

IN THE HIGH COURT OF ORISSA AT CUTTACK**W.P.(C) No.19416 of 2014*****Pradeep Kumar Pattnaik* *Petitioner******-versus-******State of Odisha and others* *Opposite Parties*****Appeared in this case:*****For Petitioner* : Mr. Budhadev Routray,
Senior Advocate along with
Mr. Jagdish Biswal, Advocate*****For Opposite Parties* : Mr. P. K. Muduli,
Additional Government Advocate****CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAİK****JUDGMENT
04.04.2022****Dr. S. Muralidhar, CJ.**

1. The Petitioner, who was a Judicial Officer in the Orissa Superior Judicial Service (OSJS) as Additional District and Sessions Judge (AD&SJ), has questioned to his pre-mature retirement, which was notified by the Notification dated 28th March, 2014.

2. The background facts are that the Petitioner was appointed as a Munsif on probation in the Orissa Judicial Service (OJS) Class-II by

a Notification dated 28th January, 1987. He was subsequently appointed in the Cadre of OJS Class-II with effect from 16th February, 1989. He received promotions first as Additional Civil Judge (Junior Division-cum-Sub-Divisional Judicial Magistrate by a Notification dated 26th April, 1999 and then as Civil Judge (Senior Division) with effect from 16th September, 2005. He received his Assured Career Progression (ACP) Scale of Pay in the Cadre of Civil Judge with effect from 1st January, 1996 and the financial benefit was extended to him with effect from 1st July, 1996 by a Notification dated 15th October, 2009. He was promoted as in the Cadre of Civil Judge (Senior Division) by a Notification dated 5th January, 2010.

3. The Petitioner was promoted in the Cadre of District Judge in the OSJS and was transferred and posted as AD&SJ, Malkangiri by virtue of a Notification dated 24th May, 2013. He joined in his post at Malkangiri on 17th July, 2013. On 28th March 2014, while continuing as such, he was compulsorily retired with immediate effect giving him three months' pay and allowances in lieu of three months' notice.

4. Mr. Budhadev Routray, learned Senior Counsel appearing on behalf of the Petitioner, submitted that the Petitioner was never communicated any adverse entries during the entire career of his service. He had successfully crossed the efficiency bar at the age of fifty and was allowed to get ACP Scale-I and the ACP Scale-II in the Cadre of Civil Judge (Junior Division). He received ACP Scale-I in

the Cadre of Senior Civil Judge. He had got his promotions from time to time. No adverse report on his performance was communicated to him. Mr. Routray submits that even in the counter affidavit filed by the Opposite Parties, not a single incident has been indicated which would prove otherwise.

5. Mr. Routray contends that only eight months prior to his compulsory retirement, the Petitioner was promoted as AD&SJ and therefore, there was no reason why suddenly in March 2014 he should be compulsorily retired. He assailed the said decision as being based on no evidence. Mr. Routray further contended that when a Government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting. In other words, any adverse remarks passed earlier would be deemed to be wiped out. Consequently, once the Petitioner was promoted as AD&SJ, he cannot be said to be dead wood requiring to be weeded out. Reference is made to the Judgment dated 19th January, 2022 passed by this Court in W.P.(C) No.19322 of 2014 (*Ashok Kumar Agarwala v. Registrar General of Orissa High Court*).

6. Mr. Routray submitted that the decision to compulsory retire a judicial officer cannot be taken arbitrarily. There has to be some material on the basis of which such decision could be arrived at. The power to compulsory retire a judicial officer should not be used to humiliate the person.

7. Mr. P.K. Muduli, learned Additional Government Advocate (AGA) appearing for the Opposite Parties referred to the counter affidavit filed. At the outset, he pointed out that an order of compulsory retirement is not a punishment as has been settled in a catena of decisions, including ***Rajasthan State Road Transport Corporation v. Babulal Jangir (2013) 10 SCC 551*** and ***Baikuntha Nath Das v. Chief District Medical Officer, Baripada (1992) 2 SCC 299***. While not disputing the fact that the Petitioner had received ACPs in the cadre of Civil Judge both in Junior Division and Senior Division, he submitted that the Petitioner's contention that there were no adverse remarks recorded in his entire service career at any time was not true.

8. Mr. Muduli submitted that the entire service rendered by the concerned employee till the date of consideration of his case is required to be looked into and assessed. An order of compulsory retirement is not passed taking into account any specific instance. The capability of a person to continue in service cannot be based on solitary instances. The claim of the Petitioner that he had an unblemished service record was stated to be 'far from truth'. Merely because the Petitioner had been granted promotion only eight months earlier, it cannot be said that there was no material on the basis of which he could be compulsorily retired. It is pointed out that the requirements of Rule -44 of the OSJS and OJS Rules, 2007 read with Rule 71(A) of the Orissa Service Code had been adhered to.

9. This Court summoned the entire service record of the Petitioner and carefully perused it. For many of the years, the grading given for the Petitioner was that of 'Average'. Also, it was not a career which could be said to be without any adverse remark whatsoever. Just to give two instances, while he was in Registrar Civil Courts, Dhenkanal, complaints were received against the Petitioner regarding illegal drawing of conveyance allowance and granting of discount for purchase of law books. The District Judge made a thorough enquiry and found these allegations to be true. An explanation was called for from the Petitioner. After considering his explanation, a decision was taken to warn him to be careful in future. This warning was communicated to him. In another instance, when he was working as CJM, Sundergarh, a letter was sent by the Bar that he was not adhering to the decorum expected from a Judicial Officer while recording evidence and disposing of bail applications. This led to the boycott of the Court by the local Bar. Inquiries revealed that the Petitioner was not free from blame and had not dealt with certain bail applications in a transparent manner. An explanation was called for from the officer. Once again, after considering the entire matter, it was decided that the matter should be dropped 'with a word of caution to the Officer to behave properly towards the Bar Members'.

10. The above two instances are only being cited to put the whole issue in proper perspective particularly, since the Petitioner seeks to be under impression that there was nothing adverse against him at any time during his entire service career. The High Court on the

administrative side has to keep in view a number of factors while taking a decision whether to continue a judicial officer in service at various points in time. The review is undertaken when the Officers reach the ages of fifty years, fifty-five years and fifty-eight years. While it is true that the decision to compulsorily retire a judicial officer cannot be taken arbitrarily, and should be based on some material, it cannot be said that there has to be some particular instance of misbehaviour by an Officer that could warrant such a decision.

11. In ***Baikuntha Nath Das*** (*supra*), the legal position was explained as under:

“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 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.”

12. Again in ***Rajasthan State Road Transport Corporation*** (*supra*), it was emphasized as under:

“27. It hardly needs to be emphasised that the order of compulsory retirement is neither punitive nor stigmatic. It is based on subjective satisfaction of the employer and a very limited scope of judicial review is available in such cases. Interference is permissible only on the ground of non-application of mind, mala fide, perverse, or arbitrary or if there is noncompliance with statutory duty by the statutory authority. Power to retire compulsorily the government servant in terms of service rule is absolute, provided the

authority concerned forms a bona fide opinion that compulsory retirement is in public interest.”

13. It needs to be noted here that even before the matter reaches the State Government, a review is undertaken of the Officer's entire service record first by the Standing Committee of the High Court on the Administrative side comprising of the Chief Justice and the Senior Judges and at the next level by the Full Court of the High Court which deliberates on the recommendations of the Standing Committee. Therefore, on the administrative side of the High Court, the review takes place at two levels. The recommendation of the Full Court is then placed before the State Government for its decision. In *S. Ramachandra Raju v. State of Orissa, 1994 Supp.(3) SCC 424*, it was explained as under:

“9..... The entire service record or character rolls or confidential reports maintained would furnish the back drop material for consideration by the Government or the Review Committee or the appropriate authority. On consideration of the totality of the facts and circumstances alone, the government should form the opinion that the government officer needs to be compulsorily retired from service. Therefore, the entire service record more particular the latest, would form the foundation for the opinion and furnish the base to exercise the power under the relevant rule to compulsorily retire a government officer. When an officer reaching the age of compulsory retirement, as was pointed out by this Court, he could neither seek alternative appointment nor meet the family burdens with the pension or other benefits he gets and thereby he would be subjected to great hardship and family would be greatly affected. Therefore before exercising the power, the competent appropriate authority must weigh pros and cons and balance the public interest as against the individual interest. On total

evaluation of the entire record of service if the government or the governmental authority forms the opinion that in the public interest the officer needs to be retired compulsorily, the court may not interfere with the exercise of such bona fide exercise of power but the court has power and duty to exercise the power of judicial review not as a court of appeal but in its exercise of judicial review to consider whether the power has been properly exercised or is arbitrary or vitiated either by mala fide or actuated by extraneous consideration or arbitrary in retiring the government officer compulsorily from service.”

14. Again another review of the entire service record has in fact been undertaken by this Court while examining this petition in the judicial side. Having carefully perused the entire service record of the Petitioner in the present case, the Court is satisfied that the decision to compulsorily retire him from service is neither arbitrary nor unwarranted or contrary to law. The Officer in question did not have an unblemished service record and for many years, his rating was ‘Average’. It is entirely possible that he received his promotions in due course, but the parameters that weigh with the Court when it comes to retaining a Judicial Officer in service after attaining the ages of fifty years, fifty-five years and fifty-eight years would be based on a review of the entire service career of the Officer and not just on a few years of performance. In that sense, the grant of promotion a few months earlier to the review of such performance would not ipso facto preclude such a review for the purposes of the decision to be taken regarding compulsory retirement of such Officer.

15. For all of the aforementioned reasons, the Court finds no grounds made out for interference with the Notification dated 28th March, 2014, compulsorily retiring the Petitioner from the OSJS.

16. The writ petition is accordingly dismissed, but in the circumstances, with no order as to costs.

(S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M. panda

