigation, all the FIRs were found to be “Not Proved”. However, recommendation was made to initiate departmental action against the officer. In spite of the aforesaid recommendation, it has not been disputed before us, that no departmental action was ever initiated against the appellant. In fact, after the completion of the investigation into the FIRs, the appellant was promoted to the post of Executive Engineer on 15.12.1996. Therefore, it can be safely concluded that there were no material before the High Powered Committee to conclude that the officer possessed assets beyond his known source of income.

29. This now takes us to the other material on the basis of which the recommendation has been made by the High Powered Committee. It has been noticed by us earlier that the appellant was required, in the performance of his official duties, to recommend the sanctioning of technical approval to the construction of works of various projects. The allegation with regard to issuing back dated technical sanctions was duly inquired into. The conclusion ultimately reached by inquiry officer noticed in the earlier part of the order indicates that at best the appellant acted in a casual and haphazard manner in the maintenance of records. Such negligence on the part of the appellant cannot per se lead to the conclusion that the appellant was acting in such a manner with an ulterior motive. The conclusions reached by the High Powered Committee also do not co-relate to the assessment of work and integrity of the appellant in the annual performance report. As noticed earlier, in all the annual performance reports, the officer has been rated ‘very good’, ‘excellent’ and even ‘outstanding’.

30. In view of the aforesaid, the conclusion is inescapable, that the order passed by the State Government suffers from vice of arbitrariness. The High Court erred in arriving at conclusions which were not borne out by the record produced before the High court. In view of the settled law, it is not possible for us to uphold the judgments of the Single Judge as also of the Division Bench.

31. consequently, the appeal is allowed, the impugned order of the premature retirement of the appellant dated 26th April, 2005 is quashed and set aside. It is brought to our notice that the appellant has still not reached the age of superannuation. He is, therefore, directed to be reinstated in service. In view of the fact that the appellant has not challenged the order of premature retirement on the ground that the action taken by the Government was malafide, it would not be appropriate in this case, to follow the normal rule of grant of full backwages on reinstatement. We, however, direct that the appellant shall be paid 30% of the backwages from the date of order of premature retirement till reinstatement. He shall not be entitled to any interest on the backwages.

32. We may further observe that upon reinstatement, it shall be open to the Government to post the appellant on a non sensitive post in view of the background of the case.

33. Let the order be implemented within a period of four weeks.

34. There shall be no order as to costs

¹2012 (3) SCC 0580

²2001 (3) SCC 0314

³2003 (4) SCC 0059

⁴1996 (4) SCC 0504

⁵1992 (2) SCC 0299