

**HIGH COURT OF MADHYA PRADESH :**  
**JABALPUR**

**W.P. No. 3698/2001**

Noor Mohammad Pathan

**Vs**

The State of Madhya Pradesh and another

**Coram**

**Hon'ble Chief Justice A. M. Khanwilkar,**  
**Hon'ble Justice J.K. Maheshwari,**

*Whether approved for reporting? Yes/No*

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Shri Arun Soni, Advocate for the petitioner

Shri Amit Seth, Government Advocate for the respondent/State.

Shri Ashish Shroti, Advocate for the respondent no.2.

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**Reserved on : 30/7/2015**

**Date of Decision : /8/2015**

**ORDER**

**Per : J.K. Maheshwari, J.**

Invoking the jurisdiction under Article 226/227 of the Constitution of India, to assail the order of compulsory retirement Annexure P/1 dated 14.6.2001 passed by respondent no.2 and relieving order Annexure P/2, this petition has been preferred,

seeking reinstatement with consequential benefits.

2. Petitioner *inter alia* contended, that he was appointed as Process Writer and posted at Mandsaur. In the year 1995 with malafide intention he was transferred and posted in the Court of III Additional District & Sessions Judge, Ujjain. While posting at Ujjain, he was subjected to harassment and mental agony, however, compelled to take leave, which was not sanctioned and treating it as unauthorized absence, a chargesheet was served. On filing the reply, a departmental enquiry was initiated wherein he was found guilty and negligent in discharge of duties. The disciplinary authority inflicted the major penalty of withholding two increments with cumulative effect. It is said that except the said penalty, he was not subjected to any departmental enquiry during his entire service period and no adverse communication has been made. The petitioner belongs to reputed family of Sitamau, District Mandsaur and his wife contested the election of President, Nagar Panchayat however, the opponent made a complaint regarding participation of petitioner in the election, but it was found frivolous and in preliminary enquiry the said complaint was rejected, but his constant harassment continued. However, the orders impugned Annexure P/1 and P/2 were passed in gross violation of the principles of natural justice. It is said that the

order Annexure P/1 is a non-speaking order passed on the recommendation of Screening Committee without considering the entire service record. It is said that singular order of punishment cannot form the basis to pass an order of compulsory retirement. It is further said that the Scrutiny Committee has not followed the norms and procedure specified vide Government circular dated 22.8.2000 and without approval of the State Government, order impugned is not in conformity with law. As the cases of other similarly situated persons have not been considered while recommending the case of the petitioner to retire him in public interest, though the statutory functionary is bound to act fairly and to assign the reasons to support their findings. However, to single out the petitioner order impugned has been passed.

3. Respondent no.2 by filing the return, *inter alia* contended that Rule 42(1)(b) of the M.P. Civil Services Pension Rules, 1976 (hereinafter referred to as 'Pension Rules') empowers the appointing authority to retire a Government servant in public interest on completion of 20 years of service or 50 years of age. The State Government has issued a circular dated 22.8.2000 laying down the criteria, how and in what manner the scrutiny is to be done. As per the said circular a Committee was constituted for the purpose of scrutiny of the employees who comes within the said

criteria. The said Committee comprises of Special Judge and two Additional District & Sessions Judges, Ujjain. They scrutinized the service record of 47 employees including petitioner, and after overall assessment, made the recommendation against petitioner and four others to retire them compulsorily leaving others to continue in employment. It is said that the Committee while considering the cases of 47 employees applied the uniform norms to all, and also in case of petitioner, thus, the plea to single out the petitioner recommendation was made by Committee, is incorrect hence denied. The averments regarding political motivation or malafide intention were also specifically denied. It is said the Scrutiny Committee has considered the over all performance including CRs and made the recommendation based on the objective assessment. Thus, recommendation of Committee is based on bonafides, however, said interference in the facts is beyond the scope of judicial review in exercise of writ jurisdiction.

4. The respondent no.2 has again filed a detailed reply clarifying that after scrutiny of the service record of 47 employees, five persons were recommended and the petitioner is one of them. The said recommendations were placed before the appointing authority i.e. District & Sessions Judge, Ujjain who after perusal has approved those recommendations. It is further said that the

service record of the petitioner was not found satisfactory due to a departmental enquiry wherein he was punished vide order dated 2.6.1999, inflicting major penalty of withholding two increments with cumulative effect. As the Screening Committee has not found him fit to be retained in the Government service, however, recommended to retire him compulsorily. The fact regarding approval of the recommendation by the State Government, as per circular dated 22.8.2000 has been denied in reference to the instructions of the High Court dated 27.6.1985 Annexure R/3. It is stated that the said instruction has not been superseded, as apparent from the notesheet of the District & Sessions Judge Annexure R/4. It is further said that one other employee retired by the same Scrutiny Committee alongwith the petitioner namely Santaji Rao Bhonsle, had filed a writ petition bearing W.P. No.3378/2001 assailing his order of compulsory retirement, which is dismissed on 16.9.2008 vide Annexure R/5 accepting the recommendation of the Committee. Thus, petitioner has rightly been retired compulsorily by passing the order impugned which do not warrant any interference in this petition.

5. The respondent no.1/State has filed its brief return adopting the return filed by respondent no.2, however, prayed for dismissal of the writ petition.

6. Learned counsel for the petitioner would submit that the service record of the petitioner remained unblemished, however, without assessing the overall performance and the record, the recommendation of the Committee accepted by respondent no.2 is without recording its subjective satisfaction. Infact, petitioner remained in the benchmark of “Good” during the entire service career which is one of the vital consideration, however, ignoring the same, the recommendation made against him is not in accordance with law. It is further submitted that the Committee has further considered the various other remarks, but without supplying those documents made him handicapped to put effective defence, which is in gross violation of the principles of natural justice. It is further contended that under Rule 42(1)(b) of the Pension Rules and as per the circular dated 22.8.2000, on making recommendation, approval of the State Government is necessary, however, without such approval order of compulsory retirement is illegal and without jurisdiction. Lastly, it is urged that the action taken by the respondent is arbitrary and discriminatory because the case of various other similarly situated employees have not been considered while making recommendation against him. In support of the said contentions reliance has been placed on the judgments in the case of **State of**

**Gujarat vs. Umedbhai M. Patel (2001) 3 SCC 314, and Anil Kumar Mahajan vs. Union of India through Secretary, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi and others (2013) 7 SCC 243**, therefore, prayed for quashment of the orders impugned, allowing this petition.

7. Per contra, learned counsel appearing on behalf of the respondent no.2 has produced the original recommendation of the Scrutiny Committee for perusal of the Court and argued with vehemence that overall performance of the petitioner was not upto the mark and he was found below the benchmark “good”. In the year 1999 on account of unauthorized absence and having negligent in discharge of duties, a departmental enquiry was conducted, wherein he was found guilty and the major penalty of withholding two increments was directed, thus the recommendation is based on objective assessment. The argument regarding competence of respondent no.2 to pass order without approval of the State Government has been seriously objected in view of the corrigendum of the High Court vide Annexure R/3 and R/4. It is further submitted that the plea of discrimination as raised by the petitioner is without any basis, therefore, no relief, as prayed in this petition can be directed.

8. After perusal of pleadings and hearing rival submissions of the learned counsel for the parties, as per the Pension Rules 42(1)(b), the appointing authority may retire a Government Servant in Public interest at any time on completion of 20 years of service, or on attaining 50 years of age whichever is earlier. The procedure which is to be applied in scrutiny of the cases, has been reiterated in the G.A.D circular dated 20.8.2000, however, relevant extract thereof is reproduced as under :-

“(1) छानबीन कर अनिवार्य सेवानिवृत्ति के लिये निर्धारित मानदण्ड :-

50 वर्ष की आयु और अथवा 20 वर्ष की सेवा पूर्ण करने वाले शासकीय सेवकों के लिये मूलभूत नियम 56 एवं मध्यप्रदेश सिविल सेवा (पेंशन) नियम, 1976 के नियम 42 के अधीन छानबीन करते समय अनिवार्य सेवानिवृत्ति करने के लिये निम्नानुसार देखा जाये :-

- (1) ईमानदारी तथा सत्यनिष्ठा संदेहजनक होना। (इस हेतु संबंधित शासकीय सेवक का संपूर्ण अभिलेख देखा जाकर अनुसंशा की जाए।)
- (2) शारीरिक क्षमता में कमी।
- (3) ख्याति एवं कार्यक्षमता का मूल्यांकन संबंधित शासकीय सेवक के सेवाकाल के संपूर्ण अभिलेखों के आधार पर किया जाये। यह आवश्यक नहीं है कि प्रत्येक प्रतिकूल अभ्युक्ति अथवा ऐसी अभ्युक्ति जिसे प्रतिकूल अभ्युक्ति को संज्ञा दी जा सकती है, शासकीय सेवक को संसूचित की गई हो।  
(राज्य शासन, उ.प्र. एवं अन्य विरुद्ध बिहारी लाल, 1994 की सिविल अपील क्रमांक 6307 (ए आई आर 1995 सुप्रीम कोर्ट 1161)
- (4) सम्पूर्ण सेवाकाल के अभिलेखों का समग्र मूल्यांकन— “अच्छा (ख)” श्रेणी से कम होना। इसके साथ यह भी देखा जावे कि शासकीय सेवक की कार्यक्षमता में गिरावट तो नहीं आ रही है। विशेषकर पिछले 5 वर्षों के कार्य का स्तर घट तो नहीं रहा है।

9. In addition to the said guidelines specified by the State Government for scrutiny of the employees to recommend them to retire compulsorily Hon’ble the Apex Court in the case of **Baikuntha Nath Das and another vs. Chief District Medical**



**Officer, Baripada and another (1992) 2 SCC 299** and in the case **Umedbhai M. Patel (supra)** has laid down the certain guidelines required to be considered and followed while making recommendations for compulsory retirement which is reproduced as thus :-

The law relating to compulsory retirement has now crystallised into definite principles, which could be broadly summarised thus:-

- (i) Whenever the services of a public servant are no longer useful to the general administration, the officer 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 the dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.
- (iv) **Any adverse entries made in the confidential record shall be taken note of and be given due weightage 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.

**10.** In view of the above, the broad guidelines are that honesty and integrity ought to be beyond doubt, an employee must be capable and his/her assessment ought to be done on the basis of entire service record giving weightage to the passing of adverse remarks. Even uncommunicated adverse entries may be taken into consideration. The service record of the employee should not be less than the benchmark "Good". It is further required to be seen that his efficiency has not reduced particularly during last five years. Hon'ble the Apex Court in the case of **State of U.P. vs. Vijay Kumar Jain (2002) 3 SCC 641** held that even an isolated adverse entry is sufficient to form an opinion to retire an employee compulsorily. Further, in the case of **State of U.P. vs. Bihari Lal**

**1994 Supp.(3) SCC 593**, the Apex Court held that if the general reputation of an employee is not good, though there may not be any tangible material against him, he may be given compulsory retirement in public interest but the decision is to be taken bonafide. Hon'ble Apex Court in the case of **Jugal Chandra Saikia vs. State of Assam (2003) 4 SCC 59** has observed that the Scrutiny Committee shall form an opinion objectively with a view whether any employee is fit to be retained in service or not. The said opinion must be based on the subjective satisfaction of the authority.

**11.** It is to be noted here that if broad guidelines have been observed by the Scrutiny Committee and the order of compulsory retirement has been passed to chop off the dead wood in public interest, the scope of judicial review is very limited. In this regard guidance may be taken from the judgments **Posts and Telegraphs Board and others vs. C.S.N. Murthy (1992) 2 SCC 317**; **Sukhdeo vs. Commissioner Amravati Division, Amravati and another (1996) 5 SCC 103**; **I.K. Mishra vs. Union of India and others (1997) 6 SCC 228**; **M.S. Bindra vs. Union of India and others (1998) 7 SCC 310** and **Rajat Baran Roy and others vs. State of W.B. and others (1999) 1 SCC 529**. Recently Hon'ble Supreme Court in the case of **Pyare Mohan Lal vs. State of**

**Jharkhand and others (2010) 10 SCC 693** has restated the same principles indicating the scope of judicial review and observed that if decision is taken by the authority forming his opinion objectively on the basis of the material brought before him after subjective satisfaction in absence of having any allegation of malafide or to show non application of mind in arbitrary exercise of powers, interference by the court is not warranted.

12. In the context of the norms so determined by the State Government as well as legal position reiterated by the Hon'ble Apex Court by various judgments as discussed hereinabove to analyze the arguments of the petitioner with respect to malafide due to non-consideration of the case of other employees, non-consideration of the entire service record though he is having benchmark "Good" and without supplying the document, passing an order is required to be adverted to. In the said context the record of the Scrutiny Committee, placed for perusal of the Court is seen whereby it is clear that the cases of the 47 other employees have also been considered alongwith the case of the petitioner, and the performance of all the employees have been considered looking to the entire service record, CRs of last five years in particular and overall performance and other entries. By the said assessment, the Scrutiny Committee recommended retirement of

petitioner alongwith four other persons. The performance chart of petitioner has already been brought to the notice of this Court which is reproduced as under :-

**ACRs Chart of Shri Noor Mohammad Pathan**

Year	ACR (Grading)	Heads under adverse remarks given	Remark
1977-78	No remark	10	.....किन्तु तामिली प्रतिसत में सुधार आवश्यक है।
1978-79	No remark	10	उसे अपने कार्य में और सुधार लाना चाहिये उसका इस न्यायालय से स्थानान्तर किया जावे।
1981-82			Seen. He should improve his percentage. He is educated and if he improves and gives better performance he may have good prospects of being considered for promotion communicate.
1983-84	"P" POOR	6 8 9 10	साधारण, किन्तु ना0 नाजिर द्वारा बताये तामिली कार्य के समय विवाद करना व झगड़ना। ठीक; प्रायः शासन द्वारा दी गई बर्दी नहीं पहनते हैं। .....किन्तु विनम्रता नहीं। आदेश का पालन नहीं करते, इस बावत् जु. ना. ना. ने लिखित प्रतिवेदन दिया है। "P" POOR "स्थानान्तर होना आवश्यक, क्योंकि अन्य प्रोसेस सर्वर भी इनके देखा-देखी व्यवहार कर रहे हैं।
1984-85	No remark	6 10	अच्छी नहीं है क्योंकि वह वारंट की तामिली बिल्कूल नहीं करता और कई बार सर्कल की तिथि समाप्त होने के बाद देर से मुख्यालय वापस लौटता है। उसका कार्य सन्तोषजनक नहीं है क्योंकि आमतौर पर तामिली बहुत कम है। वह कई बार देर से मुख्यालय वापस लौटा जिसके कारण देर से लौटने की अवधि आकस्मिक मानी गई सम्भवतः उसका स्थानान्तर सीतामउ से असंतोषजनक कार्य के कारण यहां हुआ है।
01-10-91 to 31-03-92	No remark	12 14	An average worker. Need improve.
31-05-91 to 30-09-91	No remark	5 10	Talkative and slow worker. Not fit for promotion.
31-03-92 to 10-04-93	No remark	5 7	Slow in worker. Require guidance.
1994-95	"D" Below average.		"D" Below average.
97-98	"C" GOOD	13	नियमित रूप से उपस्थिति न होने के कारण विभागीय जांच की जाकर दो इंकीमेंट संचयी प्रभाव

			से रोकने की शास्ति।
1998-99	"C" GOOD	14	कार्य स्तर और बढ़ाये जाने की आवश्यकता है।
Year ending 31-03-2000	"C" GOOD		पेन्डिंग कार्य का निपटारा और अच्छी गति से करना चाहिये।

On perusal of the aforesaid, it is clear that in the remark column, he was found to be average worker, slow worker, talkative, need improvement, not discharging his duties efficiently and not fit for promotion. In the year 1983-84, he has been categorized in the category "Poor", in the year 1994-95 he was graded "Below Average" (D). In the year 1997-98, 1998-99 and 2000 he was graded as "Good" but in the departmental enquiry of 1997-98, a major penalty of withholding two increments with cumulative effect was directed vide order dated 2.6.1999. In such circumstances, looking to the entire service record, gradation and over all performance, reputation of petitioner, it is clear that the opinion formed by the Scrutiny Committee is based on the objective assessment, which cannot be regarded without due application of mind or any malafide intention. In addition, the argument regarding the malafide without joining by name and making specific allegation against the members of the Screening Committee and appointing authority in this petition is hereby repelled. It is seen, the case of the petitioner has been considered alongwith other 47 employees, therefore, the allegation of arbitrary

exercise of power to single out him is also unfounded. As the entire service record has been brought before this Court and after perusal thereto, it cannot be said that without any basis the order impugned has been passed prejudicing the right of the petitioner. In that view of the matter, the argument regarding non-supply of the document is of no substance and is hereby rejected. Thus, in our considered opinion, the recommendation of the Scrutiny Committee and taking decision by appointing authority retiring the petitioner compulsorily is not open for judicial review. In-fact, the Scrutiny Committee has applied its mind to arrive at a conclusion that retention of the petitioner is not in public interest. The said recommendation and the order is based on subjective satisfaction of appointing authority which is beyond the scope of judicial review.

**13.** Now, reverting to the point of passing an order without approval of the State Government by the respondent no.2 is concerned, it is seen from the record that High Court of Madhya Pradesh, Jabalpur has issued memorandum dated 27.6.1985 in the matter of screening of the employees for compulsory retirement, and to pass the order. The said memo is reproduced as under :-

“ : : HIGH COURT OF MADHYA PRADESH : JABALPUR : :

: : M E M O R A N D U M : :

No. B/5666/ Jabalpur Dated the 27/June, 1985.  
III-18-117/84 (Durg).

To,

The District and Sessions Judge,

Subject: - Screening of Government Servants for compulsory retirement.

\* \* \*

I am directed to invite your kind attention to instructions contained in the General Administration Department Memo.No.F/C/3-24/84/3/1 dated 20.7.84 and to advise you to take necessary steps to scrutinize cases of all such Government Servants, who have put in 25 years of qualifying Service in accordance with the orders of the Government issued from time to time and to make necessary recommendations under Clause (b) of sub-rule (1) of Rule 42 of the M.P.Civil Services (Pension) Rule, 1976 for approval of the Government.

2. I am further directed to make it clear that in view of the instructions contained in G.A.D. Memo. Dated 20.7.84 referred to above the District Judge's himself competent to retire a non-gazetted Government Servant compulsorily on attaining, the age of 55 years Under F.R.56(3) after screening of their cases.

(Y.B.SURYAVANSHI)  
 REGISTRAR

**14.** As per the instructions of the High Court, the recommendation made against the petitioner has been placed before the respondent no.2 in reference to the said circular which is accepted by him and directed to issue the order. However, considering the memorandum dated 27.6.1985 the appointing



authority recorded subjective satisfaction being competent and directed to proceed further by writing a notesheet which is reproduced as under :-

“राज्य शासन ने ज्ञाप दि. 22-8-2000 के अनुसार सेवा निवृत्ति की आयु 55 वर्ष से घटाकर 50 वर्ष की है जो मूलभूत नियम 56 में की गई इसके अलावा पेंशन नियम 42 बी में भी इसे जोड़ा गया है। तब यह तय किया जाना था कि क्या 50 से अधिक वर्ष की आयु पूरी करने पर किसी कर्मचारी को नियोक्ता अधिकारी अनिवार्य सेवा निवृत्ति कर सकता है अथवा माननीय उच्च न्यायालय की सहमति आवश्यक है क्योंकि उक्त आदेश दिनांक 22-8-2000 के द्वारा पुराने जिन परिपत्रों को समाप्त किया गया उनमें परिपत्र दि. 27-6-85 (माननीय उच्च न्यायालय का ज्ञाप बी/5666/तीन-18-117/84(दुर्ग) से भेजे गए परिपत्र समाप्त नहीं हुआ है।

फिर भी माननीय उच्च न्यायालय से इस संबंध में मार्गदर्शन चाहा गया था। माननीय उच्च न्यायालय के ज्ञाप दि. 14-11-2000 से ऐसा नहीं कहा गया है कि ऐसे कर्मचारियों का मामला सहमति के लिए उनके पास भेजा जाए बल्कि राज्य शासन के लागू किए गए परिपत्र के अनुसार कार्यवाही की जाने की राय दी गई है। तब परिपत्र दि. 27-6-85 के प्रकाश में 50 वर्ष से अधिक आयु के कर्मचारी जिनकी अनिवार्य सेवा निवृत्ति छानबीन समिति ने अनुशंसित की है, को अनिवार्य रूप से सेवा निवृत्त किया जा सकता है अतएव तदनुसार नोटिस दिया जाना स्वीकार किया जाता है।

(एन.के.गुप्ता)  
जिला एवं सत्र न्यायाधीश,  
उज्जैन (म.प्र.)”

**15.** In view of the above by the memorandum of the High Court dated 27.6.1985, the GAD Memo dated 22.7.1984 was clarified, that the District Judges were themselves competent to retire non-gazetted government servants compulsorily on attaining the age of 55 years or 20 years of service under Rule 42 of Pension

Rules or under Fundamental Rules 56(3). However, looking to the memorandum of the High Court, the competence of the District & Sessions Judge, cannot be doubted in absence of having any material to supersede the said memorandum of the High Court. In such circumstances, the argument advanced by the learned counsel regarding competence of respondent no.2 or that the order cannot be passed without prior approval of the State Government is devoid of any merit, hence rejected.

**16.** In view of the above discussion and looking to the over all performance of the petitioner, and grading which reflects from the chart articulated hereinabove and also taking note of the adverse communications and the major penalty inflicted on 2.6.1999 vide Annexure P/6, the recommendations made by the Screening Committee is based on the opinion formed objectively with bonafides with due application of mind, and not arbitrary. The competent authority thereafter recorded subjective satisfaction on perusal of such recommendation while passing the order of compulsory retirement of petitioner. Thus, as per the discussion made, in fact situation of this case, interference is not warranted.

**17.** In view of the foregoing, we are of the considered opinion that the orders impugned Annexure P/1 and P/2 retiring

the petitioner compulsorily in public interest and to relieve him have rightly been passed, consequently the petition filed by the petitioner is dismissed being devoid of any merit. In the facts of this case, parties to bear their own costs.

**(A.M. KHANWILKAR)**  
**Chief Justice**

**(J.K. MAHESHWARI)**  
**Judge**

PK