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I.K. MISHRA

v.

UNION OF INDIA AND ORS.

JULY 11, 1997

B

[SUJATA V. MANOHAR AND V.N. KHARE, JJ.]

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*Service Law : C.C.S. pension Rules—1972—Rule 48 (b)—Compulsory retirement order made after considering the service record is valid—Adverse remarks in character roll continue when no promotion is given—Allegation of malafides cannot be considered in the absence of full facts in the plaint.*

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The challenge in this case was against an order of Compulsory retirement and the High Court reversed the decision of two lower Courts which had decreed in favour of the appellant. The contention of the Appellant was that the order of compulsory retirement was arbitrary; that on his having passed the S.A.S. Part II Civil Examination, the adverse entries in the Character roll lost their impact and could not be made a ground for compulsory retirement; and that the order of the AG was malafide.

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Dismissing the Appeal, this Court

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HELD : 1. The adverse remarks in the annual confidential report and the minor punishment inflicted upon the appellant clearly demolishes the contention that the appellant's service record was unblemished. It is not disputed that the entire service record including (good and bad) entries of the appellant were placed before the Review Committee and the Review Committee after considering the aforesaid reports mainly confidential report/character roll, both favourable and adverse, recommended to the appointing authority for compulsory retirement of the appellant from service. The adverse materials placed before the Review Committee and the appointing authority show that the order compulsorily retiring the appellant was based on material on record and by no stretch of imagination it can be branded as arbitrary. [264-G-H; 265-A]

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2. No doubt the appellant was sent by the respondents to appear in S.A.S. examination in the year 1972-73 after having been found that the appellant complied with the conditions for appearing in the said examina-

tion and further the appellant passed the S.A.S. Part II examination, but merely the fact that the appellant was sent to appear in the examination and was declared successful in the said examination are not the end of the matter. In fact passing of the S.A.S. examination entitles an auditor to be considered for promotion to the higher post by the Departmental Promotion Committee. In the present case after the appellant was declared successful in the S.A.S. examination, the Departmental Promotion Committee after considering the service record of the appellant did not recommend his case for further promotion. Applying the principle in the case of *Baikuntha Nath Das* the appellant having not been promoted to the higher post the adverse remarks in his character roll remained intact. Since the appellant was not promoted to the higher post by the Departmental Promotion Committee it is not correct to contend that the adverse materials in the annual confidential report of the appellant lost their sting and those materials could not form the basis of order of compulsorily retiring the appellant from service. [265-C-F]

*Baikuntha Das and another v. Chief District Medical Officer, Baripada and another*, [1992] 2 SCC 299, relied on.

3. It cannot be said that the order compulsorily retiring the appellant was a *mala fide* order as the same was passed at the instance of the Accountant General, M.P., who bore grudge against the appellant. It may be noticed that the record before the Court does not show that the Accountant General, M.P., was party to the suit. In fact he was not impleaded by name in the suit. Further, the allegations against him were totally vague. No inference of *mala fide* could be drawn from such allegations. In the absence of full facts and particulars in the plaint in respect of allegation of *mala fides* the order compulsorily retiring the appellant cannot be held to be *mala fide* order. [265-G-H; 266-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3137 of 1986.

From the Judgment and Order dated 9.7.85 of the Madhya Pradesh High Court at Gwalior in C.S.A. No. 127 of 1981.

Ravindra Bana for the Appellant.

M.L. Jain, Rao Ranjit for C.V. Subba Rao for the Respondents.

A The Judgment of the Court was delivered by

B V.N. KHARE, J. The appellant before us, started his service career as a Sub-Auditor in the erstwhile Holkar Estate, Indore with effect from 5th February, 1943. Subsequently on reorganisation of states in the year 1956 the appellant continued to serve in the office of Accountant General, Madhya Pradesh, Gwalior. The appellant while working as Auditor was accorded selection grade. However, subsequently the appellant was compulsorily retired from service by notice dated 23rd of August, 1974 issued under Rule 48(b) of C.C.S. Pension Rules, 1972 hereinafter referred to as the Rules.

C The appellant challenged the impugned notice compulsorily retiring him from service by filing a Civil Suit in the Court of Sub-Judge, Gwalior for a declaration that the order compulsorily retiring him from service is illegal and inoperative, being arbitrary and *mala fide*. The Trial Court decreed the suit and the aforesaid decree was affirmed by the First Lower Appellate Court. The High Court in the Second Appeal filed at the instance of the respondents set aside the decree and judgments of the Trial Court and the First Appellate Court holding that the order compulsorily retiring the appellant from service did not suffer from infirmity either on account of arbitrariness or *mala fides*. That is how the plaintiff appellant has come up in appeal before us.

F Counsel for the appellant reiterated the argument advanced before the Court below characterising the order compulsorily retiring the appellant from service as arbitrary and *mala fide*. It was urged that the service record of the appellant being unblemished, the impugned order compulsorily retiring the appellant deserves to be held as arbitrary. The law in regard to the compulsory retirement of the government servants in terms of service rule is almost settled by now by number of decisions of this Court. Repeatedly it has been held that the power to retire compulsorily a government servant in terms of the service rules is absolute provided the concerned authority forms an opinion *bona fide* that it is necessary to pass order of compulsory retirement in the public interest. This Court in the case of *Baikuntha Das and another v. Chief District Medical Officer, Baripada and another*, [1992] 2 S.C.C. 299 after considering the number of decisions of the apex Court referred the following principles for testing the validity of order of compulsory retirement.

“34. The following principles emerge from the above discussion : A

(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. B

(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. C D

(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. E F

(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. G

Interference is permissible only on the grounds mentioned in (iii) above. This aspect has been discussed in paras 30 to 32 above.” H

- A Applying principles No. 3 and 4 to the present case, it is worthwhile to refer to the entries pertaining to appellant in his Annual Confidential Report. In the annual confidential report for the year 1960-61 the appellant has been described as an average worker and his further promotion was deferred. In the year 1961-62 the appellant was again graded as poor.
- B About trustworthiness it was remarked that his work requires supervision as his accuracy is limited. Against column "business habits" it was remarked that appellant's method of working is not systematic. During the period 1.4.64 to 26th of December, 1964 against the column "fitness and further advancement of appellant", it was remarked - "question does not arise". During the period 1965-66 and 1966-67 as well the appellant was
- C described as an average worker. By letter dated 8th of September, 1972 the Senior Deputy Accountant General, Administration observed that the appellant has not been reported good and was required to show improvement in his work before he may be allowed to cross the efficiency bar. For the period beginning from 13.6.1971 to 30.11.1971 the Reviewing
- D Officer observed in the report that the appellant is not fit for further advancement and is an average worker.

- Besides that by an order dated 4th February, 1970 passed by the Accountant General, the appellant was subjected to the minor penalty of
- E withholding next increment for the period of two years with cumulative effect of postponing future increments which was reduced by the Appellate Authority to withholding of increments "for two years without cumulative effect". By letter dated 20th of November, 1973 passed by the Accountant General, the appellant was further subjected to the penalty of reduction to
- F the lower stage of Rs. 550 for a period of two years and further the appellant was denied benefit of increment during the period of subsistence of the penalty.

- The adverse remarks in the annual confidential report and the minor punishment inflicted upon the appellant as referred herein before clearly
- G demolishes the contention that appellant's service record was unblemished. It is not disputed that the entire service record including (good and bad) entries of the appellant were placed before the Review Committee and the Review Committee after considering the aforesaid reports mainly confidential report/character roll both favourable and adverse
- H recommended the appointing authority for compulsory retirement of the

appellant from service. The adverse materials placed before the Review Committee and the appointing authority show that the order compulsorily retiring the appellant from service was based on material on record and at no stretch of imagination it can be branded as arbitrary.

It was then contended that the appellant having passed the S.A.S. Part II Civil Examination in the year 1972-73 after complying with the eligibility criteria laid down in the Regulations 199 and 207, the adverse entries in the character roll of the appellant lost their sting and for that reason there was no material on record on basis of which the appointing authority could form an opinion to compulsorily retire the appellant from service. No doubt the appellant was sent by the respondents to appear in S.A.S. examination in the year 1972-73 after having been found that the appellant complied with the conditions for appearing in the said examination and further the appellant passed the S.A.S. Part II examination but merely the facts that the appellant was sent to appear in the examination and was declared successful in the said examination are not the end of the matter. In fact passing of the S.A.S. examination entitles an auditor to be considered for promotion to the higher post by the Departmental Promotion Committee. In the present case after the appellant was declared successful in the S.A.S. examination, the Departmental Promotion Committee after considering the service record of the appellant did not recommend his case for further promotion. Applying the principle No. 4 as noted in the case of *Baikuntha Nath Das* (supra) the appellant having not been promoted to the higher post the adverse remarks in his character roll remained intact. Since the appellant was not promoted to the higher post by the Departmental Promotion Committee it is not correct to contend that the adverse materials in the annual confidential report of the appellant lost their sting and those materials could not form the basis of order compulsorily retiring the appellant from service.

Lastly it was urged that the order compulsorily retiring the appellant was a *mala fide* order as the same was passed at the instance of Shri Manazure Muastafa Siddiqui, Accountant General, M.P., who bore grudge against the appellant. This argument is being noted only to be rejected. It may be noticed that the record before us does not show that Shri Manazure Muastafa Siddiqui was party to the suit. In fact he was not impleaded by

A name in the suit. Further, the allegations against Shri Siddiqui were totally vague. No inference of *mala fide* could be drawn from such allegations. In the absence of full facts and particulars in the plaint in respect of allegation of *malafides* the order compulsorily retiring the appellant cannot be held to be *mala fide* order.

B For the aforesaid reasons the instant appeal has no merit and is accordingly dismissed. There shall be no order as to costs.

I.M.A.

Appeal dismissed.