

HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (S) NO. 1249 OF 2005**

Smt. Rehana Tabassum, W/o S.G. Mohammad, age 46 years, D/o Qr. No.39, St. 3/A, Maitri Nagar, Risali, Bhilai, District Durg (CG)

... Petitioner

versus

State of Madhya Pradesh, through the Secretary, Forest Department, M.P. Govt., Vallabh Bhawan, Bhopal (M.P.)

... Respondent

For Petitioner	:	Mr. Uttam Pandey, Advocate.
For Respondent-State	:	Mr. Ishan Verma, Panel Lawyer.
For Interveners	:	Mr. Y.S. Kazi, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

17/01/2020

1. Challenge in the present writ petition is to the order dated 31.10.1995 (Annexure A-11) whereby the services of the original petitioner, M. Karim (since dead), were placed under compulsory retirement with immediate effect granting three months' salary in lieu of notice.
2. The present writ petition was originally filed as early as on 22.11.1995 before the then existing State Administrative Tribunal wherein the case was registered as O.A. No. 3568/1995. Respondent-State was noticed and they had filed their reply. In the reply, the stand of the respondent-State is that the order of compulsory retirement issued against the petitioner-employee was taking into consideration circulars of the State Government, that is the circular dated 22.7.1983 and also the subsequent circular dated 7.11.1985, which lay down the guidelines and parameters for placing a person under compulsory retirement.
3. Relevant facts placed before this court for consideration is that the petitioner-employee was initially appointed as a Forest Ranger under the Forest Department in the year 1964 and he in due course of time received promotion and reached to the stage of Assistant Conservator of Forest and on which post he was confirmed on 30.10.1993 with effect from 1.4.1988. At the relevant point of time, he was working as a Deputy Manager, Laghu Vanopaj Sangh, Durg Circle, on deputation. The respondent authorities vide the impugned order dated 31.10.1995

placed the services of the petitioner-employee under compulsory retirement. The reasons assigned in the impugned order is that the order of compulsory retirement is being issued in the public interest. Apart from this, there is no other reason assigned in the impugned order. This impugned order was initially challenged before the State Administrative Tribunal by the employee himself. Subsequently, the said Tribunal was abolished and all the matters stood transferred to the High Court and the present matter has been registered as WPS No. 1249/2005 in the High Court of Chhattisgarh.

4. Learned counsel for the petitioner contends that the order of compulsory retirement is totally baseless and is without any justified reasons available with the respondent. It was also the contention of the counsel for the petitioner that the order of compulsory retirement seems to be one which has been issued with malafides as there is no serious act of misconduct alleged against the petitioner-employee nor is the service record of the petitioner tainted in any manner which could have been the reason for placing him under compulsory retirement. It was further contended that except for the ACR of the year 1994, the petitioner-employee has not been provided with any of the ACRs of the previous year which is sufficient to draw an inference that ACRs of the previous years were not bad in any manner. So far as the ACR of the year 1994 is concerned, contention of the counsel for the petitioner is that the petitioner-employee had made a representation against the adverse entries, which though the respondent-State in their reply have denied of having received any such representation.

5. If we look into the contents of the reply that the respondent-State has filed, firstly, the respondent submits that the service record of the petitioner was not up to the mark and was unsatisfactory and therefore the respondent-State have taken the decision of placing him under compulsory retirement. It was also the stand of the respondent-State in their return that the case of the petitioner-employee has been properly considered by the scrutiny committee and the committee in public interest found him not to be retained in government employment any further and thus he was issued with the order of compulsory

retirement. It is further the stand taken by the respondent-State in their reply that the scrutiny committee had considered the ACR of the petitioner-employee for the year 1990 till 1994 and based upon the entries made therein, the present impugned order of compulsory retirement has been passed.

6. From the previous couple of dates of hearing, this case was getting adjourned only at the instance of the learned counsel for the respondent-State to ensure that the service record of the petitioner, particularly the ACRs of the last five years when the petitioner was in service, to be placed on record. In spite of time being granted to the respondent-State, they have failed to produce the record before this Court. The documents enclosed along with the reply of the respondent-State only show the policy of the State Government under which the employee can be placed under compulsory retirement. Not a single document has been enclosed by the respondent-State along with their reply by which it could be ascertained so far as the five years of ACRs having adverse entries; neither has the entries of the previous five years reflected in the reply of the State Government to ascertain whether the gradings that have been given to the petitioner-employee in the previous five years were adverse or unsatisfactory.

7. Contents of the reply which the respondent-State has filed had been categorically denied by the petitioner-employee in his rejoinder which was filed as early as in the year 1998 and again in the additional rejoinder that was filed in September, 1999. In spite of these averments being brought on record by the employee, the respondent authorities have not been able to produce any substantial material with which it could be said that the service record of the petitioner-employee was in any manner adverse or there were adverse entries in the ACRs or that in the past he had been subjected to disciplinary action for any major or minor misconduct.

8. The return of the State Government only bears the record of some notes of the inspecting officer, which is alleged to have critical remarks on it. This Court is of the opinion that merely because there are some critical remarks in any of the inspection notes by itself cannot be the ground of placing the employee under

compulsory retirement. The respondent-State themselves in their reply have enclosed certain circulars of the State Government which provide for the guidelines and parameters which have to be taken note of while considering whether the employee is fit to remain in employment or has to be sent on compulsory retirement. The return of the State-Government does not even meet the requirements as are envisaged in these guidelines; neither has the State Counsel been able to produce any record during the course of argument.

9. Under the circumstances, this Court is forced to draw an inference against the State authorities so far as issuance of the impugned order dated 31.10.1995 (Annexure A-11) placing the petitioner-employee under compulsory retirement is concerned.

10. So far as compulsory retirement is concerned, the Hon'ble Supreme Court as early as in the year 1998 in the case of **M.S. Bindra Vs. Union of India & Ors.**

[1998 (7) SCC 310] has 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.”

11. Again in the case of **Bishwanath Prasad Singh Vs. State of Bihar & Ors.**

[2001 (2) SCC 305] dealing with the issue of compulsory retirement the Hon'ble Supreme Court held as follows:

“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.”

12. A similar view has been taken by the Hon'ble Supreme Court in the case of **State of Gujrat Vs. Umedbhai M. Patel [2001 (3) SCC 314]** where in paragraph 11 the following parameters have been crystallized by the Supreme Court and which are required to be taken note of while considering the case for compulsory retirement:

“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 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 adverser 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.”

A plain perusal of the aforesaid parameters laid down by the Hon'ble Supreme Court would reveal that clause (vii) shows that if an officer is given promotion despite of adverse entry, that factor would go in favour of the officer/employee.

13. A similar view has again been taken by the Hon'ble Supreme Court in the 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 and 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."

14. The Hon'ble Supreme Court in the 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 has summarized or laid down the situations under which the order of compulsory retirement could be interfered with, held as follows :

"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."

15. Recently, again in the case of **Rajasthan State Road Transport Corporation and Ors. Vs. Babu Lal Jangir [2013 (10) SCC 551]**, the Hon'ble Supreme Court has held that:

“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.”

16. In view of the aforesaid judicial pronouncements and the facts narrated in the preceding paragraphs, this Court is inclined to allow the present writ petition by quashing the impugned order dated 31.10.1995 (Annexure A-11).

17. Now come to the question of consequential relief that the petitioner would be entitled to. The petition originally was filed by the employee, M. Karim, himself. However, subsequently the employee is said to have expired on 7.3.2010. The

present petitioner Smt. Rehana Tabassum and her mother Smt. Sahida Khanam both had moved an application for substitution in the year 2010 itself and since then they were representing the case of the employee. Pending the petition, Smt. Sahida Khanam also died leaving behind the present petitioner Smt. Rehana Tabassum as the sole petitioner to pursue the present writ petition. Since the employee has expired, the question of taking him back in service does not arise. As a result of the order of compulsorily retirement getting quashed, the effect would be that the original employee, M. Karim, would have to be treated in service from 31.10.1995 onwards till his attaining the age of superannuation or till his date of death, whichever is earlier. Since the employee has died, the question of the present petitioner entitling her for getting any monetary benefits for the said intervening period does not arise. However, the petitioner Smt. Rehana Tabassum claiming herself to be the legal heir of the deceased employee would be entitled for all retiral dues that were payable to the deceased employee treating him to be in service and retiring on attaining the age of superannuation, and any other monetary benefits which were payable on the superannuation of the deceased employee.

18. At this juncture, this Court takes note of the objection of the interveners, the brothers of the deceased employee, disputing the fact that the petitioner Smt. Rehana Tabassum is the legal heir of the deceased employee. According to the interveners, the deceased employee was a bachelor and had never married and therefore the locus of the petitioner Smt. Rehana Tabassum is doubtful.

19. Since this Court is deciding the petition only so far as the veracity of the impugned order of compulsory retirement is concerned, the issue of whether the petitioner Smt. Rehana Tabassum is the legal heir of the deceased employee or not is left open for the petitioner to establish before the concerned authorities of the department before claiming the benefits that arise out of this order.

20. At this juncture, learned counsel for the petitioner submits that he has produced various documents in the present writ petition to establish that the petitioner Smt. Rehana Tabassum is in fact the legal heir of the deceased

employee and she has a couple of orders in her favour from the competent Court of law declaring her to be the legal heir of the deceased employee. All these documents would be considered by the employer while deciding the issue whether the petitioner Smt. Rehana Tabassum is the legal heir of the deceased employee or not.

21. The writ petition stands allowed and is disposed of accordingly.

/sharad/

Sd/-
(P. Sam Koshy)
JUDGE