

**IN THE HIGH COURT OF MADHYA PRADESH**

**AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE RAVI MALIMATH,**

**CHIEF JUSTICE**

**&**

**HON'BLE SHRI JUSTICE PURUSHAINDR KUMAR KAURAV**

**ON THE 29<sup>th</sup> OF MARCH, 2022**

**WRIT PETITION No. 5752 OF 2002**

**Between:-**

**ASHOK KUMAR SON OF NARAYAN  
RAO, ANWANE, AGED 43 YEARS,  
ASSISTANT GRADE-II, STATISTICAL  
WRITER, OFFICE OF DISTRICT  
JUDGE, BETUL, R/O TELEPHONE  
COLONY, VIKAS NAGAR, BETUL (M.P.).**

**.....PETITIONER**

***(BY SHRI B.B.DUBEY AND OTHERS - ABSENT)***

**AND**

- 1. DISTRICT AND SESSIONS JUDGE,  
BETUL.**
- 2. STATE OF M.P. THROUGH THE  
PRINCIPAL SECRETARY TO  
GOVERNMENT, LAW AND  
LAGISLATIVE DEPARTMENT,  
VALLALBH BHAVAN, BHOPAL.**
- 3. HON'BLE HIGH COURT OF MADHYA  
PRADESH AT JABALPUR (M.P.)  
THROUGH ITS REGISTRAR GENERAL.**

**....RESPONDENTS**

*(SMT. SHOBHA MENON – SENIOR ADVOCATE  
ASSISTED BY RAHUL CHOUBEY - ADVOCATE)*

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*This petition coming on for admission this day, **Hon'ble Shri Justice Purushaindra Kumar Kaurav**, passed the following:*

**ORDER**

This matter was dismissed twice for want of prosecution i.e on 28.07.2015 and thereafter on 09.11.2021, however, the same was restored vide order dated 18.02.2016 (M.C.C. No.581-2016) and 09.11.2021 (M.C.C No.1863-2021). The same was called for final hearing on 28.03.2022. Since nobody appeared, therefore, we directed to keep it for hearing on 29.03.2022. On 29.3.2022 also nobody appeared for the petitioner even when the matter was called out in the second round. Under such circumstances, since the petition is pending for last 20 years, we are left with no option except to decide it on merits with the assistance of learned Senior Counsel appearing for the respondent and on the basis of material available on record. Hence, we proceed to decide the same.

1. The petitioner has filed the instant writ petition challenging the notice dated 19.08.2002 (Annexure P-1), the order of rejection of his representation dated 18.11.2002 (Annexure P-11) and another order dated 18.11.2002 (Annexure P-12), whereby, he has been compulsorily retired.

2. The facts of the case are that the petitioner was appointed as Process Writer vide order dated 18.06.1977. He was promoted as

LDC on 28.10.1978 and was further promoted as A.G.-II with effect from 09.04.1993. Since then he was working on the post of A.G-II under the Establishment of District and Sessions Judge, Betul. He submits that on 28.09.1999, he was served with the charge sheet for the alleged misconduct. The same was replied by him on 14.10.1999 and, thereafter, neither any inquiry officer was appointed nor any departmental inquiry was held, therefore, the matter stood closed.

3. He submits that without there being any material against him, he was served with another notice dated 19.08.2002 (Annexure P-1) which was issued under Rule 42(1)(b) of the Madhya Pradesh Civil Services (Pension) Rules, 1976 (hereinafter referred to as “Rules of 1976”). Petitioner submits that he made a representation to the Hon’ble High Court on administrative side which has also been rejected vide order dated 18.11.2002 (Annexure P-11). Thereafter, by another order dated 18.11.2002 (Annexure P-12), the petitioner has been compulsorily retired with effect from 19.11.2002 under the Rules of 1976.

4. We have perused the record and we find that the petitioner has mainly challenged the order of his compulsory retirement on the ground the petitioner received adverse confidential report of the year 1997-1998 and 1998-1999 which were communicated to him after 15<sup>th</sup> of June of the concerned years. He submits that as the same were communicated to him after 15<sup>th</sup> of June of the concerned years, therefore, they cannot be taken into consideration for any purpose whatsoever. For the year 1999-2000, 2000-2001 and 2001-2002, there was no complaint against him. Thus the same should not have been

taken into consideration. Since the charge sheet did not culminate into departmental inquiry and punishment, hence the same should not have been taken into account while passing the order of compulsory retirement. It is submitted that the order of compulsory retirement has been passed without affording him any opportunity of hearing.

5. The legal position with respect to compulsory retirement is well settled. The principles of natural justice are not applicable in the case of compulsory retirement. Moreover, the uncommunicated adverse confidential report can also be taken into consideration while taking the decision regarding compulsory retirement. (*See : Baikuntha Nath Das vs. District Medical Officer*<sup>1</sup>. *Pyare Mohan Lal Vs. State of Jharkhand and others*<sup>2</sup>).

6. We have carefully examined the material available on record against the petitioner. The entire service record of the petitioner was considered before taking the decision of compulsory retirement. Some of the incidents have been relied upon by the respondents in pleadings which are reproduced herein below:-

“4. As to Para 5.8 (d) :- The compulsory retirement under Rule 42(1)(b) of the M.P. Civil Services (Pension) Rules, 1976 is not attracted by principles of natural justice as per settled law and, therefore, the contentions of the petitioner in this para are unsustainable. The entire service records of the petitioner were continuously stained abruptly by remaining absent thereby putting impediments in the proper and smooth functioning of the respondents which were

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<sup>1</sup> (1992) 2 SCC 299.

<sup>2</sup> (2010)10 SCC 693.

intimated to him as well. Some of such incidences are enumerated herein below:-

(i) Order No.47 dated 17.04.1984 imposing penalty of stopping one increment for a period of one year without cumulative effect.

(ii) Vide order dated 18.04.1984, unauthorized absence of the petitioner on 27.02.1984 and 28.02.1984 were accepted by the respondents.

(ii) Vide order dated 07.11.1997, 3 days' unauthorized absence from 03.11.1997 to 05.11.1997 and vide order dated 24.06.1998, 4 days' unauthorized absence from 16.06.1998 to 19.06.1998 were accepted by the respondents.

(iv) Vide order dated 16.03.1999, the petitioner was served with a character warning for remaining absent from the duty without submitting application for without giving information.

(v) Vide order dated 04.03.1999, 5 days' unauthorized absence on 18.01.1999 and 01.02.1999 to 04.02.1999 was accepted.

(vi) The following unauthorized absences were accepted on dates show below:-

- |                            |                                  |
|----------------------------|----------------------------------|
| (a) Order dated 10.03.1999 | 5 days from 23.02.99 to 27.02.99 |
| (b) Order dated 30.05.1999 | 5 days from 15.03.99 to 19.03.99 |
| (c) Order dated 06.08.1999 | 4 days from 26.07.99 to 29.07.99 |
| (d) Order dated 27.08.1999 | 8 days from 10.08.99 to 17.08.99 |

(vii) The following unauthorized absences were accepted on dates show below :-

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|----------------------------|---|
| (a) Order dated 23.01.2001 | 7 days from 10.01.2001 to 16.01.2001  |
| (b) Order dated 15.02.2001 | 5 days from 05.02.2001 to 09.02.2001  |
| (c) Order dated 05.09.2001 | 1 day on 28.08.2001   |
| (d) Order dated 09.08.2001 | 5 days from 27.06.2001 to 01.07.2001 and 13 days from 3.07.2001 to 15.07.2001 |

(viii) He was issued a memorandum on 17.04.1984 for dereliction of duty, the reply of which was not satisfactory.

(ix) The Committee has found the petitioner not keeping well and therefore, also he was incompetent to discharge his duties.”

7. The Scrutiny Committee had considered the entire service record of the petitioner and it was found that he remained absent unauthorizedly. He was alcoholic and was lacking in honesty and integrity. After considering the overall service record, his representation was also rejected.

8. While considering various decisions of the Hon’ble Supreme Court particularly the matters of *Posts and Tegraps Board Vs. C.S.N.Murthy*<sup>3</sup>, *Sukhdeo Vs. Commissioner*<sup>4</sup>, *I.K.Mishra Vs. Union of India*<sup>5</sup>, *M.S.Bindra Vs. Union of India*<sup>6</sup> and *Rajat Baran Roy Vs. State of W.B*<sup>7</sup>, it is settled that there is limited scope of judicial review

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<sup>3</sup> (1992) 2 SCC 317.

<sup>4</sup> (1996) 5 SCC 103.

<sup>5</sup> (1997) 6 SCC 228.

<sup>6</sup> (1998) 7 SCC 310.

<sup>7</sup> (1999) 4 SCC 235.

in a case of compulsory retirement and it was permissible only on the grounds of non-application of mind, mala fides or want of material particulars. Power to retire compulsorily a government servant in terms of service rules is absolute, provided the authority concerned forms a bona fide opinion that compulsory retirement is in public interest.

9. Having considered the entire material available on record, we find that the decision of the respondents to compulsory retire the petitioner is in public interest. The same is strictly in accordance with law. The same has been passed having due regard to the entire service record of the petitioner. He was found to be inefficient to discharge his official duties. His work was categorized as “ordinary”. If the decision has been taken to compulsory retire him, the same cannot be subjected to judicial review under the facts of the present case. Accordingly, we find no substance in the present writ petition. The same is dismissed.

**(RAVI MALIMATH)**  
**CHIEF JUSTICE**

**(PURUSHAINDR KUMAR KAURAV)**  
**JUDGE**