

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 18th day of January, 2008

ORIGINAL APPLICATION No.320/2003

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. J.P.SHUKLA, ADMINISTRATIVE MEMBER

Smt. Shanta Bhatia
w/o late Shri Srinath Bhatia,
aged about 55 years,
r/o Plot No.4-MA-65,
Jawahar Nagar,
Jaipur.

.. Applicant

(By Advocate: Shri Dharmendra Jain)

Versus

1. The Union of India
through the Central Provident Fund
Commissioner,
Employees' Provident Fund Organisation,
Ministry of Labour, Govt. of India,
Bhavishya Nidhi Bhawan,
14, Bhikaji Cama Place,
New Delhi.
2. The Regional Provident Fund Commissioner,
Nidhi Bhawan,
Jyoti Nagar,
Jaipur.

.. Respondents

(By Advocate: Shri Sunil Kumar Yadav, proxy counsel
for Shri N.S.Yadav)

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O R D E RPer Hon'ble Mr. M.L.Chauhan, M(J)

In this case validity of the order dated 13th June, 2003 (Ann.A1) is under challenge whereby the applicant has been retired from service under Rule 56 (J) of the Fundamental Rules on the ground that her services have been curtailed by the respondent in arbitrary manner and the exercise undertaken by the competent authority is vitiated by mala fide.

Chopping of the dead wood/weeding out dishonest and retention in service of only those who are efficient and whose integrity is beyond doubt is the primary object of Rule 56(J) and instructions issued by the Government from time to time in this behalf relating to procedure to be followed in such matters which empowers the Central Government to retire an employee before attaining the age of superannuation. This object can be achieved by the Government/public employer by scrutinizing the records of the employees after a particular age or on completion of the particular year of service with a view to determine whether retention of the particular officer is in the interest of service and/or public interest. The Courts have also recognized the right of the government to weed out those who are inefficient and/or whose integrity is doubtful. Judicial review of an exercise undertaken by the Government/public employer to

prematurely retire an employee is passed by the authority not competent to do so. However, the case law on the subject has been reviewed by the Hon'ble Apex Court in the case of Baikuntha Nath Das Vs. Chief District Medical Officer, Baripada, 1992 (2) SCC 299 and their Lordships after reviewing a number of decisions of the Apex Court has culled out the following propositions:-

"(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 has 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 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 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 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."

The issue was again considered by a two-Judges Bench of the Supreme Court in State of Gujarat vs. Umedbhai M. Patel (2001) 3 SCC 314 and the following principles were laid down:-

- (i) Whenever the services of a public servant are no longer useful to the general administration, he 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 of the officer.
- (iv) Any adverse entries made in the confidential record shall be taken note of and be given due weight 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.

In State of U.P. Vs. Vijay Kumar Jain, 2002 (3) S.C.C.641, the Supreme Court considered the ambit and scope of the employer's right to retire an employee and observed as under:-

"If the conduct of a government employee becomes unbecoming to the public interest or obstructs the efficiency in public services, the Government as under FR 56 (c) read with Explan.(2) an absolute right to compulsorily retire such an employee is a method to ensure efficiency in public service and while doing so the Government is entitled under Fundamental Rule 56 to take

into account the entire service record, character roll or confidential report with emphasis on the later entries in the character roll of an employee. In fact, entire service record, character roll or confidential report furnishes the materials to find out whether a government servant has outlived his utility in service. It is on consideration of totality of the materials with emphasis on the later entries in the character roll that the government is expected to form its opinion whether an employee is to be compulsorily retired or not."

In Bishwanathn Prasad Singh vs.State of Bihar, 2001 (2) SCC 305, a three-Judges Bench of the Supreme Court highlighted the distinction between compulsory retirement brought about as a measure of punishment and one brought about in public interest in the following words:

"Compulsory retirement in service jurisprudence has two meanings. Under the various disciplinary rules, compulsory retirement is one of the penalties inflicted on a delinquent government servant consequent upon a finding of guilt recorded in disciplinary proceedings. Such penalty involves stigma and cannot be inflicted except by following procedure prescribed by the relevant rules or consistently with the principles of natural justice if the field of inflicting such penalty be not occupied by any rules. Such compulsory retirement in the case of a government servant must also withstand the scrutiny of Article 311 of the Constitution. Then there are service rules, such as Fundamental Rule 56(j) of the Fundamental Rules, which confer on the Government or the appropriate authority, an absolute (but not arbitrary) right to retire a government servant on his attaining a particular age or on his completing a certain number of years of service on formation of an opinion that in public interest it was necessary to compulsorily retire him. In that case it is neither a punishment nor a penalty with loss of retiral benefits. Compulsory retirement in public interest under service rules is like premature retirement. It does not cast any stigma. The government servant shall be entitled to the pension actually earned and other retiral benefits. So long as the opinion forming basis of

the order for compulsory retirement in public interest is formed bona fide, the opinion cannot be ordinarily interfered with by a judicial forum. Such an order may be subjected to judicial review on very limited grounds such as the order being malafide, based on no material or on collateral grounds or having been passed by an authority not competent to do so. The object of such compulsory retirement is to weed out the worthless who have lost their utility for the administration."

The fact whether the order of compulsory retirement was punitive or mala fide, the Apex Court in the case of Purushottam Kumar Jha vs. State of Jharkhand and Ors., 2006 SCC (L&S) 1840 has made the following observations in para 23 which thus reads:-

"23. It is well settled that whenever allegation as to malafides have been levelled, sufficient particulars and cogent materials making out prima facie case must be set out in the pleadings. Vague allegation or bald assertion that the action taken was malafide and malicious is not enough. In the absence of material particulars, the court is not expected to make "fishing" inquiry into the matter. It is equally well established and needs no authority that the burden is "very heavy". Malice cannot be inferred or assumed. It has to be remembered that such a charge can easily be "made than made out" and hence it is necessary for the courts to examine it with extreme care, caution and circumspection. It has been rightly described as "the last refuge of a losing litigant." (Vide Gulam Mustafa vs. State of Maharashtra; Ajit Kumar Nag vs. GM (PJ), Indian Oil Corpn. Ltd.)"

It is in the light of the aforesaid principles culled out by the Apex Court by way of judicial pronouncements that the case of the applicant is required to be considered.

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2. Brief facts of the case are that the applicant was appointed as LDC on compassionate ground on 11.2.1971, after death of husband of the applicant. She was promoted as UDC in the year 1976 and Head Clerk in the year 1986. It is further stated that the applicant was further promoted to the post of AAO/EO in the year 1996. The applicant was chargesheeted on 29.9.99 and before completion of the enquiry the applicant was prematurely retired on 13.6.2003 by invoking the provisions of Rule 56(J) of Fundamental Rules. The applicant further stated that she was granted efficiency bar on 28.9.94. According to the learned counsel for the applicant it was not permissible for the respondents to take into consideration the record prior to 28.9.94 when she has crossed the efficiency bar and was also promoted. The only incriminating circumstances against the applicant is the chargesheet dated 29.9.99 which could not have been taken into consideration so long as enquiry is not completed and applicant was held guilty.

3. The respondents have filed reply. Along with the reply, the respondents have annexed copy of the documents which were taken into consideration by the Screening Committee as Ann.R1 to R15. The respondents have also annexed copy of the chargesheet issued on 29.9.99. There are as many as 3 charges which have

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been levelled against the applicant. The gravamen of the charges against the applicant is that applicant while working as Head Clerk has failed to maintain absolute integrity, devotion of duty in the capacity of supervisory cadre and had attributed a loss of Rs. 38,794 + Rs.550 on account of PF payment by clearing the fake claim on Form-19 in favour of Shri Hari Prashad s/o Shri Lekhraj purported to be an employee of M/s Shri Gandhi Mills (P) Ltd., Pali into savings Bank A/c No.9685 maintained at State Bank of India, Tonk Road, Jaipur opened by Shri Suraj Mal Meena in the name of a fictitious persons, Shri Hari Prasad s/o Shri Lekh Raj. From perusal of article of charge, it is also clear that as per Form-9 (revised) of the establishment available with the Regional Office, Jaipur the last A/c No. allotted was RJ/378/57 only and also as per the approved Form -24 available for the year 1978-79 in respect of Code No.RJ/378 in the Regional Office, Jaipur the last number was RJ/378/57 whereas the said fake claim in Form-10 B bore A/c No.RJ378/64.

The respondents have filed MA No.14/2007. Alongwith MA, the respondents have also annexed copy of the order whereby the applicant has been held guilty of aforesaid charges vide punishment order dated 30.8.2006, though after premature retirement of the applicant. However, the penalty order has been kept in

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abeyance since the applicant stood already retired prematurely.

The respondents have also produced the record of the Screening Committee. In the case of the applicant, the Screening Committee has recorded the following findings:-

"Smt. Shanta Bhatia, EO/AAO:

Smt. Shanta Bhatia whose date of birth is 20.11.47 joined service on 11.2.71 and she has attained the age of 50 years in the year 19.11.1997 and has completed 30 years of service 10.2.2001. Hence her case comes under FR 56 (J). On going through all the relevant documents the Screening Committee found that there are several adverse remarks in her ACRs in different years and departmental proceedings are presently in progress against her for having processed fake P.F. claim in respect of RJ/378/64.

It is also seen that several memos were issued to her right since 1976 for various omissions and failure to perform her duties effectively and efficiently. She also remained absent for long periods and thus hampered administrative functioning. She had taken part in illegal demonstration, agitation and Gherao, had not intimated the competent authority regarding purchase of immovable property and has committed various other grave acts of indiscipline as per details given in Annexure-SB)I) attached.

The service history of Smt. Shanta Bhatia present a dismal picture of not only failure to perform efficiently and effectively in the various fields of duty but also gross indiscipline and she is also under cloud with regard to integrity. Taking into consideration all the facts and circumstances of the case and the need to maintain an efficient and clean administration, the Screening Committee is of the opinion that it will not be in a public interest to continue Smt. Shanta Bhatia in service and in view of the foregoing the Screening Committee recommends the case of Smt. Shanta Bhatia for compulsory retirement under FR 56 (J)".

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The Review Committee has also recorded the following findings:-

iii. Smt. Shanta Bhatia, EO/AAO

As per the finding of the Screening Committee there are several adverse remarks in her ACRs for different years. Records also indicate that Smt. Bhatia was reportedly involved in processing fake PF claims and departmental proceedings have been initiated against her for the alleged misconduct. Several memos have been issued to her for various omissions and failure to perform her duties effectively and efficiently. She has also remained absent from long periods hampering the functioning of the office, which indicates that Smt. Bhatia is not serious about her employment and she is casual and careless in her behaviour. Besides committing various other grave acts of indiscipline as per details listed by the Screening Committee, she has been found to have taken part in illegal demonstration, agitation and gherao. The official in violation of conduct rules had also not intimated the Competent Authority regarding purchase of immovable property. This reflects adversely on her conduct, reputation and amiability to discipline.

Taking cognizance of above particularly the fact that Smt. Shanta Bhatia does not enjoy a good reputation in the matter of honesty and probity in public life, the Review Committee is of the opinion that Smt. Shanta Bhatia, EO/AAO has not only failed to perform efficiently and effectively in the various fields of duty but besides gross indiscipline she has also come under cloud with regard to her integrity. The Review Committee has accordingly come to the conclusion that keeping in view the need to maintain an efficient and clean administration, it will not be in public interest to continue Smt. Shanta Bhatia in service, as the same would seriously hamper discipline, decorum and smooth functioning of the office. The Review Committee accordingly recommends that Smt. Shanta Bhatia be retired prematurely under FR 56 J"

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4. We have heard the learned counsel for the parties and gone through the material placed on record.

5. It is well settled that the order of premature retirement is not punishment. 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 subjective satisfaction of the Government. It is further held by the Apex court that 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. It is held that after 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 and not upon seniority. The respondents have placed copy of the OM dated 6.11.98 as Ann.R17 which fact proves that promotion up to Group-B can be granted to those persons having 'average' benchmark if sufficient number of employees with 'good' benchmarks are less than the number of vacancies, if promotion is given on the basis of selection-cum-seniority. Even in terms of principle No. iv) as culled out by the Apex Court in the case of Baikuntha Nath Das vs. Chief District Medical Officer, Baripada, 1992 (2) SCC 299, the

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applicant is not entitled to any relief. The view that the person has been granted promotion, as such, adverse report prior to that cannot be looked into has also been negated by the Apex Court in the case of State of U.P. Vs. Lalsa Ram, 2001 SCC (L&S) 593 whereby the Apex Court relying on the principle No. iv) as enunciated by the Apex court in the case of Baikuntha Nath Das (supra) and also relying upon the decision of the Apex Court in the case of I.K.Mishra vs. Union of India, 1997 SCC (L&S) 1654 has categorically held that in the event however the promotion is offered only on the ground of seniority without any assessment of the entire career situation, question of adverse entries lose their sting does not and cannot arise. In the contextual facts if it was promotion by way of a selection and not by way of seniority, no exception could be taken therefore but the facts in the present context depict otherwise since the respondent herein was promoted by seniority only. Thus, according to the Apex Court even the adverse record prior to promotion of the applicant can be looked into. Further, the applicant has also not made out any case of mala-fide, though he has levelled vague allegations that six persons were considered by the Screening Committee for the purpose of premature retirement whereas only three persons have been prematurely retired, ipso facto, is not a ground which establishes that the mala-fide is proved. The

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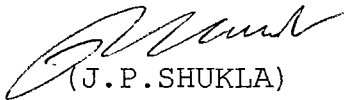
applicant has not alleged any mala-fide or raised any objection against any member of the Screening Committee/Review Committee, who are high officials, as such, this kind of vague allegation cannot be taken into account.

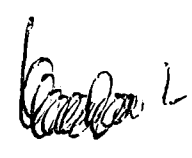
The learned counsel for the applicant argued that the impugned order has been passed as a short cut to avoid departmental enquiry when such course was not desirable. We see no considerable force in the submission made by the learned counsel for the applicant. It is true that ordinarily order of premature retirement should not be passed as a short cut to avoid department enquiry but in the facts and circumstances of the case, the said principle is not applicable, inasmuch as, even the applicant had been held guilty of the charges in the departmental proceedings which were continued by the department even after premature retirement of the applicant and punishment has been imposed upon the applicant. Even otherwise also from the facts and circumstances of the case and in view of the subjective opinion formed by the Screening and Reviewing Committee, relevant portion of which has been reproduced above and the integrity of the applicant was under cloud, according to us, it was not in the public interest to continue the applicant till completion of the enquiry which will defeat the very purpose for which Rule 56 (J) has been incorporated in the Fundamental Rules.

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It may also be stated that one person namely Shri Satish Jain, whose case was also scrutinized and reviewed by the Committee along with the applicant and validity of the said order has been upheld by this Tribunal vide judgment dated 10th May, 2005 in OA No.412/2003.

6. Thus, taking into consideration the entire facts and circumstances of the case and also that Review Committee has recorded categorical findings that "the Review Committee is of the opinion that Smt. Shanta Bhatia, EO/AAO has not only failed to perform efficiently and effectively in the various fields of duty but besides gross indiscipline she has also come under cloud with regard to her integrity. The Review Committee has accordingly come to the conclusion that keeping in view the need to maintain an efficient and clean administration, it will not be in public interest to continue Smt. Shanta Bhatia in service, as the same would seriously hamper discipline, decorum and smooth functioning of the office" and such finding has been recorded after forming opinion bona-fide, we are of the view that the applicant has not made out a case for our interference. Accordingly, the OA is dismissed with no order as to costs.


(J.P. SHUKLA)
Admv. Member


(M.L. CHAUHAN)
Judl. Member

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