

## **Baidyanath Mahapatra vs State Of Orissa & Anr on 10 August, 1989**

**Equivalent citations: 1989 AIR 2218, 1989 SCR (3) 803, AIR 1989 SUPREME COURT 2218, (1989) 4 SCC 664, 1989 LAB. I. C. 2089, (1989) 68 CUT LT 640, (1989) 2 LAB LN 722, (1989) 3 JT 360 (SC), (1989) 2 ORISSA LR 272, (1989) 15 ALL LR 686, (1989) 2 CURLR 517, AIRONLINE 1989 SC 58, 1990 SCC (L&S) 38, (1989) 2 CUR LR 517, 1989 (4) SCC 664, (1989) 3 JT 360**

**Author: K.N. Singh**

**Bench: K.N. Singh, M.H. Kania**

PETITIONER:  
BAIDYANATH MAHAPATRA

Vs.

RESPONDENT:  
STATE OF ORISSA & ANR.

DATE OF JUDGMENT 10/08/1989

BENCH:  
SINGH, K.N. (J)  
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SINGH, K.N. (J)  
KANIA, M.H.

CITATION:  
1989 AIR 2218                      1989 SCR (3) 803  
1989 SCC (4) 664                JT 1989 (3) 360  
1989 SCALE (2) 271  
CITATOR INFO :  
\*                1992 SC1020 (1,23,25,29)

ACT:

Orissa Service Code: Rule 71(a)--Compulsory retirement-  
Adverse entries in service record--Of no significance when  
government servant is promoted: belated communication of  
adverse entries defeat their object: it is not permissible  
to consider adverse entries representation against which is  
pending.

Natural Justice--Members of a Tribunal not to sit in  
judgment on their own decisions taken administratively.

HEADNOTE:

The appellant had joined service in the Orissa Government as an Assistant Engineer in 1955, and in 1983 he was working on the post of Superintending Engineer. Since he had completed 50 years of age, a Review Committee considered his service record for determining his suitability for retention in service in accordance with the first proviso to Rule 71(a) of the Orissa Service Code. On the recommendation of the Review Committee the State Government by its order dated 10.11.1983 pre-maturely retired the appellant from service. The appellant filed a civil suit challenging the validity of his pre-mature retirement. The suit was transferred to the Administrative Tribunal. The Tribunal held that the recommendation of the Review Committee was bona fide and did not suffer from any legal infirmity.

Before this Court, it was contended that the recommendation of the Review Committee was vitiated as it was founded on irrelevant and inadmissible material. It was urged that the Review Committee had considered a number of adverse remarks contained in the appellant's service record for the remote past years, and had also considered adverse entries relating to recent years although those adverse entries had not become final.

Allowing the appeal and setting aside the order of premature retirement of the appellant, this Court,

HELD: (1) The purpose of the Rule conferring power on the Government to retire Government servants prematurely is to energise

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its machinery by 'chopping of the dead-wood'. [807C]

Union of India v. J.N. Sinha, [1971] 1 SCR 791.

(2) When a Government servant is promoted to a higher post on the basis of merit and selection prior adverse entries if any contained in his service record lose their significance and those remain on record as part of past history. It would, therefore, be unjust to curtail the service career of Government servant on the basis of those entries in the absence of any significant fail in his performance after his promotion. [807F]

(3) If the adverse remarks awarded to a Government servant are communicated to him after several years, the object of communicating entries is defeated. It is, therefore, imperative that the adverse entries awarded to a Government servant must be communicated to him within a reasonable period to afford him opportunity to improve his work and conduct and also to make representation in the event of the entry being unjustified. In the instant case, belated communication of the entries resulted into denial of reasonable opportunity to the appellant to improve his performance. [808A-B]

(4) The appellant's representation against the adverse entries relating to a number of years was rejected on the

ground that the representation was barred by time. Since the communication of the adverse entries was itself highly belated, the representation against those adverse remarks should have been considered on merits and the same could not be rejected on the alleged ground of delay as the Government itself was guilty of inordinate delay in communicating the adverse remarks to the appellant. [808D]

(5) The appellant had a right to make representation against the adverse entries within six months period. Therefore, the adverse entries awarded to the appellant in the years 1981-82 and 1982-83 could not be taken into account either by the Review Committee or by the State Government in forming the requisite opinion contemplated by Rule 71(1)(a) of the Orissa Service Code, before the expiry of the period of six months. It is settled view that it is not permissible to prematurely retire a Government servant on the basis of adverse entries, representations against which are not considered and disposed of. [809C-D, 808H-809A]

Brij Mohan Chopra v. State of Punjab, [1987] 2 SCR 583.

(6) The Members of the Tribunal must follow rules of natural  
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justice in administering justice like judges. They should not sit in judgment on their own decisions. In the instant case Shri Gian Chand, who had administratively taken a decision as Chief Secretary against the Appellant, considered the matter judiciary as the Chairman of the Administrative Tribunal, thereby he acted as a Judge of his own cause. While it is true that there is no allegation of personal bias against Shri Gian Chand, he may have acted bona fide, nevertheless, the principles of natural justice, fair play, and judicial discipline required that he should have abstained from hearing the appellant's case. [810B, 809F-H]

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3050 of 1989.

From the Judgment and Order dated 21.12.87 of the Orissa Administrative Tribunal in T.A. No. 161 of 1987..

P.P. Rao and C.S.S. Rao for the Appellant.

P.N. Misra and A.K. Panda for the Respondents. The Judgment of the Court was delivered by SINGH, J. Leave granted.

This appeal is directed against the judgment of the Orissa Administrative Tribunal, Bhubaneswar dated 21.12. 1987 dismissing the appellant's suit challenging his pre- mature retirement from service.

The appellant, a qualified Electrical Engineer with training in West Germany, joined service of Orissa Government as an Assistant Engineer (Electrical) in 1955. In 1961 he was promoted to the rank of Executive Engineer (Electrical) and deputed to the Orissa State Electricity Board. In March, 1976 he was promoted to the post of Superintending Engineer (Electrical) on the basis of merit. In 1979 while working on the post of Superintending Engineer (Electrical) he was allowed to cross the Efficiency Bar with effect from 1.1.1979. He also officiated on the post of Chief Engineer (Electrical) in Orissa State Electricity Board. Since he had completed 50 years of age a Review Committee constituted by the Government of Orissa considered his service record in October, 1983 for determining his suitability for retention in service in accordance with the first proviso to Rule 71(a) of the Orissa Service Code. On the recommendation of the Review Committee the State Government by its order dated 10.11.1983 pre-maturely retired the appellant from service. He filed a civil suit before the Subordinate Judge, Bhubaneswar challenging the validity of his pre-mature retirement on a number of grounds. On the Constitution of the Orissa Administrative Tribunal the suit was transferred to the Administrative Tribunal, Bhubaneswar, under Section 29 of the Administrative Tribunals Act. The Tribunal by its order dated 21.12.1987 dismissed the suit and upheld the validity of appellant's pre-mature retirement. Hence this appeal. The Tribunal held that the Review Committee on an assessment of the overall performance of the appellant's conduct had bona fide made recommendations to the State Government that the appellant's retention in service was not in public interest, and in pursuance thereof the State Government retired the appellant pre-maturely. The Tribunal further held that the order of pre-mature retirement does not suffer from any legal infirmity. Learned counsel for the appellant urged that the Tribunal committed serious error in upholding the order of pre-mature retirement as the recommendation of the Review Committee was vitiated as it was rounded on irrelevant and inadmissible material. In this connection, he urged that the Review Committee had considered a number of adverse remarks contained in the appellant's service record for the remote past years which had no relevance and it had further considered adverse entries relating to the recent years although those adverse entries had not become final as the representations against those adverse entries had not been considered by the State Government. He urged that while considering overall performance of the appellant the Review Committee was influenced by the entries of remote past, which had lost their significance as in spite of those entries the appellant had been promoted to higher post on merit and he had also been permitted to cross Efficiency Bar. Before we consider these submissions it would be pertinent to refer of the recommendations of the Review Committee which are as under:

"From the year 1969-70 to 1982-83, Shri Baidyanath Mohapatra has got adverse remarks for the years 1969-70, 1970-71, 1972-73, 1975-76, 1976-77, 1981-82 and 1982-83. Although he was an intelligent officer, he did not apply his mind and did not bestow adequate zeal in his work. He did neither assume responsibility nor did he work hard for which the Chief Engineer had to deal with his Executive Engineers and Assistant Engineers directly. He was found to be too cursory in dealing with the problems and adept in putting the responsibilities for deficiencies on others. His performance during most of the years was found to be of average standard. The Committee, considering his overall performance, was of the view that his continuance in service is not desirable in public interest and that he be retired prematurely. This officer would have retired on superannuation on 30.9.1989."

No exception can be taken to the Government's opinion in retiring the appellant pre-maturely on the basis of the aforesaid recommendation of the Review Committee as it clearly indicated that the appellant's retention in service was not in public interest. The purpose of the Rule conferring power on the Government to retire Government servants pre-maturely is to energise its machinery by "chopping of the dead-wood" as held by this Court in *Union of India v. J.N. Sinha*, [1971] 1 SCR 791. The question which falls for consideration is whether the Review Committee was justified in making its recommendations on the basis of adverse entries awarded to the appellant in remote past especially when the appellant had been promoted to the post of Superintending Engineer in 1976 and he had further been permitted to cross Efficiency Bar in 1979. The adverse entries relating to the years 1969-70, 1970-71, 1972-73 and 1975-76, had lost all significance, because in spite of those entries the appellant was considered to be an intelligent and efficient officer and in that view he was promoted to the post of Superintending Engineer. If those entries did not reflect deficiency in appellant's work and conduct for the purpose of promotion, it is difficult to comprehend as to how those adverse entries could be pressed into service for retiring him pre-maturely. When a Government servant is promoted to a higher post on the basis of merit and selection, adverse entries if any contained in his service record lose their significance and those remain on record as part of past history. It would be unjust to curtail the service career of Government servant on the basis of those entries in the absence of any significant fall in his performance after his promotion.

The adverse entries for the years 1969-70, 1970-71, 1972-73 and 1975-76 were communicated in a lot to the appellant in 1978, although under the instructions issued by the State Government the adverse entries must be communicated by December of each year. The purpose of communicating adverse entries to the Government servant is to inform him regarding his deficiency in work and conduct and to afford him an opportunity to make, amend, and improvement in his work, and further if the entries are not justified the communication affords him an opportunity to make representation. If the adverse remarks-awarded to a Government servant are communicated to him after several years, the object of communicating entries is defeated. It is therefore imperative that the adverse entries awarded to a Government servant must be communicated to him within a reasonable period to afford him opportunity to improve his work and conduct and also to make representation in the event of the entry being unjustified. In the instant case, adverse entries relating to a number of years were communicated to the appellant in one lot under a letter dated 27.2.1978 contrary to the instructions issued by the State Government as contained in Circular No. 29 dated 19.2.1953. Belated communication of the entries resulted into denial of reasonable opportunity to the appellant to improve his performance. Further since adverse remarks for several years were communicated with inordinate delay it was impossible for the appellant to make an effective representation against the same. The appellant's representation against the aforesaid entries was rejected on 12.3.1981 on the ground that the representation was barred by time. Since the communication of the adverse entries was itself highly belated the representation against those adverse remarks should have been considered on merits and the same could not be rejected on the alleged ground of delay as the Government itself was guilty of inordinate delay in communicating the adverse remarks to the appellant. Adverse remarks relating to the years 1981-82 and 1982-83 were taken into account by the Review Committee in formulating its opinion against the appellant's retention in service. The appellant's representation against those entries had not been considered, yet the Review Committee placed reliance on those entries. In fact, the adverse remarks

for the year 1981-82 were communicated to the appellant under the letter dated 21.6.1983 which was received by him on 5.7.1983, and as regards the adverse remarks for the 'year 1982-83 these were communicated to the appellant under the letter dated 29.7.1983 which was received by him on 9.8.1983. He made representation to the Government against the aforesaid adverse remarks on 1.11.1983 but before the representation could be considered by the Government the impugned order of pre-mature retirement was made on 10.11.1983. These facts make it amply clear that the appellant's representation against the aforesaid adverse remarks for the years 1981-82 and 1982-83 was pending and the same had not been considered or disposed of on the date the impugned order was issued. It is settled view that it is not permissible to pre-maturely retire a Government servant on the basis of adverse entries, representations against which are not considered and disposed of. See. *Brij Mohan Chopra v. State of Punjab*, [1987] 2 SCR 583. When this aspect was pressed before the Tribunal, it took a peculiar view in holding that since the representation had not been made before the date on which the Review Committee had considered the appellant's case, the Committee need not have waited for the disposal of the appellant's representation and it was free to take into account the adverse remarks awarded to the appellant in the years 1981-82 and 1982-83. The appellant placed reliance on the decision of this Court in *Brij Mohan Chopra's* case but the Tribunal by some involved logic avoided giving effect to the law laid down by this Court. It is not disputed that in the State of Orissa a Government servant has right to make representation within six months from the date of communication of the adverse remarks. The appellant had right to make representation against the adverse entries within six months period, therefore, the adverse entries awarded to him in the years 1981- 82 and 1982-83 could not be taken into account either by the Review Committee or by the State Government in forming the requisite opinion as contemplated by Rule 71(1)(a) of the Orissa Service Code, before the expiry of the period of six months. Since the period prescribed for making representation against the adverse remarks for the years 1981-82 and 1982-83 had not expired, the proper course for the Review Committee should have been not to consider those entries or in the alternative, the Review Committee should have waited for the decision of the Government on the appellant's representation. The view taken by the Tribunal is not sustainable in law.

There is a disturbing feature of this case which vitiates Tribunal's order. Shri Gian Chand, Chairman of the Tribunal, ex-Chief Secretary of the State of Orissa, was member of the Review Committee which made recommendation against the appellant for his pre-mature retirement, and in pursuance thereof the State Government had issued the impugned order. It appears that Sh. Gian Chand, had later been appointed as Chairman of the Administrative Tribunal. Shri Gian Chand, participated in the proceedings of the Tribunal, and he is party to the decision of the Tribunal. These facts show that Mr. Gian Chand, who had administratively taken a decision against the appellant, considered the matter judicially as a Chairman of the Tribunal, thereby he acted as a Judge of his own cause. While it is true that there is no allegation of personal bias against Sh. Gian Chand, he may have acted bona fide, nonetheless, the principles of natural justice, fair play, and judicial discipline required that he should have abstained from hearing the appellant's case. While considering the appellant's case the Tri-

bunal exercised judicial powers and it was required to act judicially, as the jurisdiction of the Civil Court and High Court have been excluded and vested in the Administrative Tribunal. The Members of the Tribunal must follow rules of natural justice in administering justice like Judges, they should

not sit in judgment on their own decisions. Sh. Gian Chand was disqualified to hear the appellant's case. The order of the Tribunal is vitiated on this ground but as the appellant had not raised any objection before the Tribunal against the participation of Sh. Gian Chand, we do not consider it necessary to grant relief to the appellant on this ground.

For the aforesaid reasons we hold that the order of pre-mature retirement is vitiated and the Tribunal committed error in upholding the same. We accordingly allow the appeal, set aside the order of the Tribunal dated 21.12.1987 and also the order of the State Government dated 10.11. 1983. The appellant is entitled to reinstatement with all consequential benefits of service in addition to the costs.

R.S.S.

Appeal allowed.