Central Industrial Security Force vs Hc(Gd) Om Prakash on 4 February, 2022

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Bench: V. Ramasubramanian, Hemant Gupta

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5428 OF 2012

CENTRAL INDUSTRIAL SECURITY FORCE .....A

VERSUS

HC (GD) OM PRAKASH .....RES

JUDGMENT

HEMANT GUPTA, J.

1. The present appeal arises out of an order dated 14.10.2011 passed by the Division Bench of the High Court of Delhi whereby the order of premature retirement passed against the respondent was set aside.

2. The respondent, Head Constable Om Prakash 1 was prematurely retired on 16.08.2011 in exercise of the powers conferred under Rule 56(j) of the Fundamental Rules read with Rule 48(1)(b) of CCS (Pension) Rules, 19722 after completion of 30 years of service. The order is to the effect that the Superannuation Review Committee under Rule 48(1)(b) of the years of qualifying service with immediate effect. 1 Hereinafter referred to as the 'Writ Petitioner' 2 For short 'the Rules'

3. In the writ petition challenging such order, the High Court set aside the order of premature retirement on the ground that the writ petitioner was promoted as Head Constable on 14.06.2000 and thus penalties imposed prior to the year 2000 have to be ignored while determining suitability of the writ petitioner to be retained in service. The two penalties of sleeping on duty and overstaying leave by two days were inflicted in the year 2005 and 2008 respectively which were minor penalties. The Annual Confidential Reports 3 grading of the writ petitioner in the preceding five years have to be considered with greater focus while noticing the fact that even earlier ACR's had to be taken into

consideration. The ACR's from 1990 till the year 2009 were either good or very good. The ACR for the year 2010 was graded average but the same was not conveyed to the writ petitioner. Therefore, such ACR could not be taken into consideration while arriving at an opinion that the writ petitioner is a dead wood. The High Court referred to a three Judge Bench judgment of this Court reported as Baikuntha Nath Das and Another v. Chief District Medical Officer, Baripada and Another4 wherein it has been held that the order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour. The order of compulsory retirement is in public interest and is passed on the subjective satisfaction of the Government and is not liable to be quashed by the 3 ACR 4 (1992) 2 SCC 299 Court merely for the reason that uncommunicated adverse remarks were taken into consideration.

4. This Court approved the earlier judgment of this Court reported as Union of India v. M. E. Reddy and Another5 wherein it was held as under:

> "12. An order of compulsory retirement on one hand causes no prejudice to the government servant who is made to lead a restful life enjoying full pensionary and other benefits and on the other gives a new animation and equanimity to the Services. The employees should try to understand the true spirit behind the rule which is not to penalise them but amounts just to a fruitful incident of the Service made in the larger interest of the country. Even if the employee feels that he has suffered, he should derive sufficient solace and consolation from the fact that this is his small contribution to his country, for every good cause claims its martyr."

5. We find that the High Court has completely misdirected itself while setting aside the order of premature retirement of the writ petitioner. The writ petitioner has been awarded number of punishments prior to his promotion including receiving illegal gratification from a transporter while on duty in the year 1993. There are also allegations of absence from duty and overstaying of leave. After promotion, a punishment of four days fine was imposed on the charge of sleeping on duty and two days fine was imposed for overstayed from joining time. Apart from the said punishments, the writ petitioner has a mixed bag of ACRs such as average, below average, satisfactory good and very good. In the last 5 years, he has been graded average for the period 01.01.2010 to 5 (1980) 2 SCC 15 31.12.2010.

6. After the judgment in Baikuntha Nath Das, a three Judge Bench in a judgment reported as Posts and Telegraphs Board and Others v. C.S.N. Murthy6 held that the courts would not interfere with the exercise of the power of compulsory retirement if arrived at bonafidely and on the basis of material available on record. The Court held as under:

> "5. .... Whether the conduct of the employee is such as to justify such a conclusion is primarily for the departmental authorities to decide. The nature of the delinquency and whether it is of such a degree as to require the compulsory retirement of the employee are primarily for the Government to decide upon. The courts will not interfere with the exercise of this power, if arrived at bona fide and on the basis of material available on the record. No mala fides have been urged in the present case.

> The only suggestion of the High Court is that the record discloses no material which would justify the action taken against the respondent. We are unable to agree. In our opinion, there was material which showed that the efficiency of the petitioner was slackening in the last two years of the period under review and it is, therefore, not possible for us to fault the conclusion of the department as being mala fide, perverse, arbitrary or unreasonable."

7. A three Judge Bench of this Court reported as Union of India and Others v. Dulal Dutt7 examined the order of compulsory retirement of a Controller of Stores in Indian Railway. It was held that an order of compulsory retirement is not an order of punishment. It is a prerogative of the Government but it should be based on material and has to be passed on the subjective satisfaction of the Government and 6 (1992) 2 SCC 317 7 (1993) 2 SCC 179 that it is not required to be a speaking order. This Court held as under:

> "18. It will be noticed that the Tribunal completely erred in assuming, in the circumstances of the case, that there ought to have been a speaking order for compulsory retirement. This Court, has been repeatedly emphasising right from the case of R.L. Butail v. Union of India [(1970) 2 SCC 876] and Union of India v. J.N. Sinha [(1970) 2 SCC 458] that an order of a compulsory retirement is not an order of punishment. It is actually a prerogative of the Government but it should be based on material and has to be passed on the subjective satisfaction of the Government. Very often, on enquiry by the Court the Government may disclose the material but it is very much different from the saying that the order should be a speaking order. No order of compulsory retirement is required to be a speaking order. From the very order of the Tribunal it is clear that the Government had, before it, the report of the Review Committee yet it thought it fit of compulsorily retiring the respondent. The order cannot be called either mala fide or arbitrary in law."

8. In another judgment reported as Secretary to the Government and Another v. Nityananda Pati8, the order of the High Court setting aside the compulsory retirement for the reason that certain uncommunicated adverse remarks were taken into consideration was set aside by this Court.

9. In Union of India v. V.P. Seth and Another9, relying upon Baikuntha Nath Das and other judgments, it was held as under:

> "3. These principles were reiterated with approval in the subsequent decision. It would, therefore, seem that an order of compulsory retirement can be made subject to judicial review only on grounds of mala fides, arbitrariness or perversity and that the rule of audi alteram partem has no application since the order of compulsory retirement in such a situation is not penal in nature. The position of law having thus been settled by two 8 (1993) Supp 2 SCC 391 9 (1994) SCC (L&S) 1052 decisions of this Court, we are afraid that the order of the Tribunal cannot be sustained as the same runs counter to the principles laid down in the said two decisions."

> 10. A three Judge Bench of this Court in a judgment reported as State of Punjab v. Gurdas Singh10 considered the argument that the order of compulsory retirement was based on material which was non-existent inasmuch as there were no adverse remarks against him and if there were any such remarks, it should have been communicated to him.

This Court held as under:

> "11. .....Before the decision to retire a government servant prematurely is taken the authorities are required to consider the whole record of service. Any adverse entry prior to earning of promotion or crossing of efficiency bar or picking up higher rank is not wiped out and can be taken into consideration while considering the overall performance of the employee during whole of his tenure of service whether it is in public interest to retain him in the service. The whole record of service of the employee will include any uncommunicated adverse entries as well."
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> 11. In State of U.P. and Others v. Raj Kishore Goel11, the order of the High Court setting aside the order of compulsory retirement was set aside when the order of compulsory retirement was on account of uncommunicated ACR.
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> 12. In the judgment reported as Rajasthan State Road Transport Corporation and Others v. Babu Lal Jangir12, the High Court had taken into consideration adverse entries for the period 12 years prior to premature retirement. This Court held that Brij Mohan Singh

10 (1998) 4 SCC 92 11 (2001) 10 SCC 183 12 (2013) 10 SCC 551 Chopra v. State of Punjab13 was overruled only on the second proposition that an order of compulsory retirement is required to be passed after complying with the principles of natural justice. This Court also considered the "washed-off theory" i.e., the remarks would be wiped off on account of such record being of remote past. Reliance was placed upon a three Judge Bench judgment of this Court reported as Pyare Mohan Lal v. State of Jharkhand and Others14 and it was observed that:

> "22. It clearly follows from the above that the clarification given by a two-Judge Bench judgment in Badrinath [(2000) 8 SCC 395 :
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> 2001 SCC (L&S) 13 : (2000) 6 Scale 618] is not correct and the observations of this Court in Gurdas Singh [(1998) 4 SCC 92 : 1998 SCC (L&S) 1004 : AIR 1998 SC 1661] to the effect that the adverse entries prior to the promotion or crossing of efficiency bar or picking up higher rank are not wiped off and can be taken into account while considering the overall performance of the employee when it comes to the consideration of case of that employee for premature retirement.
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> 23. The principle of law which is clarified and stands crystallised after the judgment in Pyare Mohan Lal v. State of Jharkhand [(2010) 10 SCC 693 : (2011) 1 SCC (L&S)

> 550] 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 the 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 the 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

13 (1987) 2 SCC 188 14 (2010) 10 SCC 693 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."

13. There are numerous other judgments upholding the orders of premature retirement of judicial officers inter alia on the ground that the judicial service is not akin to other services. A person discharging judicial duties acts on behalf of the State in discharge of its sovereign functions. Dispensation of justice is not only an onerous duty but has been considered as discharge of a pious duty, therefore, it is a very serious matter. This Court in Ram Murti Yadav v. State of Uttar Pradesh and Another15 held as under:

> "6. ....The scope for judicial review of an order of compulsory retirement based on the subjective satisfaction of the employer is extremely narrow and restricted. Only if it is found to be based on arbitrary or capricious grounds, vitiated by mala fides, overlooks relevant materials, could there be limited scope for interference. The court, in judicial review, cannot sit in judgment over the same as an appellate authority. Principles of natural justice have no application in a case of compulsory retirement."

14. Thus, we find that the High Court has not only misread the judgment of this Court in Baikuntha Nath Das but wrongly applied the principles laid down therein. The adverse remarks can be taken into consideration as mentioned in the number of judgments mentioned 15 (2020) 1 SCC 801 above. There is also a factual error in the order of the High Court that there are no adverse remarks and that the ACRs for the year 1990 till the year 2009 were either good or very good. In fact, the summary of ACRs as reproduced by the High Court itself shows average, satisfactory and in fact below average reports as well.

15. The entire service record is to be taken into consideration which would include the ACRs of the period prior to the promotion. The order of premature retirement is required to be passed on the basis of entire service records, though the recent reports would carry their own weight.

16. In view of the said fact, we find that the order of the High Court setting aside the order of premature retirement is clearly unsustainable and is set aside. The appeal is allowed. The writ petition thus stands dismissed.

.....J. (HEMANT GUPTA) .....J. (V. RAMASUBRAMANIAN) NEW DELHI;

FEBRUARY 04, 2022.