

Case :- WRIT - A No. - 55436 of 2017

Petitioner :- Head Constable Ravindra Mishra

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Satya Prakash Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Saral Srivastava, J.

1. Heard Sri Satya Prakash Pandey, learned counsel for the petitioner and Dr. Amar Nath Singh, learned Standing Counsel for the respondents.
2. The petitioner by means of the present writ petition has assailed the orders dated 31.07.2017 and 10.11.2017 passed by respondent no.2 by which the petitioner has been compulsorily retired from service.
3. The petitioner was appointed as Constable in P.A.C. on 15.08.1981 and was promoted as Head Constable in the year 1992. The date of birth of the petitioner is 25.06.1962 and the date of retirement is 30.06.2022.
4. It appears that a decision was taken by the Government to assess the suitability of about 203 Constables belonging to Class-III employees and 36 employees of Class-IV working in the P.A.C. Department for continuing in service.
5. Pursuant to the said decision, a Committee was constituted to assess the suitability of employees. Accordingly, the committee constituted for such purpose, assessed the suitability of employees. The Committee on the assessment of service record of the petitioner found that in the last 10 years the service of the petitioner was not satisfactory, and accordingly, his services are no longer required in the public interest. Consequently, the committee recommended the compulsory retirement of the petitioner by order dated 31.07.2017.
6. The case of the petitioner is that the service record of the petitioner has not been properly assessed by the committee, yet he has been recommended for compulsory retirement.
7. A counter affidavit has been filed by the respondent-state stating

that the petitioner was awarded five minor punishments in the years 1984, 1989, 1998, 2001, and 2015. It was further stated that the petitioner was awarded three censure entries in the years 2002, 2007, and 2010 and adverse annual remarks in the years 2002, 2010, 2013, and 2015. Thus, the service of the petitioner is not satisfactory. The respondents also enclosed a chart based on the service book of the petitioner demonstrating the punishment awarded to the petitioner. The chart enclosed as Annexure 4 to the counter affidavit is being extracted herein-below:-

"उद्धरण चित्र पंजिक मुख्य आरक्षी पीएन० ओ नं० 810630129 रवीन्द्र मिश्रा

दण्ड का प्रकार	दण्ड की संख्या	दण्ड प्रदान किये जाने का वर्ष	चरित्र पंजिका का पेज संख्या
छुद्र दण्ड	01	1984	पेज सं०- 82 पर अंकित है।
	01	1989	पेज सं०- 82 पर अंकित है।
	01	1998	पेज सं०- 82 पर अंकित है।
	01	2001	पेज सं०- 82 पर अंकित है।
	01	2015	पेज सं०- 83 पर अंकित है।
परिनिन्दा प्रविष्टि	02	2002	पेज सं०- 77,78 पर अंकित है।
	01	2007	पेज सं०- 79 पर अंकित है।
	01	2010	पेज सं०- 80 पर अंकित है।
प्रतिकूल मन्तव्य	01	2002	पेज सं०- 51 पर अंकित है।
	01	2010	पेज सं०- 55 पर अंकित है।
	01	2013	पेज सं०- 56-57 पर अंकित है।
	01	2014	पेज सं०- 57 पर अंकित है।

सेनानायक
12 वीं वाहिनी पीएसी
फतेहपुर"

8. The further averment in the counter affidavit is that the screening committee after scrutinizing the service record of the petitioner found that five minor punishments, three censure entries, and four annual remarks had been awarded to the petitioner, accordingly, it recommended for compulsory retirement of the petitioner as the continuance of the petitioner in service would not be in the public interest.

9. To meet the averments made in the counter affidavit, a second supplementary affidavit has been filed by the petitioner stating therein that petitioner on completing 8 years of satisfactory service as Head Constable was given the benefit of selection grade w.e.f 09.07.2000, and on completing 14 years of service, he was granted super selection grade on 09.07.2006. It is further stated that vide Hindi Order Book (HOB) No.408 dated 15.07.2014, the petitioner was granted Grade Pay of Rs.4600/- under Assured Career Progression (ACP) Scheme by providing two increments w.e.f 30.03.2013. The arrears of salary was also paid to the petitioner. It is further stated that none of the adverse entries awarded to the petitioner in the last 10 years have been communicated to the petitioner, particularly entries of the years 2010, 2013 & 2014 were never communicated to the petitioner. The integrity of the petitioner was always certified by the concerned officer.

10. Respondent no.2 filed a supplementary counter affidavit wherein he did not deny the fact of granting time pay scale to the petitioner on 07.09.2000, but it was pleaded that petitioner was placed under suspension on being engaged in a scuffle with one Indrapal during the Parade at 42nd Battalion P.A.C., Allahabad. It is further pleaded that from the service record, it is also evident that the petitioner was awarded adverse entries in the years 2013 & 2014, however, it is not clear from the record as to whether these entries were communicated to the petitioner or not. The petitioner was punished in the year 2015 at Orderly Room and was awarded adverse entry by order dated 08.01.2018. The petitioner was punished with a penalty of Rs.500 by order dated 30.03.2010.

11. In the rejoinder affidavit filed to the counter affidavit petitioner did not deny the fact of various punishments awarded to the petitioner but has tried to explain in paragraph 5 of the rejoinder affidavit why they are not relevant while assessing and scrutinizing the past service record of the petitioner for consideration to recommend the petitioner for compulsory retirement.

12. The petitioner filed a supplementary rejoinder affidavit to the supplementary counter affidavit wherein the averments made in the

supplementary counter affidavit have not been specifically denied. However, in paragraph 5 of the rejoinder affidavit, he has stated that the date 08.01.2018 has been wrongly mentioned whereas the correct date is 08.01.2008, but he did not deny the fact that he was awarded adverse entry by the said order.

13. Challenging the order of compulsory retirement, learned counsel for the petitioner has submitted that the order of compulsory retirement has been passed without correctly assessing and scrutinizing the service record of the petitioner. He submits that there was no material or evidence against the petitioner before the committee based on which the committee could form an opinion that continuance of petitioner in service is not in the public interest. He further submits the fact that the petitioner has been extended the benefit of the time pay scale and benefit of ACP by granting two increments w.e.f 30.03.2013 implies that whatever adverse entries or order of punishment are recorded in the service record of the petitioner have been condoned as the benefit of the time pay scale and ACP are granted on the basis of satisfaction of past service of an employee, and thus, it proves that recommendation of the committee recommending the petitioner to compulsory retirement is not based upon proper appreciation of record of past service of the petitioner. It is further submitted that since the recommendation for compulsory retirement has been made without application of mind, therefore, order of compulsory retirement is not sustainable in law and deserves to be set aside. In support of his aforesaid submissions, he has placed reliance upon the following judgments:-

- i. ***State of Gujarat and Another Vs. Suryakant Chunilal Shah (1999) 1 SCC 529;***
- ii. ***Madhya Pradesh State Cooperative Dairy Federation Limited and Another Vs. Rajnesh Kumar Jamindar and Others (2009) 15 SCC 221;***
- iii. ***Avinash Chandra Tripathi Vs. State of U.P. and Another 2018 (7) ADJ 582 (DB).***

14. Per contra, learned counsel for the respondents has submitted that specific case of the respondents in the counter affidavit is that petitioner has been awarded punishment and adverse entry several times in the

entire service, and the committee after scrutinizing the service record of the petitioner rightly formed opinion that continuance of petitioner is not in the public interest and accordingly, the committee has rightly recommended the petitioner for compulsory retirement. He submits that the Court under Article 226 of Constitution of India may not interfere with the order of compulsory retirement except where the order has been passed malafidely, capriciously, and based upon extraneous consideration and as none of the conditions in which this Court can interfere with the order of compulsory retirement are present, the writ petition being devoid of merit deserves to be dismissed. In support of his aforesaid contention, he has placed reliance upon the judgment of this Court in Writ-A No.52623 of 2017 (***Dinesh Chandra Vs. State of U.P. & Another***) & Writ-A No.11828 of 2018 (***Shiv Charan Vs. State of U.P. And 3 Others***).

15. Before proceeding to appreciate the argument of learned counsel for the petitioner, it would be apposite to refer to the judgment of Apex Court in the case of ***Rajesh Kumar Gupta Vs. State of Jammu & Kashmir and Others (2013) 3 SCC 514*** wherein Apex Court has succinctly explained the law on compulsory retirement. Paragraphs 20 & 21 of the said judgment are being extracted herein below:-

*“20. The principles on which a government servant can be ordered to be compulsorily retired were authoritatively laid down by this Court in *Baikuntha Nath Das Vs. District Medical Officer (1992) 2 SCC 299*. In para 34, the principles have been summed up as follows:-*

“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.”

21. The aforesaid principles have been re-examined and reiterated by this Court in Nand Kumar Verma Vs. State of Jharkhand (2012) 3 SCC 580. The principles have been restated as follows:-

“34. It is also well settled that the formation of opinion for compulsory retirement is based on the subjective satisfaction of the authority concerned but such satisfaction must be based on a valid material. It is permissible for the courts to ascertain whether a valid material exists or otherwise, on which the subjective satisfaction of the administrative authority is based. In the present matter, what we see is that the High Court, while holding that the track record and service record of the appellant was unsatisfactory, has selectively taken into consideration the service record for certain years only while making extracts of those contents of the ACRs. There appears to be some discrepancy. We say so for the reason that the appellant has produced the copies of the ACRs which were obtained by him from the High Court under the Right to Information Act, 2005 and a comparison of these two would positively indicate that the High Court has not faithfully extracted the contents of the ACRs.

36. The material on which the decision of the compulsory retirement was based, as extracted by the High Court in the impugned judgment, and material furnished by the appellant would reflect that totality of relevant materials were not considered or completely ignored by the High Court. This leads to only one conclusion that the subjective satisfaction of the High Court was not based on the sufficient or relevant material. In this view of the matter, we cannot say that the service record of the appellant was unsatisfactory which would warrant premature retirement from service. Therefore, there was no justification to retire the appellant compulsorily from service.”

16. In the case of ***State of Gujarat Vs. Umedbhai M. Patel (2001) 3 SCC 314*** the Apex Court has broadly summarised the principles relating to compulsory retirement. Paragraph 11 of the said judgment is being extracted herein below:-

“11. The law relating to compulsory retirement has now crystallised into definite principles, which could be broadly summarised 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 to 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 adverse 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 more 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.”*

17. In the light of parameters laid down by the Apex Court in the aforesaid two judgments, the Court proceeds to analyse the challenge to the order of compulsory retirement. In the case in hand, the record reflects that the petitioner has been awarded several punishments during the entire tenure of service which has been detailed in the earlier part of the judgment.

18. The fact that the petitioner has been awarded so many adverse entries and punishment as stated in the counter affidavit, which has been detailed above, has not been categorically denied by the petitioner. Though, the petitioner has tried to explain in rejoinder affidavit that those punishment or adverse entries are not sufficient material based on which the committee could form an opinion that continuance of petitioner in service is not in the public interest.

19. It is also urged by the learned counsel for the petitioner that whatever adverse entry or punishment has been awarded in the past are condoned by the respondents for the reasons that petitioner has been

awarded time pay scale and grade pay etc. and had been granted ACP which can be granted only when in the opinion of the department, service of the petitioner had been satisfactory.

20. At this point, it would be worth notice the judgment of this Court in the case of **Dinesh Chandra (supra)** wherein order of compulsory retirement has been assailed on the ground that it was based upon annual confidential remarks for the years 2011-12 and 2013-14, and an 'Excellent' entry awarded by the Tehsildar for the year 2016-17 was ignored, thus, order of compulsory retirement is illegal; while repelling the said contention, this Court held that the order of compulsory retirement is based upon subjective satisfaction of the employer and a very limited scope of judicial review is available in such cases. It is further held that the order of compulsory retirement is neither punitive nor stigmatic. Paragraph 8 of the said judgment is being extracted herein below:-

“8. Constitution Bench of Supreme Court in Shyamlal v. State of U.P., AIR 1954 SC 369, held that the two requirements for compulsory retirement are that the officer has completed twenty-five years service and that it is in the public interest to dispense with his further services. It is true that this power of compulsory retirement may be used when the authority exercising this power cannot substantiate the misconduct which may be the real cause for taking the action but what is important to note is that the directions in the last sentence in Note 1 to Article 465-A make it abundantly clear that an imputation or charge is not in terms made a condition for the exercise of the power. In other words, a compulsory retirement has no stigma or implication of misbehaviour or incapacity. A compulsory retirement does not amount to dismissal or removal and, therefore, does not attract the provisions of Article 311 of the Constitution. In Rajasthan SRTC v. Babu Lal Jangir, (2013) 10 SCC 551, held that 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 non-compliance 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.”

21. Similar view has been taken by this Court in the case of **Shiv Charan (supra)** wherein the order of compulsory retirement was challenged on the ground that the order is stigmatic and has been passed in violation of Article 311(2) of the Constitution of India.

22. Applying the parameters elucidated by the Apex Court in considering the challenge to the order of compulsory retirement, this Court finds that recommendation of the committee to compulsorily retire the petitioner is based upon consideration of the entire service record of the petitioner.

23. It is true that authority while considering as to whether petitioner is deadwood and his continuance in the department is not in the public interest should give due weightage to the record of the last 10 years, but it does not mean that authorities are precluded from looking into the entire service record of the petitioner in forming the opinion that an employee is deadwood and his continuance in the department is not in the public interest.

24. In the present case, even the service record of the last 10 years of the petitioner is not clean which is evident from the chart given in the counter affidavit, extracted above, and this fact has not specifically been denied by the petitioner. However, the petitioner had tried to demonstrate that punishment awarded to him has been condoned on the ground that he had been granted time pay scale, grade pay, and A.C.P. which could be extended to him only when the authorities are satisfied that his past service had been satisfactory.

25. It is true that in the case of *Umedebhai M. Patel (supra)* the Apex Court has held that if the officer was given a promotion despite adverse entries in his confidential record, that is a fact in his favour, but at the same time, Apex Court has also held that adverse entries and uncommunicated entries in the confidential record shall be taken into consideration in forming an opinion as to whether service of the petitioner is required and continuance of petitioner is for the benefit of the department and is in the public interest.

26. At this point, it is worth noticing that principles governing the grant of certain benefits i.e. pay scales and other benefits are different than the assessment of service record of the petitioner to assess the suitability of the petitioner whether his continuance in the department is for the public good or not, therefore, grant of the promotional pay scale, etc. may be one factor which may be in favour of the petitioner, but it does not mean that

authority while assessing the suitability of the petitioner is under obligation to ignore other factors to consider whether the continuance of petitioner in the department is in the public interest or not.

27. In the instant case, right from the joining of service by the petitioner, it is evident that the petitioner has been awarded adverse entries or punishment. The committee is competent to broadly look into the entire service record of the petitioner to form an opinion as to whether the employee should be recommended for compulsory retirement as the object of the compulsory retirement is to weed out the deadwood and making a healthy working environment in the department for the public good.

28. So far as the judgment of this Court in the case of ***Avinash Chandra Tripathi (supra)*** relied upon by the learned counsel for the petitioner is concerned, it was a case where the service record of the petitioner did not reflect any adverse entry against him and one adverse entry, which was awarded to him, was set aside and upon consideration of entire service record, this Court found that opinion formed by the committee for recommending the case of the petitioner for compulsory retirement was not based upon material on record, and accordingly, this Court interfered with the order of compulsory retirement.

29. In the case of ***Suryakant Chunilal Shah (supra)***, the order of compulsory retirement was based upon the involvement of the employee in two criminal cases, and the department based on the involvement of the employee in two criminal cases formed an opinion that the continuance of the employee in the department was not in the public interest. The apex court set aside the order of compulsory retirement holding that involvement of an employee in a criminal case does not imply that he is guilty. Paragraph 27 of the said judgment is being extracted herein-below:-

“27. The whole exercise described above would, therefore, indicate that although there was no material on the basis of which a reasonable opinion could be formed that the respondent had outlived his utility as a government servant or that he had lost his efficiency and had become a dead wood, he was compulsorily retired merely because of his involvement in two criminal cases pertaining to the grant of permits in favour of fake and bogus institutions. The involvement of a person in a criminal case does not

mean that he is guilty. He is still to be tried in a court of law and the truth has to be found out ultimately by the court where the prosecution is ultimately conducted. But before that stage is reached, it would be highly improper to deprive a person of his livelihood merely on the basis of his involvement. We may, however, hasten to add that mere involvement in a criminal case would constitute relevant material for compulsory retirement or not would depend upon the circumstances of each case and the nature of offence allegedly committed by the employee."

30. As the judgment of ***Suryakant Chunilal Shah (supra)*** has been rendered in a different fact situation, therefore, this judgment does not come in aid to the petitioner.

31. In the case of ***Madhya Pradesh State Cooperative Dairy Federation Limited (supra)***, Apex Court affirmed the order of High Court quashing the order of compulsory retirement as no consideration has been given to the performance of the employee for the last five years and order of compulsory retirement had been passed ignoring the rules and circulars made by the Federation to assess the suitability of an employee whether he is dead wood for the department and should be compulsory retired. Paragraphs 41 & 42 of the judgment are being extracted herein-below:-

"41. We have noticed hereinbefore that although criteria adopted by the State were required to be considered for the purpose of determining the suitability or otherwise of the employees to continue in service, the necessity to give special consideration to the performance of the employees for the last five years before the order was passed had been given a complete go-by. The learned Single Judge as also the Division Bench, as noticed hereinbefore, clearly held that for the purpose of weeding out the dead wood, it was absolutely necessary to take into consideration the performance of each of the employees at least for the last two years. Each case, thus, was required to be considered on its merit.

42. The broad criteria, which are not only applicable generally for the aforementioned purpose, were required to be followed but there cannot be any doubt or dispute that the criteria laid down by the State was imperative in character. Thus, the Federation adopted the rules and circulars made or issued by the State Government. The Federation itself having formulated the criteria required to be applied for passing orders of compulsory retirement was, thus, bound thereby."

32. This judgment is also of no help to the petitioner as the facts in which order of compulsory retirement was quashed by the High Court and affirmed by the Apex Court are entirely different and not akin to the facts in the present case.

33. Thus, for the reasons given above, the writ petition lacks merit and is accordingly, *dismissed* with no order as to costs.

Order Date :- 8.10.2021

Sattiyarth