

(1997) 11 AHC CK 0134

Allahabad High Court

Case No: C.M.W.P. No. 10842 of 1997

Bahoran Singh

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision: Nov. 17, 1997

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1997) AWC 681 Supp

Hon'ble Judges: O.P. Jain, J; D.S. Sinha, J

Bench: Division Bench

Advocate: Z.K. Hasan, for the Appellant;

Final Decision: Dismissed

Judgement

D.S. Sinha and O.P. Jain, JJ.

The Petitioner, who is a Judicial Officer, has filed this writ petition under Article 226 of the Constitution of India praying that a writ of certiorari be issued quashing orders Annexure-6 and Annexure-7, dated 14th February, 1997 and 7th February, 1997 respectively by which the Petitioner has been compulsorily retired with effect from 23rd April, 1997.

2. The facts, insofar as they are relevant, are that the Petitioner was appointed Munsif after competing successfully in P.C.S. (J.) Examination in the month of February, 1978. In due course, he was appointed Civil Judge in the month of June, 1987 and was posted as Additional District Judge in the month of August, 1996. During this period, he received some adverse entries from time to time which related mainly to deficiency in the disposal of cases. Such remarks were given for the year 1984-85 and 1986-87. However, the representation of the Petitioner was allowed by the Administrative Committee on 18th December, 1991 and his explanation for low disposal was considered sufficient. In the subsequent years, i.e., for the year 1987-88 and 1993-94, also there were some adverse entries.

3. The entry which is comparatively more damaging to the Petitioner was given in the year 1994-95 by the District Judge and it is Annexure-2 to the petition. The Petitioner filed a representation Annexure-3 but it was rejected by the High Court, vide Annexure-5. The adverse entry for the year 1994-95 which was communicated to the Petitioner by the High Court is Annexure-4 and reads as under:

Disposal 114.75%. The District Judge has reported that he did not pay much attention for disposal of execution cases and occasionally interim orders were not based on sufficient reasons. Further it has been informed that his judgments are not well-reasoned and require improvement and in quite a number of sessions trials he did not frame the charge before the commencement of the evidence and obtained the signatures or thumb impression of the accused on blank papers and got the charge typed out after the close of arguments.

On overall assessment the District Judge has rated him as fair and a very slow... discontented officer.

It has also been reported by the District Judge that some complaints regarding partial dealings were received but could not be substantiated and occasionally he loses temper in Court.

Integrity certified.

4. Against the said entry, the Petitioner filed Writ Petition No. 12664 of 1996 which was dismissed in default on 18th February, 1997. Therefore, the adverse entry for the year 1994-95 given to the Petitioner has become final.

5. We have heard Sri Prakash Padia, learned Counsel for the Petitioner, Sri S. M. A. Qazmi, representing Respondent No. 1 and Sri Vinay Malviya, learned standing counsel and have gone through the record.

6. The main contention on behalf of the Petitioner is that the Petitioner was promoted as Additional District Judge on 18th November, 1995 and, therefore, the previous adverse entries, if any, stood washed off. The stand taken by Respondent No. 1 is that the Petitioner was promoted for short-term appointment as stop-gap arrangement. Therefore, according to Respondent No. 1, it was not a regular promotion.

7. Before we examine this aspect of the matter as to whether the theory of wash off applies in the instant case or not, we must mention some more facts. Before the judgment of the Apex Court in the case of [All India Judges' Association Vs. Union of India and others](#), the age of superannuation for Judicial Officers in the State of Uttar Pradesh was 58 years. By the judgment of the Apex Court dated 13th November, 1991 in All India Judges Association case (supra), the age of superannuation of Judicial Officers was raised from 58 to 60 years and as a consequence thereof, the State of U.P. framed the Uttar Pradesh Judicial Officers (Retirement of Superannuation) Rules, 1992 (hereinafter referred to as the Rules).

These Rules were published on 20th October, 1992.

8. The judgment of the Apex Court was reviewed by order dated 24th August, 1993 which is reported in JT 1993 (4) SC 613. By the later judgment, passed on the review petition, the earlier directions have been modified and it has been observed by the Apex Court in paragraph 28 of the judgment as under:

There is, however, one aspect we should emphasise here. To that extent, the direction contained in the main judgment under review shall stand modified. The benefit of the increase of the retirement age to 60 years, shall not be available automatically to all judicial officers irrespective of their past record of service and evidence of their continued utility to the judicial system. The benefit will be available to those who, in the opinion of the respective High Courts, have a potential for continued useful service. It is not intended as a windfall for the indolent, the infirm and those of doubtful integrity, reputation and utility. The potential for continued utility shall be assessed and evaluated by appropriate Committees of Judges of the respective High Courts constituted and headed by the Chief Justices of the High Courts and the evaluation shall be made on the basis of the judicial officers' past record of service, character rolls, quality of judgments and other relevant matters.

9. Keeping these principles in view, we find that from time to time, adverse entries were communicated to the Petitioner. Some of them were expunged but the adverse entry of 1994-95 has become final. The representation filed by the Petitioner has been rejected and his writ petition has also been dismissed in default.

10. The contention on behalf of the Petitioner that the adverse entry of 1994-95 has been washed off due to his promotion on 18.11.1995 cannot be accepted as correct because it is clear from the record that this adverse entry for the year 1994-95 was not before the Screening Committee when he was given ad hoc promotion. The Petitioner has not placed a copy of the promotion order on record and, therefore, the counter-affidavit filed on behalf of the High Court by Sri T. M. Khan, Officer on Special Duty (Litigation) should be relied upon. It is clearly mentioned in the counter-affidavit that the Petitioner was promoted as Additional District Judge on ad hoc basis. Apart from this, it appears from the record that the adverse entry for the year 1994-95 was communicated by the District Judge to the Petitioner on 23rd May, 1995, vide Annexure-2 to the petition. The Petitioner filed representation Annexure-3 before the High Court on 24th June, 1995. The representation was rejected by the High Court and a communication to that effect was made to the Petitioner through the District Judge on 25th November, 1995. A copy of that communication is Annexure-5 to the petition. Therefore, it is abundantly clear that by the time the question of promotion of the Petitioner came to be considered on 18.11.1995, the adverse entry given by the District Judge was being processed and had not become final. Therefore, the adverse entry of 1994-95 was not before the Screening Committee and the Petitioner was promoted as Additional District Judge without taking into consideration the adverse entry of 1994-95. Therefore, it is

wrong to contend that the promotion of the Petitioner in the Meeting of the Committee dated 18.11.1995 has the effect of washing off the earlier adverse entries.

11. A perusal of the record shows that the performance of the Petitioner as a whole was lacklustre from the very beginning and from time to time, it was adversely commented upon by the reporting officer. The adverse entry of 1994-95 was particularly damaging because amongst other things, it mentions that in quite a number of sessions trials, the Petitioner did not frame the charge before the commencement of the evidence and obtained the signatures or thumb-impressions of the accused on blank papers and got the charge typed out after the close of arguments. This is not only a gross procedural irregularity but actually it amounts to tampering with the judicial record. The substance of the entry is that the charges framed by the Petitioner in sessions trials were antedated.

12. Keeping this factual backdrop in view, some Rulings cited at the Bar may be noted. The learned Counsel for the Petitioner has cited *Narasingh Patnaik v. State of Orissa* 1996 SCC 795, in which it was held that where the bad entries were preceded and followed by good entries and the employee was promoted after the second adverse entry and the departmental proceedings were either dropped or quashed, in such circumstances the order of compulsory retirement was not in public interest. Another authority cited on behalf of the Petitioner is [Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another](#), in which it was held that the Government or the Review Committee 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 they lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

13. It has been held by the Apex Court in [State of Orissa and others Vs. Ram Chandra Das](#), (paragraph 7), that merely because a promotion has been given after adverse entries were made, cannot be a ground to hold that compulsory retirement of the Government servant could not be ordered.

14. The facts of the present case are to be appreciated in the light of the observations made in the cases cited above. It is true that the Petitioner was promoted to the post of Additional District Judge but it does not appear to be a case of promotion on merit or on the basis of selection. It was a case of promotion on ad hoc basis. Moreover, the latest entry of the year 1994-95 had not become final by the time the promotion was considered and, therefore, it cannot be said that the adverse entry was washed off by promotion.

15. It should be remembered that In [All India Judges" Association and Others Vs. Union of India and Others](#), , quoted above, it has been held that the benefit of the increase of the retirement age to 60 years shall not be available automatically to all judicial officers irrespective of their past record of service and evidence of their continued utility to the judicial system. The benefit will be available to those who, in the opinion of the High Court, have a potential for continued useful service. When the record of the Petitioner is examined on this touch-stone, it cannot be said that the opinion formed by Respondent No. 1 was arbitrary.

16. The scope of judicial review in a case of compulsory retirement is limited. If the appropriate authority bona fide forms the opinion, the correctness thereof on merits cannot be challenged before the Courts, though it may be open to the aggrieved employee to impugn it on the ground that requisite opinion is based on no evidence or has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision. In the facts of the case in hand, it cannot be said that the opinion was not formed by Respondent No. 1 bona fide or that the opinion is based on no evidence or the decision is based on collateral grounds or that it is arbitrary.

17. In view of the above discussion, we do not find any force in this writ petition which is hereby dismissed. There will be no order as to costs.