

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 24th OF MARCH, 2022

WRIT APPEAL No. 130 OF 2022

Between:-

**BHEEMRAO BAGDE, S/O SHRI DEORAM
BAGDE, AGED ABOUT 71 YEARS,
OCCUPATION- ASSISTANT GRADE-III,
POSTED IN THE INDUSTRIAL TRAINING
INSTITUTE, SEONI (M.P.) (UNDER ORDER
OF COMPULSORY RETIREMENT) R/O
NEAR FCI GODOWN, MANGLIPETH,
KASTURBA WARD, SEONI, DISTRICT
SEONI (M.P.)**

.....APPELLANT

(BY SHRI VAIBHAV TIWARI - ADVOCATE)

AND

- 1. STATE OF M.P. THROUGH SECRETARY,
GOVERNMENT OF MADHYA PRADESH,
TECHNICAL EDUCATION AND TRAINING
DEPARTMENT, MANTRALAYA, VALLABH
BHAWAN, BHOPAL (M.P.)**
- 2. THE DIRECTOR, DIRECTORATE OF
TRAINING, JABALPUR (M.P.)**

3. THE PRINCIPAL, INDUSTRIAL TRAINING
INSTITUTE, SEONI (M.P.)

...RESPONDENTS

(SHRI ANKIT AGRAWAL – GOVERNMENT ADVOCATE)

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

ORDER

This *intra* Court appeal takes exception to order dated 12.01.2022 (Annexure-A-1) passed by the learned Single Judge in Writ Petition No.291 of 2004 whereby, the writ petition filed by the appellant/writ petitioner has been dismissed.

2. The facts of the case are that the appellant was appointed on the post of Lower Division Clerk in the Industrial Training Institute on 09.12.1976. The appellant was promoted on the post of Upper Division Clerk on 10.03.1986. He was promoted vide order dated 05.06.1993 on the post of Accountant. Vide order dated 27.01.2003, the appellant was reverted to the post of Assistant Grade-III from the post of Accountant. Vide order dated 18.12.2003, the State Government in exercise of powers under Rule 42 (b) of M.P. Pension Rules 1976 (hereinafter in short “the Rules of 1976”), has directed for compulsory retirement of the appellant. The appellant has preferred writ petition before learned the learned Single Judge which has been dismissed by the impugned order and hence, the appellant is in the instant appeal.

3. The learned counsel appearing for the appellant submits that the order passed by the learned Single Judge does not consider the arguments advanced by the appellant. The entire career of the appellant remained unblemished. The Scrutiny Committee made the recommendations on the basis of the circular which was already deleted by the State Government and under such circumstances, he submits that the rights of the appellant has been prejudiced on account of improper consideration by the Screening Committee. The learned Single Judge while placing reliance on a decision of the Hon'ble Supreme Court in the case of *Baikuntha Nath Das and another vs. Chief District Medical Officer Baripada and another*¹, *Madhya Pradesh State Cooperative Dairy Federation Limited and another vs. Rajnesh Kumar Jamindar and others*², *Rajendra Singh Verma vs. Lieutenant Governor (NCT of Delhi) and others*³ and *Ram Murti Yadav vs. State of UP and another*⁴ has held that even a single adverse entry of integrity can be held to be sufficient for passing an order of compulsory retirement. The report of the Screening Committee was based on the evaluation of the entire service record and subjective satisfaction is recorded, which should not be interfered under the power of judicial review of this court under Article 226 of the constitution of India.

4. We have considered the submissions made by the learned counsel for the appellant and perused the record.

1 (1992) 2 SCC 299

2 (2009) 15 SCC 221

3 (2011) 10 SCC 1

4 (2020) 1 SCC 801

5. The scope of judicial review of an order of compulsory retirement based on the subjective satisfaction of the employer is extremely narrow and restricted. Unless the order of compulsory retirement is found to be arbitrary or capricious vitiated by *mala fide*, or overlooks relevant material, then only interference is warranted. The Courts cannot sit in the judgment over the decision taken by the employer. The principle of natural justice has no application in the case of compulsory retirement. Even if the general reputation of an employee is not good and there may not be any tangible material against him, he may still be compulsorily retired in public interest. Of course, if it is a case of no material or no evidence, the same can certainly be held to be arbitrary or without application of mind, but the sufficiency of material cannot be examined by a writ Court. Ordinarily, the order of compulsory retirement is not to be treated as a punishment under Article 311 of the Constitution and such an action is necessary for better administration to chop-off dead-wood having regard to the entire service record of the officer/employee concerned.

6. The language of the Rule 42 (1) (b) of the Rules of 1976 suggests that the appointing authority may in the public interest require a government servant to retire from service at any time after he has completed 20 years qualifying service or he attains the age of 50 years, whichever is earlier, with the approval of the State Government by giving him three months' notice in form 29. It further provided that such government servant may be retired forthwith and on such retirement, the government servant shall be entitled to claim to sum equivalent to the amount of his pay plus allowances for the period of notice at the same rate

at which he was drawing them immediately before his retirement, or, as the case may be, for the period by which such notice falls short of three months as the case may be.

7. The State Government on 22.08.2000 issued the circular prescribing certain criteria while exercising power under Rule 42 (1) (b) of the Rules of 1976. The said circular was modified on 28.03.2003, however, the basic principles for compulsory retirement remains the same.

8. In the instant case, the Screening Committee was constituted for scrutiny of service record of Class III and IV employees working in the Directorate of Training. The said Committee met on 30.06.2002 for considering the cases of all employees, who had attained 50 years of age or completed 20 years of service as on 01.04.2002. The entire service record of the petitioner was considered and the Screening Committee reached to the conclusion that the appellant is not fit to be retained any more in service. His overall assessment was found to be below average. It was noted that the annual confidential report for the year 1978, 1981, 1996, 1998 and 2000 were of "poor category". It was further noticed that the recommendations of the Screening Committee were placed before the competent Authority i.e. Director Training, who agreed with the same and decision to compulsorily retire the petitioner has been taken. The learned Single Judge has reproduced the details of service record of the appellant and an extract of the evaluation by the Screening Committee.

9. Learned counsel appearing for the appellant has strong objection to the fact that when the Screening of the service record was made upto 01.04.2002, then there was no reason to take into consideration the order dated 27.01.2003 whereby, the appellant was reverted from the post of Accountant to the post of Assistant Grade-III and also the order dated 07.04.2003 whereby, the appellant was placed under suspension. He further submits that when the appellant was already reverted for his dereliction of duty, the same reason should not form the basis for his compulsory retirement as it would amount to double jeopardy.

10. From the perusal of the record, it is seen that the order of compulsory retirement is dated 18.12.2003. The same does not record any reason except the same is issued in public interest. The appellant admittedly was placed under suspension for committing financial irregularities on 23.11.2001. His ACRs for the year 1978, 1981, 1996, 1998 and 2000 were found to be "D" category ["poor" category]. Under such circumstances even assuming that the service record after 01.04.2002, is not taken into consideration in that case also, the ACR of the relevant years were sufficient for taking a decision to retire the appellant compulsorily. It is not a case of no material. Two entries for the year 1986 and 1990 awarding "Very Good" remark, would not overwrite the overall service record of the appellant.

11. The argument of the appellant that for the same charges the appellant was reverted, therefore, those charges should not be taken into consideration for taking a decision does not appeal to us. As stated above,

the order of compulsory retirement is not punitive in nature, but the same is passed in public interest.

12. Under such circumstances, we do not find any substance in this appeal. Accordingly, the same is, therefore, dismissed.

(RAVI MALIMATH)
CHIEF JUSTICE

(PURUSHAINDR KUMAR KAURAV)
JUDGE

pb.