

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO. 6895 OF 2017**

Bahadur Prasad Bakhala S/o Late Raghuvar Ram Baghala, Aged About 54 Years R/o A-42, In Front of Sai Mandir, Nature City, Sagar Home, Phase I, Bilaspur, District Bilaspur, Chhattisgarh.

...Petitioner(s)

Versus

1. State of Chhattisgarh Through Secretary, Department of Home, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh.
2. Secretary, General Administration Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh.
3. Director Of General Police, Police Head Quarter, Sector 19, Block No. III , New Raipur, District Raipur, Chhattisgarh.
4. Additional Director General of Police (Administration), Police Head Quarter, Sector 19, Block No. III, New Raipur, District Raipur, Chhattisgarh.
5. Inspector General of Police, Bilaspur Range, Bilaspur, District Bilaspur, Chhattisgarh.
6. Superintendent of Police, Bilaspur, District Bilaspur, Chhattisgarh.

... Respondent(s)

For Petitioner	:	Shri Harsh Wardhan, Advocate.
For Respondent-State	:	Shri Saleem Kazi, Dy.Advocate General

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

16.05.2019

1. Challenge in this petition is to the impugned order dated 18.08.2017 whereby the petitioner has been sent on compulsorily retirement. No specific reasons have been assigned and the impugned order speaks of only invoking the provisions of Rule 56(2) of the Fundamental Rules and Sub-rule (1)(B) of Rule 42 of Chhattisgarh Civil Services (Pension) Rules, 1976.
2. The contention of the petitioner is that, the petitioner was initially appointed as Sub Inspector in the year 1985 and in due course of time on account of his suitability, merits and seniority, he got promotion on the post of Inspector in the year, 2013 on which the

petitioner was working when abruptly an order dated 18.08.2017 was issued placing the petitioner under compulsory retirement.

3. The petitioner assailing the impugned order of compulsory retirement submits that first of all the constitution of the Committee itself is faulty for the reason that as per the circular dated 25.04.2017 there ought to have been a three tier level Committee constituted for scrutinizing the different Police Personnel/officers posted in the State of Chhattisgarh. According to the petitioner, since the petitioner was posted in district Bilaspur under the administrative control of the Superintending of Police, District Bilaspur, the authorities concerned ought to have constituted a Committee at the district level. However, the impugned order of compulsory retirement has been passed at the recommendations made by a Committee constituted at headquarter level.
4. Further contention of the counsel for the petitioner is that the Committee so constituted at headquarter level also was not a properly constituted Committee for the reason that the Committee consisted of a member who was not a permanent officer of the State Govt./State Cadre in as much as one of the members in the Committee namely Shri D. K. Mathur, the Dy. Secretary, Home Department, was not a Govt. employee on the date when the Committee was constituted. His status in the Govt. was only that of a contractual appointee i.e. a person who is from outside cadre and therefore, inclusion of Shri Mathur vitiates the constitution of the Committee itself. According to the petitioner, for the purpose of cadre review, it is always expected that the members of the Committee constituted for the cadre review

should always be an officer of same department or at least from the State Cadre. Since Shri D. K. Mathur was a contractual appointee, it cannot be said that he belongs to the State Cadre or for that matter a regular officer of the State Govt.

5. So far as merits of the case is concerned, the contention of the petitioner was that, the impugned order was without any basis and has been exercised arbitrarily and also it was not in any manner in the larger public interest. According to the petitioner, in his entire service career there has been no adverse entry whatsoever and the fact that the petitioner in the recent past in the year, 2013 itself was found suitable for promotion shows that he was a competent officer and could not have been placed under compulsory retirement. Moreover, the contention of the petitioner is that, he has also, in between, received 84 rewards and there was 5 rewards received in the last five years which too would show efficiency and competency of the petitioner and therefore the services of the petitioner could not have been placed under compulsory retirement. Thus, prayed for setting aside of the impugned order.
6. The State counsel, on the contrary, referred to Annexures enclosed along with reply of the State which shows the comparative assessment of the service career of the petitioner and it was found that in the entire service career, as compared to 84 rewards that the petitioner has received, there were 81 punishments also which were inflicted. There were a few penalties imposed in the last five years. In addition, the petitioner in the past had also been inflicted with one major punishment. Moreover, the State counsel referring to the

entries so far as grading of the petitioner is concerned, highlighted the fact that for the last three consecutive years the grading given to the petitioner was "Average" which also would show that there was a decline in the performance of the petitioner. Taking all these facts, the petitioner has been rightly sent on compulsory retirement.

7. The Supreme Court in the case of National Aviation Company of India Limited Vs. S. M. K. Khan reported in 2009 (5) SCC 732, in paragraphs-13 to 16 has held as under:-

"13. An order of compulsory retirement in pursuance of a rule/regulation which enables the competent authority to prematurely retire an employee, on the formation of a bona fide opinion that continuation of the employee in service will not benefit the institution or be in the interest of the institution (or will not be in public interest where the employee is a government servant), on review of the performance/service record of the employee, on the employee attaining the specified age or completing the specified period of service, is valid and not open to challenge. It is neither a punishment nor considered to be stigmatic. Where the compulsory retirement, is not by way of punishment for a misconduct, but is an action taken in pursuance of a valid condition of service enabling the employer to prepone the retirement, the action need not be preceded by any enquiry and the principles of natural justice have no application.

14. The unsatisfactory service of the employee which may include any persistent misconduct or inefficiency furnishes the background for taking a decision that the employee has become a dead wood and that he should be retired compulsorily. Such 'compulsory retirement' is different and distinct from imposition of a punishment of compulsory retirement (or dismissal/removal) on a specific charge of misconduct, where the misconduct is the basis for the punishment. The difference is on account of two factors : Firstly, the employee on account of completing a particular age or number of years of service falls within the zone where his performance calls for assessment as to whether he is of continued utility to the employer or has become a deadwood or liability for the employer. Secondly, the record of service, which may include poor performance, unsatisfactory service or incidentally any recent conduct (which if separately considered may constitute a misconduct subject to punishment) when considered as a whole, leads the

Reviewing Authority to the conclusion that the employee in question is not fit to be continued in service and not of utility to the employer. Therefore, any incidental reference to unsatisfactory service, or any remarks in the context of explaining the reason for compulsory retirement under the relevant rule, in the letter of compulsory retirement will not be considered as stigmatic, even though read out of context, they may be capable of being construed as allegations of misconduct.

15. Any order of compulsory retirement in terms of the rule/regulation providing for such compulsory retirement is not open to interference unless shown to be malafide or arbitrary or not based on any background material at all relating unsatisfactory service justifying the premature retirement.

16. When an order of compulsory retirement purports to be one under the rule/regulation providing for such premature retirement, the proper approach of the court would be to consider whether the order is sustainable with reference to the requirements of the relevant rule, rather than examining whether the order could also be construed as a punishment for misconduct -- vide *Baikuntha Nath Das v. Chief District Medical Officer* [1992 (2) SCC 299], *Allahabad Bank Officers' Association v. Allahabad Bank* [1996 (4) SCC 504], *"I.K.Mishra v. Union of India* [1997 (6) SCC 228], *State of Uttar Pradesh v. Lalsa Ram* [2001 (3) SCC 389] and *M. L. Binjolkar vs. State of Madhya Pradesh* [2005 (6) SCC 224]."

8. The law so far as the compulsory retirement is concerned, it cannot be disputed that for passing an order of compulsory retirement, there has to be a subjective satisfaction of the competent authority and the competent authority should take a decision on the basis of cogent material available on record. So far as the scope of interference is concerned, unless it is shown that the order of compulsory retirement was passed arbitrarily and without application of mind or that the formation of opinion to retire compulsorily was based on no evidence or that the order of compulsory retirement was totally perverse, the Court cannot as a matter of routine interfere with an order of compulsory retirement.

9. 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.”

10. On going through the aforesaid observations of the Supreme Court, it clearly gives the broad parameters and guidelines which ought to have been complied with by the department before placing an employee/officer on compulsory retirement.

11. Likewise, the Supreme Court again in the case of Nand Kumar Verma Vs. State of Jharkhand and others reported in 2012 (3) SCC 580 in paragraph-34 has clearly envisaged that the entries in the ACR would be relevant for the purpose of formation of an opinion before placing an employee/officer for compulsory retirement. For ready reference paragraph-34 of the said judgment is reproduced hereinunder:

“34. It is also well settled that the formation of opinion for compulsory retirement is based on the subjective satisfaction of the concerned authority 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 ACR's. There appears to be some discrepancy. We say so for the reason that the appellant has produced the copies of the ACR's 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."

12. Keeping the aforesaid judgments in mind, if we look into the service graph of the petitioner as is reflected from the documents annexed with the reply of the State, it would reveal that in the entire service career of the petitioner, there was nothing which could be said to be an outstanding performance made by the petitioner. On the contrary, though the petitioner has received 84 rewards but at the same time there are also 81 punishments, minor and major both inclusive, awarded to the petitioner. In addition, the average assessment of the ACRs of the petitioner would show that in the last three consecutive years, the gradings of the petitioner was "Average" with "C" grading which also would show that the performance of the petitioner for the last more than couple of years has not improved. Rather, it shows decline in the performance of his duties.
13. All these facts are sufficient to hold that there was not much found in the petitioner with which it could be said that he would be of some assistance for the department and at the same time there was a continued poor performance or average work performed by the petitioner which led to the conclusion of the committee that the petitioner was not fit to continue in service and also was not of utility for the State any further. If we take overall assessment of the ACRs of the petitioner, the total punishments received by the petitioner as

compared to the total rewards and the gradings given to the petitioner in the past many years, it cannot be said the committee did not have sufficient material before them while considering the case of the petitioner. Accordingly, the recommendation of the committee cannot be said to be either arbitrary or without application of mind.

14. Since this court is convinced on the merits of the case that there was sufficient material strong enough to place the petitioner under compulsory retirement, the other issues which the petitioner has raised so far as the competency of the committee as well as the officer who has issued the order of compulsory retirement is concerned, it is being left open to be considered in an appropriate case.
15. Given the said facts and circumstances of the case and also taking into consideration the entire facts which could be generated from the service record of the petitioner, the decision of the State Govt. placing the petitioner under compulsory retirement declaring him to a deadwood cannot be said to be in any manner bad in law or contrary to the circular of the State Govt. dated 25.04.2017.
16. Accordingly, the petition fails and is dismissed. No order as to costs.

Sd/-
(P. Sam Koshy)
Judge