Naresh Kumar Agarwal Vs State of U.P. and Others

Writ Petition. No. 1955 (S/B) of 2005

Court: Allahabad High Court (Lucknow Bench)

Date of Decision: July 19, 2006

Acts Referred:
Uttar Pradesh Fundamental Rules â€" Rule 56

Citation: (2006) 7 AWC 7471

Hon'ble Judges: Rajiv Sharma, J; Pradeep Kant, J

Bench: Division Bench

Advocate: Upendra Nath Mishra, Kshemendra Shukla and S.K. Kalia, for the Appellant; I.P. Singh, for the Respondent

Final Decision: Allowed

Judgement

Pradeep Kant and Rajiv Sharma, JJ.
Heard learned Counsel for the Petitioner Sri S.K. Kalia, senior advocate, assisted by Sri

Kshemendra Shukla and Sri I.P. Singh for the Respondent Jal Nigam.

2. The Petitioner an Executive Engineer in the U.P. Jal Nigam, has been compulsorily retired, vide order dated 1.9.2005 by the Appointing

Authority in exercise of his powers under Fundamental Rule 56 (c).

3. The Petitioner assails the aforesaid order of compulsory retirement mainly on the following grounds:

(i) the criteria of allocation of marks to the annual entries as per categorization made therein cannot be said to be a valid and reasonable criteria for

determining a case of compulsory retirement.

(ii) the reduction of marks to the extent of one each for every adverse entry or for punishment awarded during the course of service is also not in

consonance with the provisions of Fundamental Rule 56 (c) or otherwise, which also vitiates the entire exercise of screening of dead wood or

inefficient officers.

(iii) there was no adverse material against the Petitioner so as to form an opinion on objective consideration for retiring him compulsorily and the

entries/material, which has been shown in the counter affidavit was hardly relevant for the said purpose.

4. Sri I.P. Singh, appearing for Jal Nigam, refuting the claim of the Petitioner, urged that the Petitioner''s service record is indicated in the counter

affidavit shows that the Petitioner was not a fit person to be retained in service and, therefore, no fault can be attributed to the action taken by the

appointing authority in passing the order of compulsory retirement.

5. It may be pertinent to mention here that the criteria, which was adopted by the Screening Committee was to see the entire record of the service

with more weightage to the recent ten years record and that the following criteria was adopted for determining the worth of the officers for being

retained or being ousted from service:

(i) marks were allocated to Annual Character Roll remarks, category-wise and in case the officer belongs to general category could not or did not

acquire a minimum number of marks (9) on the basis of his Character Roll entries, he was liable to be retired compulsorily, which, in the case of an

officer of Reserved category were only 6 marks.

(ii) In case the officer had been awarded a punishment of recovery or he had deposited any amount towards recovery, as a result of some fault

committed by him during his service period, it would constitute a ground for compulsory retirement.

6. To cut the controversy short, the question regarding reasonableness, validity and legality of the criteria of awarding marks in the manner in which

they are awarded in a selection for promotion, in which the criteria is ''merit'' came up for consideration before us in Writ Petition No. 1888 (SB)

of 2005 Mahesh Chandra Agarwal v. State of U.P. and Ors. and we found that the aforesaid criteria was unreasonable, illegal and against the

parameters of Fundamental Rule 56 (c). The reasoning given by Division Bench is as follows:

The criteria, which is applicable in the matter of promotion based on merit cannot be applied for screening out the officers for compulsory

retirement. The purpose of the two Committees namely; Selection for promotion and the Screening Committee for screening out the officers from

service is entirely different. In the matter of promotion the comparative ''merit'' of the officers is to be seen so as to promote him on higher post and

burden him with more responsibilities whereas in the screening the officers'' past conduct, performance, behaviour and service record is to be seen

only for the purpose of finding out as to whether the officer has lost his utility and has become a dead-wood. The Committee has to form an

opinion that the officer is of no use for being retained in service or that he has become a dead wood or that he is a person of doubtful integrity or

dishonest or inefficient. Yardstick which would be applicable in the case of promotion cannot be applied nor would be applicable in the case of

compulsory retirement in so far as the award of marks is concerned in the matter of promotion based strict on "merit". It is the most meritorious

officer under consideration for promotion, would be selected, may be that there may be meritorious officer though less in the merit than the

person(s) selected but that would not mean that those persons were not fit for promotion or that it would constitute any adverse material for the

purpose of compulsory retirement. Even if, a Government servant, in the matter of promotion is not found suitable, that itself alone may not be a

ground for retiring him compulsorily, of course, unless his past record of service alongwith aforesaid fact for not being found suitable for promotion

permits the Screening Committee or Appointing authority to form such an opinion.

...

....

We further hold that the criteria of awarding marks and requiring the officer under scrutiny to obtain minimum lower marks for being retained and

continued in service was not based on any intelligible criteria, apart from being wholly arbitrary and illegal. The compulsory retirement has to be

considered within the parameters of Fundamental Rule 56 (C) of the Financial Hand Book Volume (2), which does not envisage any such scheme.

It is the entire service record with due weightage to the record of recent past, has to be considered and if the Committee or the Screening

Committee or the Appointing Authority reaches the satisfaction on the basis of objective consideration that the concerned officer has lost his utility

or is dishonest or lacks integrity or is inefficient and it is not in public interest to retain him in service, he is to be compulsorily retired. ....

...

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While considering the case of a public servant it is not only the Character Roll which would be relevant either for retaining the officer or public

servant in service or for screening him out, but such consideration would also go to the other materials in the service record namely; e.g.

appreciation letters or certificates of commendable work by higher or superior authorities or to say of the competent authority or if there is material

which though does not find mention in the Character Roll entry but either appreciates or deprecates the work and conduct of the public servant or

shows his or her shortcomings or in any other way reflects his or her character integrity and reputation. All such material cannot be lost sight by the

Screening Committee and has to be considered while making an assessment. Thus relying only upon the award of marks as against the annual

remarks on the basis of criteria of promotion strictly on the basis of "merit" cannot be supported to, under the aforesaid provision.

7. The criteria of deducting/reducing marks, one each for every adverse entry or punishment also cannot be upheld nor can be said to be legal or

reasonable. Since we have already held that criteria of awarding marks was wholly arbitrary and unreasonable and consequently the marks can

also not be deducted nor can be allocated to the adverse entry or to any punishment. If the marks cannot be allocated for judging the

suitability/worth of the officer, the question of reduction of marks would not arise. We, accordingly, hold that neither the allocation of marks which

are awarded in the selection where the criteria is "merit" nor the reduction for the said purpose as against each adverse entry or punishment can be

upheld.

8. Admittedly and provenly from the record and as per stand taken by the Jal Nigam in the counter affidavit, it is no more in doubt that while

considering the case of the officers of the Jal Nigam including the Petitioner, the Jal Nigam has followed the criteria of awarding of the marks and

consequently, deduction of marks also, as aforesaid. In the instant case, on the basis of the entries of the last ten years, the marks which were

allocated to the Petitioner were 11.78 but since the Petitioner had to his credit one adverse entry, one warning, three censor entries and one

special entry, therefore, his marks were deducted to the extent of four, making the total of marks obtained 7.78, which was less than the cut off

marks of 9 prescribed for general category candidates to which the Petitioner belongs. The manner and the procedure, which has been adopted by

the Screening Committee, thus, for the reasons stated above, cannot be upheld and the entire exercise done for assessing the worth of the

Petitioner for being retained in service stands vitiated.

9. An argument has been raised by the learned Counsel for the Jal Nigam that though the criteria of allocation of marks was adopted in the case of

the Petitioner also and that the said criteria of allocation of marks or reduction thereof as against the punishment or adverse entries cannot be said

to be legal, even then on the basis of the adverse material, which has been indicated in the counter affidavit, the order of the compulsory retirement

against the Petitioner need not be interfered with, under the discretionary jurisdiction of this Court.

10. Sri S.K. Kalia, rebutting the aforesaid argument has drawn our attention to the circumstances in which the punishment orders, under

consideration, were passed and also the nexus and relevance of those entries for assessing the case of the Petitioner for compulsory retirement.

11. Sri Kalia quoting the extract of the punishment order wherein the censor entry has been awarded, submitted that this censor entry was given

only for lack of supervision, whereas so far as the financial loss was concerned, that was attributed to two other officers, one Assistant Engineer

and one Junior Engineer and not to the Petitioner.

This matter related to the period from October, 1991 to September, 1994.

The special entry dated 5.6.2004 was only for a period of three months.

12. For the censor entry with respect to not handing over some papers to the District Magistrate and for violation of the orders of the Senior

Officers etc. it is being said that the censor entry was never communicated and secondly, the warning to that effect was already given on

28.7.2004, as such, there was no occasion for awarding the aforesaid censor entry, particularly when by the warning, the Petitioner was cautioned

that he should be careful in future and such mistake should not be repeated.

13. Further adverse material, which has been relied upon is the censor entry dated 15.4.1994 and punishment of stoppage of two annual

increments temporarily. The Petitioner submits that this related to the period 1985-1987 but in this case, the appeal preferred against the aforesaid

punishment was decided with the observation that since the Petitioner is already drawing the salary at the highest of the pay-scale, therefore, the

stoppage of two increments would not have any effect and the reason for awarding the aforesaid entry was that the Petitioner was said to have no

effective control over the Junior Engineer, who had completed the work.

14. The assessment of the service record with annual entries awarded to the public servant, the appreciation and commendation letters or

certificates issued to him or any other material, which may reflect his working, reputation and character in service, all are to be assessed by the

Screening Committee while considering the case of compulsorily retirement. The compulsory retirement, though, is not a punishment but it certainly

curtails the normal period of service to which the public servant is otherwise entitled to, under the Service Rules. Retiring a public servant

prematurely, i.e., before he reaches the age of superannuation, may be, in technical terms and legally may not be a punishment but certainly it has

its own civil consequences upon the service career of the public servant. The provision for retiring a public servant prematurely has been inserted

with a view to check out the officers/employees who had lost their utility and have become deadwood. Keeping in service or allowing such

officers, who are dishonest, inefficient and have lost their utility would affect the administration and functioning of the department adversely,

whereas the officers, who are capable of performing their duties and are still useful for the service, are not supposed to be retired on mere titbits or

on irrelevant consideration. The compulsory retirement cannot be ordered for collateral purpose nor for punishing a government servant.

15. In the instant case, the entire exercise done by the Screening Committee and followed by the appointing authority does not show that apart

from awarding the marks, any other consideration was made or mind was applied by the Screening Committee or the appointing authority, on the

service record independently.

16. Relying upon the case of the Ratan Kumar Sharma State of U.P. and Ors. Writ Petition No. 1565 (SB) of 2005, decided by a Division Bench

of this Court on 8.11.2005, it is being urged that the material said to be adverse in this case cannot be said to be relevant for compulsory

retirement of the Petitioner, even if taken into consideration independently. In the case of the Ratan Kumar Sharma, who was a Superintending

Engineer, the Court found that the warning entry was in connection with his late joining pursuant to the transfer orders in the years 1999 and 2000

and that besides this, there were no other adverse material against the Petitioner in the last ten years. However, there were two warnings, one

dated 29.1.1999 and the other dated 3.3.2000 and also an order of recovery, vide order dated 16.6.2000.

17. Considering the entries of the recent past and also the appreciation letters given to the Petitioner and relying upon the case of Baidyanath

Mahapatra Vs. State of Orissa and Another, Baldev Raj Chadha Vs. Union of India (UOI) and Others, Baikuntha Nath Das and another Vs.

Chief District Medical Officer, Baripada and another, the Court quashed the order of compulsory retirement of Ratan Kumar Sharma.

18. The Petitioner also relies upon the case of Hans Raj v. State of U.P. and Ors. Writ Petition No. 1555 (SB) of 2005 and Mahesh Chandra

Agarwal"s case in support of his submission that mere warning or entries given in the circumstances, would not make relevant adverse material for

retiring the Petitioner.

19. The service record of the Petitioner reveals the following entries for different years in the last ten years:

1994-95 _ Ã¯Â¿Â½Not availableÃ¯Â¿Â½ (Ã¯Â¿Â½Ã¯Â¿Â½?E#)

1995-96 _ Ã¯Â¿Â½SatisfactoryÃ¯Â¿Â½ (Ã¯Â¿Â½aAE?Ã¯Â¿Â½?z?Ã¯Â¿Â½)

1996-97 _ Ã¯Â¿Â½Not availableÃ¯Â¿Â½ (Ã¯Â¿Â½Ã¯Â¿Â½?E#) for the certain

period (1.4.1996 to 17.7.1996, 21.1.1997 to

31.3.1997) but Ã¯Â¿Â½satisfactoryÃ¯Â¿Â½ (Ã¯Â¿Â½?AE?Ã¯Â¿Â½?

z?Ã¯Â¿Â½) one of the portion of the financial period

(18.7.1996 to 20.1.1997)

1997-98 _ Ã¯Â¿Â½Not availableÃ¯Â¿Â½ (Ã¯Â¿Â½Ã¯Â¿Â½?E#) for the certain

periods (1.4.1997 to 1.8.1997) but "goodÃ¯Â¿Â½

(Ã¯Â¿Â½UuE?) one of the portion of the financial period

(2.8.1997 to 31.3.1998)

1998-99 _ Ã¯Â¿Â½SatisfactoryÃ¯Â¿Â½ (Ã¯Â¿Â½?AE?Ã¯Â¿Â½?z?Ã¯Â¿Â½)

1999-2000 _ Ã¯Â¿Â½Very goodÃ¯Â¿Â½ (Ã¯Â¿Â½Ã¯Â¿Â½AÃ¯Â¿Â½UuE?)

2000-2001 _ Ã¯Â¿Â½ExcellentÃ¯Â¿Â½ (Ã¯Â¿Â½Ur?ÃŽÂ§CÃ¯Â¿Â½U)

2001-2002 _ Ã¯Â¿Â½Very goodÃ¯Â¿Â½ (Ã¯Â¿Â½Ã¯Â¿Â½AÃ¯Â¿Â½UuE?)

2002-2003 _ Ã¯Â¿Â½Not availableÃ¯Â¿Â½ (Ã¯Â¿Â½Ã¯Â¿Â½?E#)

2003-2004 _ Ã¯Â¿Â½Not availableÃ¯Â¿Â½ (Ã¯Â¿Â½Ã¯Â¿Â½?E#) for the certain

periods (17.10.2003 to 31.3.2004) but

Ã¯Â¿Â½GoodÃ¯Â¿Â½ (Ã¯Â¿Â½UuE?) one of the portion of the

financial period (1.4.2003 to 16.10.2003). Rest not

available.

20. The aforesaid service record of the Petitioner shows that during the period of last ten years not a single adverse entry was awarded to the

Petitioner. The whole exercise, therefore, done and conclusion arrived at that the Petitioner be retired compulsorily cannot be supported even by

the material on record.

21. For the aforesaid reasons, the order of compulsory retirement dated 1.9.2.2005 cannot be sustained and is liable to be quashed, which is

hereby quashed. The Petitioner shall be allowed to resume his duties in the Jal Nigam forthwith, with all consequential benefits.

22. The writ petition is allowed. No order as to costs.