

**RAJASTHAN CIVIL SERVICES APPELLATE TRIBUNAL,
JAIPUR**

Appeal No. : 1850/2005

Vijay Kumar Yadav

-Appellant

V/s

- 1. State of Rajasthan through its I.G. Range, Jaipur I, Banipark, Jaipur.**
- 2. D.G.P. Rajasthan Police, P.H.Q., Jaipur.**
- 3. Home Secretary Government of Rajasthan, Secretariat Jaipur.**

-Respondents

Date of presentation of Appeal: 17-01-2006

Date of Order : 15.04.2021

Present:

On behalf of Appellant : Self

**On behalf of Respondents : Shri Pushpendra Pal Singh,
Govt.Advocate.**

**Before: Ravishankar Srivastava, Chairman
Jassa Ram Chaudhary, Member**

Order

1. The present appeal has been filed against the compulsory retirement of the appellant vide order dated 18/07/2005 issued by Inspector General of Police, Jaipur Range I. The impugned order reads as under :

“Whereas Shri Vijay Kumar S/o Shri Sanwal, Sub Inspector (Posted in jaipur City) has completed 15 years of qualifying service and has attained the age of 50 years.

Now, therefore, in exercise of the right conferred by rule 53(1) of Rajasthan Civil Services (Pension) Rule, 1996, the undersigned hereby retires the said Shri Vijay Kumar S/o Shri Sanwal, S.I., from service in public interest with effect from the receipt of this order by him. In lieu of the three months previous notice, a Bank Draft No.- 488700 for an amount of Rs. 40127/- drawn on SBBJ, Banipark, Jaipur representing the

amount of pay and allowance for the said notice period is enclosed.”

2. Brief facts of the case are as under:

- I. The appellant was appointed as sub-Inspector on 31.07.1978 by way of direct recruitment. He was awarded compulsory retirement on 18.07.2005 under Rule 53(1) of Rajasthan Pension Rules 1996.
- II. The appellant has assailed the said order of compulsory retirement on the ground that it is not in conformity with the DOP circular dated 20 July 2001 -No. 113 (53)/ACR/90 and not in conformity with the principles laid down by Hon'ble Supreme Court in Bakunth Nath Das & another V/s Chief District Medical Officer (1992) SCC-299. He has further submitted that it is malafide order because authorities did not consider the APAR reports of the later years of the appellant as emphasised by Hon'ble Supreme Court in the said case supra and as reiterated by the above mentioned DOP Circular. Similarly in Brij Mohan Singh V/s State of Panjab case also the Hon'ble Supreme Court has held that entires of the later years are to be given due weightage , there has been no adverse entry in last 4 years in case of the appellant. The principle is that all similarly situated persons should be treated similarly and policy of pick and choose should be avoided. A number of examples of other

sub-inspectors has been submitted in this regard. The review Committee has done gross discrimination in this regard by retiring him and by retaining other similarly situated officers like Suresh Saini, Ravindra Mittal, Pradhuman Sharma, Brahmdutt Yadav etc. No prior notice of 3 months was given to the appellant. There has never been communication of any adverse entries to the appellant in his entire service period. The Counsel submits that the impugned order therefore is arbitrary due to above reasons. It is also submitted that the High Power Committee has never recommended the retirement order in this regard as is mandatory in terms of Rule 53 (1). There has never been any serious charge against him. His integrity never been doubtful as the case of doubtful integrity was never made out. It is submitted that it is the case of no evidence. He has been performing his duty effectively, therefore no case of indolence or incapacity to discharge duties could have made.

3. A reply has been submitted by the respondents wherein they have reiterated that the order is in terms of Rule 53 (1) and not in violation of statutory rule in the manner as has been pleaded. The counsel for the respondent also submits that the case of compulsory retirement can not be heard in terms of Rule 2F of the RCSAT Act 1976.

He further submits that the appeal is also in violation of Section 4 A of the RCSAT Act 1976 because no representation before the competent authority had ever been submitted. The compulsory retirement has been awarded as per the recommendations of internal screening committee and the Highest Review Committee as constituted under Rule 53(1) by the State Govt .. He has been punished 43 times under Rule 16 of CCA Rules 1958. His service records have not been good. In Bal Kishan V/s State of Rajasthan, 2005 it is prescribed that such officials should be retired compulsorily. Similarly in Bankunth Nath Das case it has been prescribed that the decision of the Compulsory retirement is absolute discretion of the Government and principles of natural justice are not applicable in such cases . It is not a punishment, he is already getting pension. He has been retired on recommendations of internal screening Committee and statutory Review Committee. His service records from 1998 till 2004 has been absolutely bad and he has been retired in terms of the category of inefficient public servant with incapacity to discharge duties . He has been facing the cases of in-subordination and has never done objective investigation. He has been indolent and entire service record was screened by the internal review committee and thereafter he was retired.

4. The appellant has also submitted by way of affidavit a copy of the letter by the DGP obtained under RTI Act whereby DGP has

acknowledged that before retiring the appellant , the mandatory approval of the high power review committee constituted under Rule 53(1) of Pension Rules 1996 has not been obtained.

5. We have heard the counsel for the appellant and the respondent, without going into merit of the case as discussed above. The objection of 2F regarding jurisdiction of the Tribunal is overruled as an order of Compulsory Retirement is admittedly not a punishment and hence the matter falls within the jurisdiction of this Tribunal. Similarly the objection of Sec 4 RCSAT Act is also overruled.
6. It is needless to say that the compulsory retirement order could not have been issued without the recommendations of the statutory high power review committee and its confirmation by minister incharge in the State Govt.. The circular of DOP dated 30.04.2002 in furtherance of Rule 53(1) of Pension Rules 1996 clearly stipulates this. The matter required approval by the Minister, DOP. Thus the procedural processes as per the circular issued by DOP Govt of Rajasthan and Rule 53 (1) have not been observed. The DGP sent a letter on 23rd June 2006 for the confirmation of the compulsory retirement order of the appellant after his retirement order were enforced. There is no Government circular or rules prescribing for ex- post facto approval of the order of Compulsory Retirement by the statutory Highest Review Committee and therefore compulsory order is

therefore without authority of law and hence malicious and arbitrary. It suffers from the vice of malice in law.

7. It is thus clear as admitted by the counsel for the respondent that the prior submission of the case before the statutory highest review committee constituted by the State Govt under Rule 53(1) of Pension Rules 1996 for scrutiny of entire records and obtaining its recommendations was not made and the approval of any such recommendations by State Government for the order of the compulsory retirement in terms of Rule 53 (1) was not obtained. The Rule 53(1) of Pension Rules reads as under:-

Rule53(1) *at any time, after a government servant has completed 15 years of qualifying service or has attained the age of 50 years, whichever is earlier, the appointing authority upon having satisfied that the concerned government servant has on account of his indolence or doubtful integrity or incompetence to discharge official duties or inefficiency in due performance of official duties, has lost his utility, may require the concerned government servant to retire in public interest after following the procedure laid down by the government in Department of Personnel/ Administrative Reforms Department in case of such retirement, the government servant shall be entitled to retiring pension.*

Rule-53(2) *In such case the appointing authority shall give a notice in writing to government servant at least three months before the date on which he is required to retire in public interest or three months pay and allowances in lieu of such notice.*

Rule-53(3) *The appointing authority may publish an order of such retirement in Rajasthan Rajpatra and the government servant shall be deemed to have retired on such publication even if he has not served with the retirement order earlier.*

Rule-53(4) *In case if such a compulsory retirement the employees may represent against the order of compulsory retirement within a period of 30 days to the concerned authorities. Explanation was that for the purpose of this rule, the expression "Appointing Authority" shall means the authority which is competent to make appointment to service or post them which the government servant is retired."*

In view of the Rule 53(1), it is clear that the law provides a substantive statutory protection to an employee. The loss of utility of a public servant on account of any of the four conditions namely indolence, doubtful integrity, incompetence or inefficiency, enables the appointing authority to retire a public servant after 15 years of service or attaining 50 years of age whichever is earlier but it is subject to screening by a Review Committee and approval of its recommendations for retirement by the State Govt . This of course is based on subjective satisfaction of appointing authority and such order can be issued in public interest after following due procedure laid down under the law/rules. Needless to say subjective satisfaction is not arbitrary personal satisfaction but a reasonable satisfaction based on objective assessment of entire records including details of punishment, APAR entries, rewards, inquiry and promotion etc., following due procedure laid down by the law. In this case the compulsory retirement was not based on the recommendations of statutory review committee. Review Committee ensures absence of arbitrariness the authorities themselves cannot make arbitrary and mechanical orders and recommendations, the authorities are under obligation to ensure procedural fairness and objectivity, due application of mind and reasoned analysis of each individual case after scrutiny of entire records of the employee, as has been ruled

by higher courts at several occasions in cases involving subjective satisfaction or use of discretion by the executive authorities in such matters concerning employment and compulsory retirement. This is substantive protection under Art 21 and 14 of the constitution and Pension Rules of 1996, available to each and every employee in the state.

The DOP Circular dated 2004 and 2001 clearly provided for screening of entire service records by the highest review committee, and approval of its recommendation by the State Government (appointing authority).

The circular of 2001 issued by Secretary, Department of Personnel on 20th July, 2001 prescribes that the order of compulsory retirement is to be passed in public interest, more importance should be attached to the confidential records of the later years, It would not be reasonable to consider adverse entries of the remote past, though the adverse entries before crossing the efficiency bar can be taken into account, the entire records is to be considered. Merely on the basis of pending criminal procedure no adverse opinion should be framed.

The circular of 30th April, 2002 provides as under:-

“However, after the State Review Committee decides that some government servants should be given compulsory retirement, the concerned Administrative Department will make a reference to the High Powered Committees which have been

constituted vide Order No. F.6(9)AR/Gr.-3/2001 dated 07.03.2001 of the Administrative Reforms Department under the Chairmanship of the Chief Secretary, Department of Personnel. All the cases which are recommended for compulsory retirement by the State Review Committee will be reviewed by these High Powered Committees if the High Powered Committee agrees with the recommendation of the State Review Committee that any government servants should be given compulsory retirement, the matter will be submitted on file to the Minister of Personnel by the Administrative Department concerned. The orders for compulsory retirement can be issued only after the Minister for Personnel approves the proposal for giving compulsory retirement.

These clarifications may kindly be brought to the notice of all concerned for ensuring strict compliance thereof.

(Ashok Sampatram)

Secretary to Government”

Admittedly in this matter no such approval was obtained. Therefore the case falls in the category of malafide exercise of powers and power exercised without the authority of law. Based on malice in law the present order cannot be sustained hence we deem it fit to set aside the same . The order dated 18.07.2005 is hereby set aside.

The authorities have acted in a high handed manner and without the authority of law in a overzealous manner. The appellant might have been a public servant deserving Compulsory Retirement but no such order can be passed without following the procedure prescribed under law particularly when the matter pertains to livelihood and right to life which is sacrosanct. If higher authorities themselves do

not follow the rules and provisions of law, what can be expected of subordinates. It sets a bad precedent and may encourage other officials as well to indulge in similar conduct of highhandedness and disrespect towards law. The case pertains to 2005 and now setting aside of unlawful order – an unlawful order necessarily needs to be set aside, will have serious financial repercussions for public exchequer and all this due to unauthorised conduct of senior officials. We therefore deem it fit to impose a penalty of 2 lacs on the then errand IG range 1 Jaipur who passed an unlawful order of compulsory retirement in case of the appellant. If the IG has retired, same should be recovered through his pension in suitable installments of not less than 25000 a month.

The appellant will be entitled for pension and other retirement benefits by taking into account his services as restored from the date of retirement order. The Pension given to him so far will suitably be adjusted.

With this, the appeal stands disposed of.

**Sd/
(Jassa Ram Chaudhary)
Member**

**Sd/
(Ravishankar Srivastava)
Chairman**