

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 6131 of 2017

Mahendra Ram Yadav S/o Late Sechan Yadav, Aged About 60 Years, R/o Qtr. No. 421/1- K, Ravishankar Sukla Nagar, Dadar Road, Korba, District Korba, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Excise Department, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh
2. In-Charge, Assistant Excise Commissioner, Korba, District Korba Chhattisgarh
3. District Excise Officer, District Korba, Chhattisgarh
4. District Excise Officer, Korea, District Korea, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Abhishek Pandey, Advocate
For State	:	Shri Saleem Kazi, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

13/05/2019

1. The challenge in this writ petition is to the order Annexure P-1 dated 06.11.2017 whereby the respondents have with immediate effect placed the petitioner under compulsory retirement based on the guidelines that were issued by the State Govt. on 28.10.2017.
2. The facts of the case are that the petitioner was appointed as a Constable vide Annexure P-3 dated 26.07.2004 in the Excise Department of the State Govt. The petitioner continued to work

uninterruptedly with satisfactory performance right from the time of his appointment till the impugned order Annexure P-1 dated 06.11.2017 was passed.

3. Counsel for the petitioner submits that the gradings in the ACR of the petitioner all along was either "Very Good" or "Good". According to the petitioner, he has never been awarded any adverse entry nor has there been any grading below "अ" given to the petitioner in the recent past before the impugned order was passed. It is the further contention of the petitioner that the entries made in the Annual Confidential Report of the petitioner would show that the work and performance of the petitioner has all along been very good or outstanding and there was no reason on which he could have been placed under compulsory retirement. Counsel for the petitioner submits that the petitioner at one stage was implicated in a criminal case for the offence under the provisions of the Prevention of Corruption Act and the matter was placed before the First Additional Sessions Judge(Prevention of Corruption Act) where the case was registered as Special Criminal (P.C.Act) Case No. 01/2016. The said criminal case finally vide judgment dated 30.10.2018 stood decided and the petitioner was acquitted from the criminal case. Hence, the pendency of the criminal case against the petitioner could not have been the ground for placing him under compulsory retirement. The petitioner otherwise also has got a good health condition and that he has got himself examined before the District Medical Board on 22.11.2017. The District Medical Board on thorough medical examination of the petitioner has declared him to be fit. Counsel for

the petitioner further submits that the petitioner under the Right to Information Act obtained the entries that had been made in the ACR of the petitioner and it is found that in the last 5 years, the grading of the petitioner had never been below "Good". As per the information of the last 5 years of ACR, 3 entries were of "Very Good" and 2 entries were of "Good", therefore the petitioner could not have been placed under compulsory retirement taking into consideration the overall assessment given in his ACR. For all these reasons, placing the petitioner under compulsory retirement is bad in law and liable to be set aside.

4. State counsel, on the other hand, submits that the stand which the respondents have taken in the writ petition is that the respondents found the petitioner's health condition to be not up to the mark for retaining him in government service and therefore the petitioner has been inflicted with the order of compulsory retirement. According to the State counsel, during the period from August, 2016 to July, 2017, the petitioner had taken leave of 65 days on account of ill health which shows that he was not keeping good health and this justifies the action on the part of the respondents so far as the issuance of the order of compulsory retirement is concerned.
5. Though the State counsel has tried to canvass the fact that the petitioner for the last 5 years had got 2 entries of 'Good' which shows that the petitioner's performance was not improving but this ground would not be available for the respondents for the reason that the

assessment or the entries made in the ACRs was not the basis for placing the petitioner under compulsory retirement.

6. Perusal of the reply which the respondents have filed and the recommendation which the Committee has made shows that the only ground that has been taken is the 65 days leave that the petitioner had taken between August, 2016 to July, 2017 and the fact that the petitioner was over weight.
7. However, perusal of the reply would show that there is no medical examination or a medical report that was called for by the respondents for determining the health condition of the petitioner. Likewise, there is also no details of the exact weight of the petitioner on the date the impugned order was passed or on the date when the Committee had recommended for the petitioner to be sent on compulsory retirement. What cannot be lost sight of the fact is that there is no entry in any of his ACRs of the previous years showing that the performance of the petitioner has been adversely affected because of his health condition or because of his allegedly being over weight. In the absence of any such strong substantial and cogent material available with the respondent State merely because the Committee found the petitioner appearing to be over weight or that in the past one year the petitioner had taken leave of 65 days by itself cannot be said to be the basis for placing him under compulsory retirement. Moreover, on the date when the impugned order was issued, the petitioner was 59 years of age and he had just about 2 ½ years of service left. This also should have been also taken note by

the department while passing the impugned order as has been discussed in the preceding paragraph. The ACRs of last five years would show that the petitioner had received 3 entries of “very good” and 2 entries of “Good” which again reflects that under no circumstance the overall assessment of the petitioner would have gone down below “Good”.

8. Given the aforesaid parameters/guidelines which have been laid down by the State, all that this Court now has to see is whether the committee which had scrutinized the case of the petitioner did find any of these conditions against the petitioner by virtue of which he could have been placed with an order of compulsory retirement?
9. So far as condition No.1 is concerned, that deals with honesty and integrity of the employee/officer concerned. The State has failed to produce before this court any entry in the service book, service record or in the ACRs of the petitioner in the entire service period where the integrity reflects it to be doubtful. So far as ground number (1) c & d are concerned, those pertain to overall assessment of the ACR of the employee/petitioner concerned. The State has not been able to produce before the court showing the entire entries or grading given to the petitioner in his service period. The only entries made available are five entries of previous five years consisting of one Very Good, three Good and one Average which under no circumstances can be said to be a case where the petitioner's performance can be said to be declining. Further, in the last five years there is no punishment which has been inflicted upon the petitioner. The overall assessment of last five years of entries would give an average entry

of "Good". Thus, the condition No.1(d) also would go against the State so far as supporting the impugned order is concerned, coupled with the fact that the respondent-State has not disputed the contention of the petitioner that in his entire service career except for one or two Average grading, the petitioner always have got either Good or Very Good grading.

10. So far as condition No.7 is concerned, though no specific pleadings have been raised by the petitioner in the writ petition, but since it is also a condition stipulated in the circular dated 25.04.2017 for granting three months of salary in lieu of notice and the said salary should be paid along with the order of compulsory retirement. A plain reading of the impugned order dated 19.09.2016 would itself reveal that three months payment which the petitioner ought to have been given along with the order of compulsory retirement was not made. Rather, the document would show that there was a direction given to the department to ensure release of three months salary at the earliest, which by itself would make it clear that it was not paid along with order of compulsory retirement, but was ordered to be paid at the earliest which would again make it in contravention to condition No.7 of the circular dated 25.04.2017.

11. So far as law in respect of compulsory retirement is concerned, the Supreme Court as early as in 1998(7)SCC 310 in case of M.S. Bindra Vs. Union of India & Ors. in paragraph 13 held as under :

"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 materials 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 Firut Repente Turpissimus" (no one becomes dishonest all on a sudden) is not unexceptional but still it is a 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. Again in case of Bishwanath Prasad Singh Vs. State of Bihar & Ors., 2001(2)SCC 305 dealing on the issue of compulsory retirement held in paragraph 12 as under:

“12. Compulsory retirement in service jurisprudence has two meanings. Under the various disciplinary rules, compulsory retirement is one of the penalties inflicted on a delinquent government servant consequent upon a finding of guilt being recorded in disciplinary proceedings. Such penalty involves stigma and cannot be inflicted except by following procedure prescribed by the relevant rules or consistently with the principles of natural justice if the field for inflicting such penalty be not occupied by any rules. Such compulsory retirement in the case of a government servant must also withstand the scrutiny of Article 311 of the Constitution. Then there are service rules, such as Rule 56(j) of Fundamental Rules, which confer on the Government or the appropriate authority, an absolute (but not arbitrary) right to retire a government servant on his attaining a particular age or on his having completed a certain number of years of service on formation of an opinion that in public interest it is necessary to compulsorily retire a government servant.....So long as the opinion forming basis of the order for compulsory retirement in public interest is formed bonafide, the opinion cannot be ordinarily interfered with by a judicial forum. Such an order may be subjected to judicial review on very limited grounds such as the order being malafide, based on no material or on

collateral grounds or having been passed by an authority not competent to do so.”

13. Similar view has been taken by the Supreme Court in case of 2001(3)SCC 314, State of Gujarat Vs. Umedbhai M. Patel, where in paragraph 11 the parameters which have been crystallized by the Supreme Court and which is required to be taken note of while considering the case for compulsory retirement, has held as under:

“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 weightage 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 made 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.”

14. Similar view has again been taken by the Supreme Court in case of MP Electricity Board Vs. Shree Baboo, 2002(9)SCC 704, where taking into consideration the service records of the employee where there was nothing adverse and on the contrary the integrity of the employee was shown to be “Sound”, the Supreme Court affirming the

order of the High Court setting aside the order of compulsory retirement, held as under :

“1.....The very service record and the annual character roll for the year 1991-92 that was placed before us record his integrity to be sound and yet the Screening Committee came to the conclusion that his integrity is also not beyond doubt. There is absolutely not an iota of material to support the aforesaid conclusion of the Screening Committee and a conclusion not based on any materials is obviously justiciable and could be interfered with by a court of law. This being the position, and in the facts and circumstances of the case, we are satisfied that the High Court rightly interfered with the order of compulsory retirement and we see no infirmity with the said order so as to be interfered with by this court in exercise of power under Article 136 of the Constitution. We therefore dismiss this appeal.”

15.The Supreme Court in case of Madhya Pradesh State Cooperative Dairy Federation & Anr. Vs. Rajnesh Kumar Jamindar & Ors. 2009(15)SCC 221, referring to all the previous decisions on the issue in paragraph 35 has summarized or laid down the situations under which the order of compulsory retirement could be interfered with, held as under :

“35. The law relating to compulsory retirement in public interest is no long res integra. The provisions had been made principally for weeding out dead wood. An order of compulsory retirement being not penal in nature can be subjected to judicial review inter alia :

- i. when it is based on no material;
- ii. when it is arbitrary ;
- iii. when it is without application of mind; and
- iv. when there is no evidence in support of the case.”

16.Recently again in case of Rajasthan State Road Transport Corporation and Ors. Vs. Babu Lal Jangir, 2013 (10) SCC 551 the Supreme Court held in paragraphs 23 & 24 as under:

“23. The principle of law which is clarified and stands crystallized after the judgment in Pyare Mohan Lal v. State of Jharkhand and Ors.; 2010 (10) SCC 693 is that after the

promotion of an employee the adverse entries prior thereto would have no relevance and can be treated as wiped off when the case of the government employee is to be considered for further promotion. However, this 'washed off theory' will have no application when case of an employee is being assessed to determine whether he is fit to be retained in service or requires to be given compulsory retirement. The rationale given is that since such an assessment is based on "entire service record", there is no question of not taking into consideration an earlier old adverse entries or record of the old period. We may hasten to add that while such a record can be taken into consideration, at the same time, the service record of the immediate past period will have to be given due credence and weightage. For example, as against some very old adverse entries where the immediate past record shows exemplary performance, ignoring such a record of recent past and acting only on the basis of old adverse entries, to retire a person will be a clear example of arbitrary exercise of power. However, if old record pertains to integrity of a person then that may be sufficient to justify the order of premature retirement of the government servant.

24. Having taken note of the correct principles which need to be applied, we can safely conclude that the order of the High Court based solely on the judgment in the case of Brij Mohan Singh Chopra was not correct. The High Court could not have set aside the order merely on the ground that service record pertaining to the period 1978-90 being old and stale could not be taken into consideration at all. As per the law laid down in the aforesaid judgments, it is clear that entire service record is relevant for deciding as to whether the government servant needs to be eased out prematurely. Of course, at the same time, subsequent record is also relevant, and immediate past record, preceding the date on which decision is to be taken would be of more value, qualitatively. What is to be examined is the "overall performance" on the basis of "entire service record" to come to the conclusion as to whether the concerned employee has become a deadwood and it is public interest to retire him compulsorily. The Authority must consider and examine the overall effect of the entries of the officer concerned and not an isolated entry, as it may well be in some cases that in spite of satisfactory performance, the Authority may desire to compulsorily retire an employee in public interest, as in the opinion of the said authority, the post has to be manned by a more efficient and dynamic person and if there is sufficient material on record to show that the employee "rendered himself a liability to the institution", there is no occasion for the Court to interfere in the exercise of its limited power of judicial review."

17. So far as the judgments relied upon by the counsel for the State is concerned, in both the judgments i.e. AIR 1996 SC 2030, Allahabad Bank Officers Association & Anr. Vs. Allahabad Bank & Ors. and AIR 1992 SC 1020, Baikuntha Nath Das and Anr. Vs. Chief District Medical Officer, Baripada & Anr. there is no dispute so far as the ratio that has been laid down by the Supreme Court in those cases. Once if the allegation of the employee/officer is that the order of compulsory retirement is one which has been passed without any basis or has been passed arbitrarily without proper appreciation of service records of the employee/officer and also the ground of challenge being there is no evidence or basis for the State to reach to the said conclusion, it is always open for this court under Article 226 of the Constitution of India exercising its power of judicial review to scrutinize and decide the veracity and legality of the order of compulsory retirement imposed upon the employee/officer.

18. Thus, the judgments which have been cited and relied upon by the State would not in the facts of the present case come to the rescue of the State justifying the action of compulsory retirement.

19. Perusal of the contents of the pleadings that have brought on record by way of reply and additional return of the State, it does not find any strong material produced by the State which can be said to be adverse so far as service record of the petitioner is concerned, inasmuch as, there is no adverse entry in the ACR, there is no punishment in the recent past and the overall ACR also not below "Good", this court is of the opinion that the impugned order therefore is bad in law and the same is in contravention firstly to the guidelines

framed by the State vide their circular dated 25.04.2017 and at the same time, the same is also without any basis or sufficient materials while scrutinizing the case of the petitioner.

20. Taking into consideration all the aforesaid judgments on the issue of compulsory retirement and also taking into consideration the overall assessment of the gradings and the entries made in the ACRs of the petitioner and also the fact that the State Govt. not having any cogent and sufficient material to prove that the petitioner was in fact not keeping good health or was in any manner over weight than the minimum if any prescribed in the department, the impugned action of the respondents placing the petitioner under compulsory retirement is bad in law and liable to be set aside/quashed.

21. The impugned order dated 06.11.2017 therefore being not sustainable deserves to be and is accordingly set aside/quashed. Consequently, it is ordered that the petitioner shall be reinstated in service and he would also be entitled for all consequential benefits. However, so far as the monetary part is concerned, the petitioner would not be entitled for monetary benefits for the intervening period, but all the benefits shall be given to the petitioner by giving him notional fixation.

22. The writ petition accordingly stands allowed. No order as to costs.

**Sd/-
(P. Sam Koshy)
Judge**