

(2005) 04 SHI CK 0021

High Court of Himachal Pradesh

Case No: C.W.P. No. 283 of 1998

Bela Ram Chauhan

APPELLANT

Vs

State of H.P. and
Another

RESPONDENT

Date of Decision: April 5, 2005

Acts Referred:

- Central Civil Services (Pension) Rules, 1972 - Rule 21
- Constitution of India, 1950 - Article 226, 227, 309, 311, 311(2)
- Himachal Pradesh Civil Services (Premature Retirement) Rules, 1976 - Rule 1, 2(3), 3, 3(1)
- State of Himachal Pradesh Act, 1970 - Section 42(1)

Citation: (2005) 2 ShimLC 320

Hon'ble Judges: Lokeshwar Singh Pant, J; K.C. Sood, J

Bench: Division Bench

Advocate: Shrawan Dogra, for the Appellant; M.S. Chandel, General and R.M. Bisht, D.A.G., for the Respondent

Final Decision: Dismissed

Judgement

Lokeshwar Singh Pant, J.

This writ petition under Articles 226/227 of the Constitution of India is directed against order dated 12.9.1997 of the Himachal Pradesh Administrative Tribunal. By the impugned order, the learned Tribunal has dismissed the Transfer Application No. 158/87 filed by the Petitioner calling in question the order of his premature retirement by the Respondents dated May 31, 1986 under the H.P. Civil Services (Premature Retirement) Rules, 1976.

It is the case of the Petitioner that he joined as Patwari candidate in the erstwhile Mahasu District after passing prescribed examinations in the year 1951. He was confirmed as Patwari in the year 1958 and later on confirmed as Revenue Assistant in the year 1960. On bifurcation of Districts in the State of H.P., new District Kinnaur was formed and the

Petitioner was selected as Kanungo in District Kinnaur in the year 1961. He was reverted as Patwari by the Deputy Commissioner, Kinnaur on 28.4.1966. The appeal filed by the Petitioner against his reversion order was not decided by the Appellate Authority. The Petitioner filed CWP No. 54 of 1969 in the High Court of Delhi (Himachal Bench) at Shimla which was accepted on 23.10.1970 setting aside the reversion of the Petitioner and declaring him to have continued as Office Kanungo in District Kinnaur.

2. The Petitioner states that he has qualified Naib-Tehsildari Examination in the year 1965. He was due for further promotion as Naib-Tehsildar, but was not promoted. He submitted many representations to the authority for his promotion. It was on 12.4.1983 when the Petitioner was promoted as Officiating Naib-Tehsildar and was posted as Naib-Tehsildar Forest Settlement with Headquarters at Nichar. On 23.3.1985, the Petitioner filed application under the provisions of H.P. Civil Services (Premature Retirement) Rules, 1976 (for short Premature Retirement Rules, 1976) on the ground that he had completed 30 years of service.

3. Further case of the Petitioner is that he has submitted many representations to the authority requesting it to implement the decision of this Court in CWP No. 54 of 1969. It was on 31.3.1986 when Commissioner, Shimla Division Respondent No. 2 herein in exercise of powers under Rule 3 of Premature Retirement Rules, 1976 had ordered premature retirement of the Petitioner vide order dated 31.3.1986 a copy of which is placed on record as Annexure P-2. Against the said order, the Petitioner submitted representation dated 4.4.1986 to Respondent No. 2, a copy whereof is placed on record as mark Annexure P-3 for his re-instatement in the service. The Petitioner filed second CWP No. 235 of 1986 in this Court which was subsequently transferred to learned Tribunal. In the Transfer Application No. 158/87, the Petitioner has challenged his premature retirement inter-alia on the grounds that the order was not in public interest, the Petitioner was not conveyed any adverse remarks recorded in his ACR, the order was in violation of principles of natural justice against the provisions of Rule-3(1) Premature Retirement Rules, 1976, as the Petitioner had not completed 30 years of "qualifying service" nor he has completed the age of 55 years.

4. The Respondents contested the Application of the Petitioner before the learned Tribunal. The learned Tribunal has considered the claim and counter-claim of the parties as also the service record of the Petitioner and came to the conclusion that the order of premature retirement of the Petitioner was in conformity with Premature Retirement Rules, 1976 and accordingly dismissed the Application. It is against the said order of the learned Tribunal, the Petitioner has filed the present writ petition.

5. In reply to the writ petition, the Respondents have stated that the Petitioner was considered for promotion to the post of Naib-Tehsildar right from 1974 to 1983 but could not merit selection on the basis of service record. He, however, was promoted as Naib-Tehsildar on the recommendation of the Departmental Promotion Committee w.e.f. 12.4.1983 vide Office Order copy mark Annexure P-I. The Petitioner was given all the

benefits as directed by this Court in its judgment dated 23.10.1970 passed in CWP No. 54 of 1969. He was paid full salary from 21.1.1966 to 18.11.1970, during which period the Petitioner had remained absent from duty as a result of reversion order, which was ultimately quashed by this Court. There was no request from the Petitioner for voluntary retirement from service. He had only requested for the fixation of his pay and updating his leave account etc. The order of premature retirement of the Petitioner was passed by the authority on the basis of recommendation of the Review Committee constituted for the purpose. The record of the Petitioner would show that he was inefficient and poor worker. After his promotion as Naib- Tehsildar during 1983 the work of the Petitioner was reported to be just satisfactory. The Respondents have stated that while submitting the pension papers of the Petitioner to the Accountant General the period of extraordinary leave, i.e. 2 months and 26 days was excluded from the "qualifying service" through an oversight as there was no specific entry in the Service Book, whereas after including the said period of extra-ordinary leave, the Petitioner had completed about 31 years of "qualifying service" at the relevant date of the order of his pre-mature retirement.

6. The Petitioner in the rejoinder contended that order of his compulsorily retirement is punitive in nature and not passed in public interest and even if there was some stale adverse entry in his Service Book, that stood wiped out after his promotion as Naib-Tehsildar in the year 1983.

7. We have heard Mr. Shrawan Dogra, learned Counsel for the Petitioner and Mr. M.S. Chandel, learned Advocate General for the Respondents.

8. Mr. Shrawan Dogra submitted that from the Office communication mark Annexure P-5 addressed by Accounts Officer of the Senior Deputy Accountant General (A & E) Himachal Pradesh to the Forest Settlement Officer, Shimla and Kinnaur Districts, it becomes clear that after deducting the period when the Petitioner remained absent from duties w.e.f. 8.4.1976 to 17.5.1976, his "qualifying service" works out less than 30 years and as such he could not have been prematurely retired because he did not fulfil the conditions of completing 30 years "qualifying service" or completing the age of 55 years as per Rule (1) of Premature Retirement Rules, 1976. He further submitted that the order of granting 40 days extraordinary leave only was passed on 28.7.1987 to complete the period of 30 years qualifying service, whereas the order of premature retirement was passed prior to the said date for grant of pension to the Petitioner therefore, the order dated 31.3.1986 mark Annexure P-2 passed by Respondent No. 2 retiring the Petitioner prematurely was against the provisions of Rule-3 (1) of Premature Retirement Rules, 1976. He lastly contended that the order of the learned Tribunal dismissing the Application of the Petitioner is not based upon proper appreciation of the provisions of law as also the material placed before it. Therefore, the order deserves to be set aside.

9. Per contra learned Advocate General has sought to support the order of the learned Tribunal to contend that the learned Tribunal on consideration of the facts of the case and the relevant provisions of the Rules has rejected the claim of the Petitioner and this Court

in exercise of the Judicial Review will not decide this writ petition as an appellate Court to re-appreciate the findings and reasonings recorded by the learned Tribunal.

10. In order to appreciate the rival contentions of learned Counsel for the parties, we have examined the material on record.

11. It is not in dispute that the Petitioner was promoted from Kanungo to the post of Naib-Tehsildar in the year 1983. The learned Tribunal has seen the proceedings of Departmental Promotion Committee in which A.C. Rs. of the Petitioner from 1977-78 to 1981-82 were considered by the Departmental Promotion Committee. The Petitioner was found fit by DPC on the average record of five years inspite of adverse entry in his A.C. Rs. for the year 1981-82. The A.C. Rs. of the Petitioner for the years 1982-83 were also seen by the learned Tribunal in which adverse entries were recorded which were duly conveyed to the Petitioner on December 22, 1983. After the promotion of the Petitioner in March, 1983 to the post of Naib-Tehsildar, his A.C. Rs. for the years 1983-84 and 1984-85 were also seen by the learned Tribunal. On consideration of the service record of the Petitioner, the learned Tribunal found that the performance of the Petitioner was such that it was perfectly reasonable for the Screening Committee to have come to the conclusion that the Petitioner was not fit to be retained in service after completing 30 years "qualifying service".

12. The Governor of Himachal Pradesh in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India and with the previous approval of the Central Government under Sub-section (7) of Section 115 of the States Re-organization Act, 1956, proviso to Sub-section (6) of Section 82 of the Punjab Re-organization Act, 1966 and proviso to Sub-section (1) of Section 42 of the State of Himachal Pradesh Act, 1970 framed the H.P. Civil Services (Premature Retirement) Rules, 1976 (for short "Premature Retirement Rules, 1976). Rule-3 conferred powers on the appropriate authority to order premature retirement of the Government servant governed by the rule. It reads as under:

3. Premature retirement.-(1) The appropriate authority shall, if it is of the opinion that it is in public interest to do so, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice-

(a) On completion of 30 years of qualifying service; or

(b) On attaining the age of-

(i) 50 years in respect of Class I and Class II officers who have entered Government service before attaining the age of thirty-five years;

(ii) 55 years in case of all other Class I and Class II officers and all the Class III employees; and

(iii) 55 years in case of such Class IV employees who entered Government service after 23rd July, 1966:

Provided that where at least three months' notice is not given or notice for a period less than three months is given, the employees shall be entitled to claim a sum equivalent to the amount of his pay and allowances at the same rates at which he was drawing them immediately before the date of retirement, for a period of three months or, as the case may be, for the period by which such notice falls short of three months:

Provided further that the appropriate authority may at any time before the expiry of the notice period substitute for the whole or part of the unexpired period of notice, pay in lieu thereof and retire the Government servant forthwith on making such payment.

(2)...

13. The expression "qualifying service" has been defined in Rule 2(3) of the Premature Retirement Rules, 1976 to mean "service qualifying for pension". The main contention of Mr. Shrawan Dogra, learned Counsel for the Petitioner was that the order dated 31.3.1986 recorded by Respondent No. 2 marked as Annexure P-2 suffers from the vice of complete non-application of mind as the Petitioner had not completed 30 years of "qualifying service" on the date on which he was to be retired.

14. Taking the contention of the learned Counsel, it is incumbent upon the Respondents to show that on the date of the order Annexure P-2, the Petitioner had completed 30 years of qualifying service which must have been completed before the power can be exercised. It was, however, contended on behalf of the Respondents that the period when the Petitioner remained wilfully absent from duty w.e.f. 8.4.1976 to 17.5.1976 has been considered as extra-ordinary leave for the purpose of "qualifying service" and thus total "qualifying service" of the Petitioner works out to 31 years 6 months and one day w.e.f. 1.10.1954 to 1.4.1986. The Respondents have stated in the affidavit that while forwarding the pension case of the Petitioner to the Accountant General Himachal Pradesh and Chandigarh the Settlement Officer did not include the period of extra-ordinary leave of 2 months and 26 days, through an oversight for calculating the "qualifying service" in the Service Book of the Petitioner. In response to the observations of the Accounts Officer in his communication dated nil marked Annexure P-5, revised pension case of the Petitioner was prepared/forwarded to the Accountant General, Himachal Pradesh by granting extraordinary leave of 2 months and 26 days to him when he remained wilfully absent w.e.f. 8.4.1976 to 17.5.1976. Thus, it is clear from the stand of the Respondents that the period of 2 months and 26 days during which the Petitioner remained wilfully absent was not counted by the Settlement Officer, Shimla in the Service Book of the Petitioner when his pension papers were sent to the Accountant General, Himachal Pradesh by an oversight for calculating the "qualifying service". When the pension papers were returned to the Settlement Officer by the Accountant General with the observations that unless the period from 8.4.1976 to 17.5.1976 was regularized by granting extra-ordinary leave to the

Petitioner, the period of "qualifying service" of 30 years was not complete nor the Petitioner had completed the age of 55 years. In response to the observations of the Accountant General, revised pension case of the Petitioner was prepared by granting extraordinary leave 2 months and 26 days to him for calculating the "qualifying service" for pensionary benefits.

15. Under Government of India's decision No. 1 in Rule 21 of CCS (Pension) Rules, 1972 all spells of extra-ordinary leave not covered by such specific entries will be deemed to be qualifying service. In that view of the matter, if the period of 2 months and 26 days was not specifically recorded extra-ordinary leave in the service record of the Petitioner for completing the "qualifying service" of 30 years in the service record, when his pension papers were submitted to the Accountant General, H.P., the said period should be deemed to be "qualifying service" in terms of the above noted decision No. 1. On 31.3.1986 when the order Annexure P-2 was passed by Respondent No. 2, retiring the Petitioner prematurely, in terms of Rule 3(1) of the Premature Retirement Rules, 1976, the Petitioner had completed more than 31 years "qualifying service" including extra-ordinary leave of 2 months and 26 days for pensionary benefits. If by over-sight or inadvertently extraordinary leave was not recorded in the service record of the Petitioner by the Settlement Officer, the Petitioner cannot, get any benefit for the lapse of the defaulting officer. The Petitioner, thus has been rightly retired by the Respondents in accordance with Rule 3 of Premature Retirement Rules, 1976. Therefore, the contention of the learned Counsel that the Petitioner had not completed 30 years of "qualifying service" on the day of order dated 31.3.1986 Annexure P-2 cannot be accepted.

16. The next contention of learned Counsel that as the Petitioner was promoted from Kanungo to Naib-Tehsildar in the year 1983 he could not have been found unfit for retention in service when the order of premature retirement was passed by Respondent No. 2 and adverse remarks if any, pertaining to the period prior to 1983 should be considered having been wiped out and only his record after 1983 should have been considered for deciding his case of premature retirement. In support of this submission reliance is placed in the case of [Murari Mohan Deb Vs. Secretary to The Government of India and Others](#), in which their Lordships have held that order of compulsory retirement passed without following principles of natural justice where there is no rule fixing the age of compulsory retirement or if there is one and the servant is retired before the age prescribed therein, then that can be regarded only as dismissal or removal within Article 311(2) of the Constitution of India.

17. In [Hans Raj Vs. State of Punjab and Others](#), their Lordships have found that the qualifying service which the Appellant was shown to have rendered commenced from February 22, 1954 and on August 20, 1975 the Appellant had not completed 25 years of qualifying service and therefore, the primary pre-requisite for exercise of power was not satisfied and the Appellant could not have been compulsorily retired from service under Punjab Civil Services (Premature Retirement) Rules, 1975. In the present case, the ratio of the above said decisions in our humble view is of no avail or assistance to the

Petitioner.

18. In [State of Gujarat Vs. Umedbhai M. Patel](#), their Lordships have broadly summarized the law relating to compulsory retirement thus:

(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 record of the officer.

(vi) 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 measure.

19. In the present case as noticed above, the Respondents have stated that the service record of the Petitioner both prior to the year 1983 and after 1983 was poor. He has been considered for promotion to Naib-Tehsildar right from 1974 to 1983 but was found unfit for promotion till April, 1983 when he was found fit for promotion. The learned Tribunal has seen the A.C. Rs. of the Petitioner for the years beyond 1981-82 and noticed that for the year 1982-83 adverse entries were recorded in his A.C. Rs. which were duly conveyed to him on December 22, 1983. The Review Committee after seeing the A.C. Rs. for the years 1983-84 and 1984-85 found the performance of the Petitioner poor and found him not fit to be retained in further service and on the basis of service record order of premature retirement on completion of 30 years "qualifying service" was passed in the public interest. The order was passed after three years of his promotion on the basis of A.C. Rs. for the years 1982-83, 1983-84 and 1984-85. The order in no terms can be said having been passed as a punitive measure nor it can be treated as punishment coming under Article 311 of the Constitution as contended by learned Counsel for the Petitioner.

20. In [State of Orissa and others Vs. Ram Chandra Das](#), their Lordships have held that the Government is empowered and would be entitled to compulsorily retire a Government servant in public interest with a view to improve efficiency of the administration or to weed out the people who are of doubtful integrity or are corrupt but sufficient evidence was not available to take disciplinary action in accordance with the rules so as to inculcate a sense of discipline in service. But the Government, before taking the decision to retire a Government employee compulsorily from service, has to consider the entire record of the Government servant including the latest reports. Compulsory retirement is not a punishment and the employee compulsorily retired is entitled to all the pensionary benefits.

21. In [The State of Punjab Vs. Gurdas Singh](#), their Lordships have held that 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.

22. In *State of U.P. and Ors. v. Vijay Kumar Jain* (2002) 3 SCC 641, their Lordships held in para-11 of the judgment as follows: (see p.646 para-II).

23. In [Union of India \(UOI\) Vs. Col. J.N. Sinha and Another](#), it was held that an employee compulsorily retired does not lose any right acquired by him before retirement and that the said Rule is not intended for taking any penal action against the Government servant and that the order retiring a Government servant compulsorily can only be challenged on the ground that either the order is arbitrary or it is not in public interest. No other ground is available to a Government servant who is sought to be compulsorily retired from service under the relevant rules subject to the conditions provided therein.

24. In [Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another](#), the Apex Court laid down certain principles which are as under: (SCC pp. 315-16, para 34)

34.(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 an 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 showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.

25. In the factual situation of the present case and in the light of the above settled principles of law, we find no infirmity or perversity in the impugned order of the learned Tribunal to warrant interference in exercise of the Judicial Review. The learned Tribunal has passed reasoned order on the basis of the service record and other material on record including the recommendation of the Review Committee.

26. No other point was urged by learned Counsel for the parties.

27. In the result, for the above stated reason, we find no merit in this writ petition and it is accordingly dismissed. Parties are however, left to bear their own costs.