



**IN THE HIGH COURT OF MADHYA PRADESH**

**AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE SANJEEV SACHDEVA**

**&**

**HON'BLE SHRI JUSTICE VINAY SARAF**

**ON THE 1<sup>st</sup> OF MAY, 2025**

**WRIT PETITION No. 8302 of 2010**

***SURYA KANT VARADE***

***Versus***

***HIGH COURT OF MADHYA PRADESH***

**Appearance:**

***Shri Shashank Verma, Senior Advocate with Shri Akhilesh Rai - Advocate for petitioner.***

***Shri Aditya Adhikari, Senior Advocate with Ms. Divya Pal - Advocate for respondent.***

**ORDER**

***Per: Justice Sanjeev Sachdeva***

1. Petitioner impugns order dated 30.11.2004 whereby petitioner has been compulsorily retired from service under Rule 42(1)(b) of M.P. Civil Services (Pension) Rules, 1976 and Fundamental Rules 56(2)(a) read with Rule 17 of High Court of Madhya Pradesh Officers & Employees (Classification Control, Appeal and Conduct) Rules, 1996.

2. Petitioner was appointed as a Lower Division Clerk in the services of the High Court in the year 1981. He was promoted to the post of Assistant Grade-II in 2003. As a consequence of promotion,



petitioner was transferred from the Indore Bench of High Court to the Gwalior Bench and consequently, petitioner represented against the same and forwent his promotion.

3. Subsequently, by the impugned order dated 30.11.2004, petitioner has been compulsorily retired.

4. Learned counsel for petitioner impugns the order primarily on the following grounds:-

(i) That, the Committee which recommended for compulsory retirement did not take into account the entire career profile of the petitioner and took into account only the last five Annual Confidential Reports ('ACR' for Short).

(ii) That, the Committee overlooked the factum of promotion of the petitioner to a higher post in the year 2003 and took into account an ACR of the preceding year i.e. of 1999-2000.

(iii) That, the adverse ACR of the year 2003-2004 could not have been taken into account for the reason that petitioner had given a representation against the ACR, which as per the petitioner has till date not been decided.

5. *Per contra*, learned counsel for respondent contends that the Committee which examined the records of all the employees who had completed 20 years of service and 50 years of age, comprised of two sitting Judges of this Court besides a Registrar and took into account the entire career profile of each of the officers/employees. He submits that the Committee had decided to recommend compulsory retirement of officers who had at least one poor or unsatisfactory ACR in the last five



years of consideration. In the case of petitioner, there were two adverse ACRs one for the year 1999-2000 and the other for the year 2003-2004. Learned counsel further submits that the petitioner is unaware as to whether the representation given by him has been decided or not and without prejudice submits that the Committee could have looked into the adverse entries even if the representation was not decided. He submits that the adverse ACR does not get effaced and can still be taken into account.

6. Learned counsel further submits that merely because petitioner was promoted would not nullify the adverse comments made against petitioner in the previous ACRs. He further submits that the adverse ACR of 2003-2004 was written after the order of promotion and as such the adversity in the ACRs could certainly have been taken into account by the Committee. He relies on the decisions of the Supreme Court in the cases of **Punjab Vs. Gurdas Singh, (1998) 4 SCC 92**, **Rajendra Singh Verma Vs. Lieutenant Governor (NCT of Delhi) and others, (2011) 10 SCC 1** and **Central Industrial Security Force BS. HC (GD) Om Prakash, (2022) 5 SCC 100**.

7. For determining the questions that arise for consideration, it would be necessary to first examine the report of the Committee. The relevant portion of the report of the Committee dated 18.11.2004 reads as under:-

*“The Hon'ble Committee examined in details each and every case falling within the criteria of attainment of 50 years of age or completion of 20 years of service. The Hon'ble Committee has seriously deliberated on all the 58 cases as per Annexure 'A' and in particularly 15 Officials/Employees whose A.C.Rs for the last 5 years from 1999-2000 to 2003-2004 were reported to be poor/unsatisfactory in any particular year or more. In this*



*regard, relevant statement showing names of the 15 Employees whose A.C.RS were reported to be adverse is annexed here at Annexure 'B'.*

*After considering all the aspects, A.C.Rs for the last 5 year: and relevant enabling provisions under the M.P. Civil Services (Pension) Rules, 1976 and the M.P, Fundamental Rules, Hon'ble Screening Committee observed as under :-*

*Employees at S.No.3, Ku.Vasantha N.(P.S.), S.No.13 Sh. S.K.Varvade, Astt.Gr.III, &S.No.14Sh.N.L. Mishra, Astt.Gr.III and S.No.15 Smt. J.B. Qureshi, Asstt.Gr.III are not found fit to be retained in service in terms of Rule 42(1)(b) and Rule 56(2)(a). Rest may be kept. Under observation and their cases may be kept for consideration in the next meeting.”*

8. Perusal of the recommendation of the Committee shows that the Committee has deliberated on all the 58 cases that were placed before the Committee particularly cases of 15 officers/employees whose ACRs for last 5 years were reported to be poor/unsatisfactory in any particular year or more. This noting by the Committee in no manner suggests that the Committee did not look into the entire career profile of each of the officers/employee. The Committee has focused on adverse entries in the last five years of the officers/employees and adverse entries in the last five years of poor/unsatisfactory have been particularly considered.

9. Accordingly we are unable to accept the contention of the petitioner that the entire career profile of the petitioner was not taken into account.

10. Further, respondent in their counter affidavit have placed on record the show cause notices issued to the petitioner from time to time. Reference is drawn to the notices dated 13.08.2001, 04.07.2002, 14.02.2003 and 04.08.2003, wherein show cause notices were issued to



the petitioner to show cause as why action be not taken against him for repeatedly coming late to office which showed his negligence towards duty.

11. The above referred conduct of the petitioner as well as the adverse entries in ACRs clearly gave a ground to the Committee to recommend compulsory retirement of the petitioner.

12. Reference may be had to the judgment of the Supreme Court in ***State of Punjab Vs. Gurdas Singh, (1998) 4 SCC 92***, wherein the Supreme Court of India has held as under:-

*“In Brij Mohan Singh Chopra v. State of Punjab [(1987) 2 SCC 188: (1987) 3 ATC496 : (1987) 2 SCR 583] this Court adopted a somewhat different approach. The judgment in the case of M.E. Reddy [(1980) 2 SCC15 : 1980 SCC (L&S) 179 : (1980) 1 SCR 736] was not noticed. In this case the Court held that it would be unjust and contrary to the principles of natural justice to retire prematurely a government employee on the basis of adverse entries which were either not communicated to him or if communicated, representations made against those entries were not considered and disposed of. This judgment given by a two-Judge Bench has been expressly overruled by a three-Judge Bench judgment of this Court in Baikuntha Nath Das v. Chief Distt. Medical Officer [(1992) 2 SCC299 : 1993 SCC (L&S) 521 : (1992) 21 ATC 649] . The question for consideration before this Court in this latter case was whether it was permissible to the Government to order compulsory retirement of a government servant on the basis of materials which included uncommunicated adverse remarks. This Court considered various judgments on the issue and laid the following principles: (SCC pp. 315-16, para 34)*

*“34. The following principles emerge from the above discussion:*

- (i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.*



- (ii) *The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.*
- (iii) *Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary — in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.*
- (iv) *The government (or the Review Committee, as the case may be) 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, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.*
- (v) *An order of compulsory retirement is not liable to be quashed by a court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.*

*Interference is permissible only on the grounds mentioned in (iii) above.”*



13. The Supreme Court in **Gurdas Singh (supra)** noticed that a two Judge Bench decision in **Brij Mohan Singh Chopra v. State of Punjab (1987) 2 SCC 188** was expressly overruled by a three Judge bench decision in **Baikuntha Nath Das v. Chief Distt. Medical Officer (1992) 2 SCC 299**. The Supreme Court after considering the decision in Gurdas Singh (*supra*) held as under:

*“11. The facts in the present case are quite similar to that in Union of India v. V.P. Seth [1994 SCC (L&S) 1052 : (1994) 27 ATC 851 : AIR 1994 SC 1261] . Here also the only ground on which the order prematurely retiring Gurdas Singh was set aside was that two adverse entries after his promotion from the rank of Assistant Sub-Inspector to Sub-Inspector were not communicated to him and earlier adverse entries could not be taken into account because even when those existed Gurdas Singh had earned his promotion. It is not necessary for us to again reiterate the principles where the Court will interfere in the order of premature retirement of an employee as these have been accurately set down by various pronouncements of this Court and particularly in Baikuntha Nath Das case [(1992) 2 SCC 299 : 1993 SCC (L&S) 521 : (1992) 21 ATC 649] . Before the decision to retire a government servant prematurely is taken the authorities are required to consider the whole record of service. Any adverse entry prior to earning of promotion or crossing of efficiency bar or picking up higher rank is not wiped out and can be taken into consideration while considering the overall performance of the employee during whole of his tenure of service whether it is in public interest to retain him in the service. The whole record of service of the employee will include any uncommunicated adverse entries as well.”*

14. The Supreme Court has held that the whole record of service is required to be considered. Any adverse entry prior to earning of promotion or crossing of efficiency bar or picking up higher rank is not wiped out and can be taken into consideration while considering the overall performance of the employee during whole of his tenure of



service whether it is in public interest to retain him in the service. The whole record of service of the employee will include any uncommunicated adverse entries as well.

15. Similarly in the case of ***Rajendra Singh Verma Vs. Lieutenant Governor (NCT of Delhi) and others, (2011) 10 SCC 1***, the Supreme Court has held as under:-

*“143. Compulsory retirement from service is not considered to be a punishment. Under the relevant rules, an order of dismissal is a punishment laid on a government servant when it is found that he has been guilty of misconduct or the like. It is penal in character because it involves loss of pension which under the rules has accrued in respect of the service already put in. An order of removal also stands on the same footing as an order of dismissal and involves the same consequences, the only difference between them being that while a servant who is dismissed is not eligible for reappointment, one who is removed is. A compulsory retirement is neither dismissal nor removal and differs from both of them, in that it is not a form of punishment prescribed by the rules and involves no penal consequences, inasmuch as the person retired is entitled to pension and other retiral benefits, proportionate to the period of service standing to his credit.*

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*150. This Court has consistently taken the view that an order of compulsory retirement is not a punishment and does not have adverse consequence and, therefore, the principles of natural justice are not attracted. What is relevant to notice is that this Court has held that an uncommunicated adverse ACR on record can be taken into consideration and an order of compulsory retirement cannot be set aside only for the reason that such uncommunicated adverse entry was taken into consideration. If that be so, the fact that the adverse ACR was communicated but none of the appellants had an opportunity to represent against the same, before the same was taken into consideration for*





*passing the order of compulsory retirement, cannot at all vitiate the order of compulsory retirement.*

**151.** *In State of U.P. v. Bihari Lal [1994 Supp (3) SCC593 : 1995 SCC (L&S) 177 : (1994) 28 ATC 586] this Court has ruled that before exercise of the power to retire an employee compulsorily from service, the authority has to take into consideration the overall record, even including some of the adverse remarks, which though for technical reasons, might have been expunged on appeal or revision. What is emphasised in the said decision is that in the absence of any mala fide exercise of power or arbitrary exercise of power, a possible different conclusion would not be a ground for interference by the court/tribunal in exercise of its power of judicial review. According to this Court, what is needed to be looked into is whether a bona fide decision is taken in the public interest to augment efficiency in the public service.*

**152.** *Again, a three-Judge Bench of this Court in Union of India v. V.P. Seth [1994 SCC (L&S) 1052 : (1994) 27 ATC 851] has held that uncommunicated adverse remarks can be taken into consideration while passing the order of compulsory retirement. The Bench in the said case made reference to Baikuntha Nath Das v. District Medical Officer [(1992) 2 SCC 299 : 1993 SCC (L&S) 521 : (1992) 21 ATC 649] , as well as Posts and Telegraphs Board v. C.S.N. Murthy [(1992) 2 SCC 317 : 1993 SCC (L&S) 710 : (1992) 21 ATC 664] , and after reiterating, with approval, the principles stated therein, has laid down firm proposition of law that: (Baikuntha Nath case [(1992) 2 SCC 299 : 1993 SCC (L&S) 521 : (1992) 21 ATC 649] , SCC p. 316, para 34)*

*“34. (v) An order of compulsory retirement is not liable to be quashed by a court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration”.*

16. The Supreme Court in **Rajendra Singh Verma (supra)** has *inter alia* held that principles of natural justice are not attracted to a case where an order of compulsory retirement is passed. Even an uncommunicated ACR can be taken into consideration. The order



cannot be set aside only for the reason that such uncommunicated adverse entry was taken into consideration. The authority has to take into consideration the overall record, even including some of the adverse remarks, which though for technical reasons, might have been expunged on appeal or revision. In the absence of any *mala fide* exercise of power or arbitrary exercise of power, a possible different conclusion would not be a ground for interference by the Court/Tribunal in exercise of its power of judicial review. What is needed to be looked into is whether a bona fide decision is taken in the public interest to augment efficiency in the public service.

17. In case of ***Central Industrial Security Force Vs. HC (GD) Om Prakash, (2022) 5 SCC 100***, the Supreme Court has held as under:-

*“12. In the judgment reported as Rajasthan SRTC v. Babu Lal Jangir [Rajasthan SRTC v. Babu Lal Jangir, (2013) 10 SCC 551 : (2014) 2 SCC (L&S) 219] , the High Court had taken into consideration adverse entries for the period 12 years prior to premature retirement. This Court held that Brij Mohan Singh Chopra v. State of Punjab [Brij Mohan Singh Chopra v. State of Punjab, (1987) 2 SCC 188] was overruled only on the second proposition that an order of compulsory retirement is required to be passed after complying with the principles of natural justice. This Court also considered the “washed-off theory” i.e. the remarks would be wiped off on account of such record being of remote past. Reliance was placed upon a three-Judge Bench judgment of this Court reported as Pyare Mohan Lal v. State of Jharkhand [Pyare Mohan Lal v. State of Jharkhand, (2010) 10 SCC 693 : (2011) 1 SCC (L&S) 550] and it was observed that : (Babu Lal Jangir case [Rajasthan SRTC v. Babu Lal Jangir, (2013) 10 SCC 551 : (2014) 2 SCC (L&S) 219] , SCC pp. 563-64, paras 22-23)*

*“22. It clearly follows from the above that the clarification given by a two-Judge Bench judgment in Badrinath [Badrinath v. State of T.N., (2000) 8 SCC 395 : 2001 SCC (L&S) 13] is not correct and the observations of*



*this Court in Gurdas Singh [State of Punjab v. Gurdas Singh, (1998) 4 SCC 92 : 1998 SCC (L&S) 1004] to the effect that the adverse entries prior to the promotion or crossing of efficiency bar or picking up higher rank are not wiped off and can be taken into account while considering the overall performance of the employee when it comes to the consideration of case of that employee for premature retirement.*

23. *The principle of law which is clarified and stands crystallised after the judgment in Pyare Mohan Lal v. State of Jharkhand [Pyare Mohan Lal v. State of Jharkhand, (2010) 10 SCC693 : (2011) 1 SCC (L&S) 550] is that after the promotion of an employee the adverse entries prior thereto would have no relevance and can be treated as wiped off when the case of the government employee is to be considered for further promotion. However, this “washed-off theory” will have no application when the case of an employee is being assessed to determine whether he is fit to be retained in service or requires to be given compulsory retirement. The rationale given is that since such an assessment is based on “entire service record”, there is no question of not taking into consideration the earlier old adverse entries or record of the old period. We may hasten to add that while such a record can be taken into consideration, at the same time, the service record of the immediate past period will have to be given due credence and weightage. For example, as against some very old adverse entries where the immediate past record shows exemplary performance, ignoring such a record of recent past and acting only on the basis of old adverse entries, to retire a person will be a clear example of arbitrary exercise of power. However, if old record pertains to integrity of a person then that may be sufficient to justify the order of premature retirement of the government servant.”*

18. In **HC (GD) Om Prakash, (supra)** the Supreme Court has held that after the promotion of an employee the adverse entries prior thereto would have no relevance and can be treated as wiped off when the case of the government employee is to be considered for further promotion.



However, this “washed-off theory” will have no application when the case of an employee is being assessed to determine whether he is fit to be retained in service or requires to be given compulsory retirement. *Since such an assessment is based on “entire service record”, there is no question of not taking into consideration the earlier old adverse entries or record of the old period.*

19. In terms of the law laid down by the Supreme Court, the factum of promotion does not wash out the earlier adversity in his service record. The Committee in the present case has taken into account the entire service record and found the petitioner unfit for being retained in service.

20. Further, even if the representation of the petitioner against the ACR of the year 2003-2004 was favourably decided, it would not have made any difference as the Committee had to consider his entire service record. Not only did he has an adverse ACR for the year 2003-2004, he also had an adverse ACR for the year 1999-2000. Besides adverse ACRs, Petitioner was issued several Show Cause Notices, (notices dated 13.08.2001, 04.07.2002, 14.02.2003 and 04.08.2003), whereby petitioner was called upon to show cause as to why action be not taken against him for repeatedly coming late to office and this showed his negligence towards duty.

21. We find no reason to take a view different from the view taken by the Committee in finding the petitioner unfit for being retained in service.

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22. We find no merit in the petition, the same is accordingly dismissed. No orders as to costs.

**(SANJEEV SACHDEVA )  
JUDGE**

**(VINAY SARAF)  
JUDGE**

*Note: Though, the judgment was pronounced in open court on 01.05.2025, however the same has been corrected and released on 15.05.2025*